

Dear Secretary of State,

Re: Bembridge Harbour, your department's last ref 341339

We set out here a synopsis of concerns about the management of Bembridge Harbour and a request for action.

1. Bembridge Harbour Trust (BHT) is a Charitable Trust with the aim of protecting the community interest. It seeks good and lawful management of the harbour by the Statutory Harbour Authority (SHA), upon which the communities of both Bembridge and St Helens rely.
2. We last wrote in April 2021, asking the department to consider action to save Bembridge Harbour from avoidable deterioration.
3. We write again following a recent High Court ruling specific to Bembridge Harbour.
4. The ruling finds that the Minister does have powers to intervene. We therefore seek confirmation that the Secretary of State agrees he/she has sufficient powers to intervene based on the summary information provided here.
5. Our concern is about avoidable deterioration of the harbour due to £1.75M in asset value and incomes being extracted to other companies owned by the same shareholder-directors that own the Statutory Harbour Authority, rather than being reinvested in the harbour. We are advised this contrary to the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963. (attached 1)
6. We believe this £1.75M should be returned to the Statutory Harbour Authority so that it can be properly applied to its Statutory Purpose, allowing the SHA to prosper.
7. A fully evidenced case on the financial dealings of the Statutory Harbour Authority we question can be provided.

Confirmation of powers to intervene.

8. We seek confirmation that the Secretary of State agrees he/she has sufficient powers to intervene based on the summary information provided here.
9. BHT asks you to please confirm the High Court ruling saying in principle that you have the jurisdiction and authority to cause an inquiry or audit the affairs of the Statutory Harbour Authority at Bembridge.
10. Once we have such confirmation, we will send you the full information so as to inform an investigation using your powers on the following points:
 - 10.1 £650,000 value of the SHA's aggregate extraction rights passed on to another company (Bembridge Investments Limited) for £0
 - 10.2 £750,000 loan interest charges on a loan of £1.2m (from Hawk Property Developments Ltd). These funds were never available to the SHA for the purposes of the undertaking

10.3 £100,000 approx. of payments made over some 8 years (by Bennetts Ltd) went to another company (Bembridge Investments Limited)

10.4 £93,000 proceeds from houseboat plot sales that should have gone to the SHA.

10.5 £90,000 as a result of a sale by the SHA of a houseboat plot at £1. The buyer resold the plot on the same day for £87,500.

10.6 £50,000 (to be confirmed) estimated loss of harbour dues revenue over 10 years, because another company (Bembridge Boat Storage Ltd) retained and discounting harbour dues.

10.7 £40,000 failure to charge interest on loan balance to Bembridge Investments Limited.

10.8 £4,900 value of benefits provided to a SHA tenant, but charged as rent by another company (Bembridge Investments Limited)

10.9 Further unquantified losses to other companies owned by the SHA shareholder-directors, including rents apparently not charged, and fees paid by the SHA on account of reports commissioned for another company.

10.10 Future losses resulting from the claim of land ownership within the SHA's title and used for harbour purposes, by another company owned by the SHA shareholder-directors.

11. We ask that the Department for Transport exercise their powers, as the judge refers in her ruling (Copy of the full ruling is attached at 2) at paras 33 and 39, as follows:

“33. Where, on a proper analysis, the scheme puts the minister in a functional position of inquiring into, superintending, or having to be satisfied with, the discharge of the SHA’s functions, then that is the primary means determined by Parliament for holding BHIC to account. Where that is the minister’s appointed function, a court of review in judicial review proceedings will hold the minister to account for performance of that role, but Judgment Approved by the court for handing down. BHT v BHIC will not itself oust the ministerial function and attempt to discharge it itself, since that is not what Parliament has provided for.” (our highlighting)

“39The minister has discretionary powers to make further inquiry and to appoint an auditor to investigate if appropriate. If the minister concludes there is no sufficient case for further inquiry or appointing an auditor, that provides public assurance as to the discharge by the SHA of its statutory financial functions....”. (our highlighting)

12. We note the judge specifically refers to The General Pier and Harbour Act 1861 Amendment Act of 1862 and Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963.

13. Bembridge Harbour Trust wrote to the Director/shareholders of the SHA Statutory on 15th August 2023 asking for a response by 15th September, but we received no response. A copy is attached (3).

14. We have submitted information to the DfT between 2017 and 2021. In particular ‘BHT Legal Report re BHIC 04.12.2020’ which set out most of these issues that remain live. However, due to time elapsed these need to be brought up to date. There are also new issues not covered by that report (see 10.1, 10.6 and 10.10 above). We would send a new package of information following receipt of the confirmation requested.

15. BHT brought a Judicial Review, and the judge ruled in relation to other limited matters alleged against harbour, without success. The judge said re the Dft:

“39The minister has discretionary powers to make further inquiry and to appoint an auditor to investigate if appropriate.”

16. King’s Counsel advice on the interface between court’s role in JR and role of Dft is set out in para 36 of their ‘Advice on Merits of Appeal’ (attached 4):

“We also consider that the first Part of the judgment represents a positive step for concerned members of the Bembridge community represented by BHT in the context of its separate long-running engagement with DfT. We would advise that every opportunity be taken to capitalise on this aspect of the judgment. This would potentially relate to a range of matters (going well beyond the narrow confines of this claim for judicial review) where the Court has concluded that the Minister for Transport was intended by the statutory scheme to have a supervisory role.”

And also, in the Kings Counsel’s ‘Annex to advice on merits’ (attached 5) at para 21:

“It is all the more important in our view, given the ruling, that the Minister reflects on the judgment and considers the concerns of BHT in accordance with s.31 and s.32 of the Order.”

17. The purpose of this submission is to establish the Dft’s acceptance of its jurisdiction in principle. On confirmation we will provide you with the full information in our possession for each of the elements, as listed above.

18. We attach the following documents in the order referred to above:

- 1) Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963
- 2) Court ruling BHT vs BHIC 2023 (This Trust vs the Statutory Harbour Authority)
- 3) Letter to the Director/shareholders of the Statutory Harbour Authority 15th August 2023
- 4) Advice on Merits of Appeal by Tom Hill KC and Ashley Pratt
- 5) Annex to Merits of Appeal by Tom Hill KC and Ashley Pratt

We look forward to your response and would be pleased to answer any questions you may have.

The Trustees

Chris Attrill, Jonathan Bacon, William Bland , Jeremy Gully (chair), Phil Jordan, Norman Marshall, Sara Smith, as Trustees

For and on behalf of
Bembridge Harbour Trust
www.bembridgeharbourtrust.org