

Bembridge Harbour: BHT immediate strategy and funding

Action must be taken now.

The Trust has been considering two courses to prevent unlawful outflow of money and resources (land) from the Harbour Company (BHIC), and to seek to ensure proper management in the future.

The first has been related to the planning application for 13 houses on currently operational harbour land. This will not provide the benefits claimed for the harbour, rather the harbour will be substantially worse off and operationally disadvantaged.

The second is the financial position and mismanagement of the harbour generally. Financial investigation of that position has led to a much wider and more serious concern; the constant loss of substantial harbour income to other companies in the same ownership - Mr and Mrs Thorpe - BIL, BBS and Hawk Property. This has had disastrous results for the proper management of the harbour; dramatically increased siltation through insufficient dredging and failure to repair the groyne. Also failing infrastructure; two accidents due to failure to maintain Bembridge Marina, one which may cost upwards of BHIC £400,000, non-repair of the groyne and harbour walls, the latter will also result in a very substantial repair bill and/or claim if not addressed.

Failing to act now would:

1) Appear to sanction and thus facilitate further financial wrongdoing. There will be many opportunities to extract further funds in ways which would be unlawful. Two future sources are evidenced in written submissions to the planning authority.

2) Facilitate BHIC to seek further public subsidy, when that is what the Enabling Development application should have delivered to the harbour if it had been structured legitimately. This is already evident from the call upon BHUG to raise public funds for the groyne within days of permission for houses being issued.

The advice is that since 2012 under the current ownership at least £1,500,000 has wrongfully left the harbour. If these receipts from harbour dues and mooring fees had been properly applied the repair of the groyne could have been funded five times over.

Failure to address this now simply facilitates a situation where the public will have to pay over huge further sums if they want the harbour to survive. Meanwhile BHIC fails to apply the funds in compliance with the Harbour Act. The view is that the only feasible option is to apply a third of the cost of the groyne now to secure proper management of the harbour into the future.

Why now?

With the grant of planning permission on 30th March, any legal challenge to the Council's decision must be made within six weeks (10th May). The aim is a judgment which confirms

that the Council's approach was unlawful – in sacrificing harbour land, to no genuine benefit for the harbour in return. The court process may take about a year until coming to trial. If successful, the Council will be directed to reconsider the application in a form which is legal, ie. one which provides genuine benefit to the harbour, and without harming the environment.

Regarding the financial and operational mismanagement of the harbour generally, the Trust has pursued every other avenue; the Trust, and the Council, have made direct requests to BHIC to explain, and to account. It pointed out to BHIC the damage and need for repair at Bembridge Marina before it came to harm. The Trust has approached the Minister for Transport, and IWC Council in its much more limited supervisory role re. harbours. It has pursued other regulatory channels. All without success, not for want of a case, but because the regulators lack resources. Legal challenge is left as the only remaining and effective option.

Any legal challenge on harbour wrongdoing has to be brought “as soon as possible and within three months” after the circumstances giving rise to the challenge. Whilst the recent legal report demonstrated multiple clear breaches, they were too old to challenge. The signing of the legal agreement crystallises the decision of BHIC unlawfully to make financial decisions to disadvantage the harbour. Further, and very unusually, there are three other actual or potential unlawful events within this window of up to three months, providing the strongest potential set of grounds of challenge that are likely to obtain in the foreseeable future.

Planning Permission generally

The Trust has long been working to prevent the need to challenge any planning permission, by working to ensure that the permission and its associated legal agreement secure benefits to the harbour without loss to the Harbour Company. The Trust has twice secured the Opinion of a planning QC on the flaws in the process and the steps needed to be taken by the LPA to put these right, and have then engaged with the Local Planning Authority (and with BHIC as far as possible) to secure this. The legal agreement has now been signed and the permission issued. These do not deliver the benefits to the harbour and do wrongfully harm the finances and wider interests of BHIC. Ideally this permission should be challenged in court to prevent these abuses. Unfortunately there is no redress other than legal challenge. On this planning matter, a legal challenge must be made within 6 weeks of 30th March, ie by 10th May.

Harbour Finances and Mismanagement generally

BHT commissioned a legal report on the activities of the harbour in 2016. Conclusions were clear causes for concern about major irregularities and multiple instances of unlawful loss of harbour income. BHT has since been vigilant to gather further evidence where available, and commissioned a further legal report in 2020. This was firstly to inform the planning authority, as it was clear money for new facilities should have been available all along, contrary to the (unsupported) assertions in the planning application. The planning authority's failure to take

this into account re. qualifying as “Enabling Development” will be one of the grounds of legal challenge of the permission, as advised by BHT’s Planning QC. It also secondly forms the basis for action against BHIC, either through relevant regulatory authorities or direct legal action, including by judicial review. The signing of the legal agreement (s.106) crystallises three separate wrongful acts by BHIC in relation to the finances of BHIC. There are three other recent acts by BHIC which could also be added as grounds to a legal challenge by judicial review. The timing of this is very fortuitous and exceptional; judicial review is a difficult process and there may never be a similarly strong opportunity. The objective of the challenge is to require the owners of BHIC to account for the funds wrongly transferred to other companies controlled by the same owners so as to recover funds due to the harbour.

Cost of Action.

The Trust will first urgently secure specialist counsel’s opinion on the merits of challenge and prospects of success on each claim. It would be imprudent to progress without the best advice. This is expected to cost approximately £10,000.

If each Judicial Review proceeds to court and is successful, the total cost will be £35,000 per JR (in addition to the initial £10,000 which is for preliminary advice relating to both actions). A total of £80,000.

If both claims are pursued up to the hearing and are successful the majority of the Trust’s legal costs of each action (limited to £35,000) will be recovered, at between 65-75% of the sums spent.

The worst case scenario is one where JR is commenced, it goes through to final hearing and the Trust loses, paying costs to the other side, limited to £10,000. In this case the total cost would be £45,000.

If both JR’s are pursued a total, then, of £90,000 plus the initial £10,000 = £100,000.

It is stressed that this worst case is unlikely to arise in practice, but the Trust as a responsible charity is bound to consider these implications.

The current view is that there is a good likelihood that neither challenge will need to proceed to its final determination, for reasons that can be elaborated upon.

It is not possible to predict how much will have to be spent in progressing the claims to a point where a satisfactory negotiated position in each case may be secured.

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