



## **ARTICLE BY DAVID CHRISTIE, TRUSTEE, 9 JUNE 2011**

***In part this is based on the initial draft of a letter to the 'County Press' which was printed, heavily edited and amended to meet its wordcount requirements, on Friday 10 June.***

### **Northwood House Charitable Trust – Cowes Town Council's Response to the Consultation - Village Green – General Matters – Philip Thwaites – Elizabeth Mackenzie - A Recent Development Proposal – the Future**

#### **The Response of Cowes Town Council to the Consultation - Generally**

The views of the Members of Cowes Town Council as expressed in their Response to the Trust's Consultation paper are decidedly negative and disappointingly unconstructive. Before issuing the Consultation paper the Trustees took advice from the Charity Commission which indicated that the paper produced by the Trustees (and in the drafting of which I played a major part) was balanced and presented matters fairly. The paper deliberately set out the views of the Trustees as a body (it would have been criticised if it had not done so) but it allowed and indeed encouraged other views. Including FAQ and Questionnaire it was 28 pages in length and referred to Reports which were made available on the NHCT website totalling several hundred pages. It was not a flawed document or one lacking transparency. It was a document which invited those consulted to express their views within a manageable and appropriate, if quite complex, context. The Trustees are now carefully considering the responses received.

The Response of Cowes Town Council (for which they sought and were granted a 4 week extension of time for submission) is just over 2 pages in length. It deals with issues outside the scope of the Consultation exercise. On the principal issues it covers barely a page and fails to deal with many of the questions posed in the Consultation. By way of illustration:-

- a) The Council support a new structure and refer to negotiation with the Charity Commission (but they do not say what scheme or structure they do want). My recent experience is that the Charity Commission want worked out proposals put to them for amendment/comment not a "negotiation".
- b) The Council want a Business Plan (but they do not offer to fund one - the Trustees have no available funds to commission one at this time - and they fail to pay heed to the Trustees view that until decisions are made as to a new structure a Business Plan cannot usefully be put in place).
- c) The Council support an enabling mixed development in the House (but they are silent on the issue of the formation of a Trust Company and the placing of the House in its title, a necessary initial step to achieve that aim in the view of the Charity Commission and in the considered view of the Trustees).
- d) The Council support the necessity for the Park to continue to be available for the enjoyment of the people of Cowes (which was a main statement of intent made by the Trustees in the paper which they fail to heed in the Response).
- e) The Council favour retention of the Community Hall (but offer no worked out proposals for its "efficient management and upkeep" in circumstances where I understand they no longer wish to use it themselves) and they fail to make any proposals for user of the

upper floors and ancillary buildings connected to it, nor do they heed or even comment on the effect of its retention on a mixed enabling development.

- f) The Council support some minor sale of trust assets (but they make no mention of the only property which is currently vacant and unused – the toilets on Park Road).

In contrast to Cowes Town Council the Friends of Northwood House have put in a detailed and well argued Response. I may not agree with all elements of it and I would welcome discussions with the Friends to see if their fears on some matters can be allayed and to examine the feasibility of some of their ambitions, but it is a document of worth and deserves and will receive careful attention.

### **Village Green**

So far as the support by Cowes Town Council for a Village Green it is my view that this is irresponsible and demonstrates that the Council has chosen not to take proper legal advice. The Trustees have been advised that it is precisely because the Park was gifted for use by the people of Cowes in 1929 and that the use by the people of Cowes has been licensed ever since as a result of that Gift that it cannot be a Village Green. This was decided by a decision of the House of Lords in 2004 and the statutory changes since that date have not affected this legal principle nor the guiding construction of the Village Green legislation, that it exists to provide for the rights of local people where land has been used “as if” it was a Village Green, not where it has been specifically and deliberately licensed and maintained for public enjoyment.

It is also the case that some parts of Northwood Park have been governed by byelaws and in other parts charges or restrictions have operated. All of these matters would complicate any Village Green proposal as the Council should know.

As non lawyers the Members of the Council responsible might be forgiven for their ignorance of some of the matters I mention, although it does not explain why in the face of a clear statement by the Trustees in the paper of legal advice it had taken, they should publicly support a proposal of this nature without taking their own legal advice. To encourage such a proposal in these circumstances is not only irresponsible, it will put yet further strain on the Trust’s resources both in manpower and funding if it causes a misconceived application to be issued.

Of equal significance in my view is the failure of the Members on Cowes Town Council to grasp the contradiction between an enabling development (which they support) and a Village Green (which is a primary means of preventing any type of development – enabling or otherwise). The House cannot just sit within its four walls (or however many walls) as a development project. Some minor elasticity has to be allowed although the Trustees have the principle firmly to the forefront of their minds that any elasticity should be the minimum necessary for the enabling development to work and should not jeopardise the parkland.

Indeed it was clearly stated in the paper that the Trustees intended to preserve and protect the real enjoyment of the parkland by local people.

### **Generally**

Some of the matters raised by Cowes Town Council concerning the administration of the Trust are deserving of attention. My own view is that we should be reasonably transparent in relation to our management of the House and Park. With this in mind after taking over full management on

1.10.2010 our Chairman started writing regular lengthy reports for the Council. These were not well received by some Members and some matters mentioned, including the intention to commence a Consultation, were not noted by Members. I accept that these things do happen and communications can always be improved.

I am very conscious that the Trust's accounts have in the past had some real anomalies. The fact is that the Trustees did not have ownership of the accounting base until 1.10.2010 and since that date our enquiries for details of what went on under their management have not been a priority of IWC. I am hopeful that 18 month accounts to 30.9.2010 can be submitted soon but at the moment our Accountants are still trying to resolve issues and await information from IWC. The Trustees have determined that production of these Accounts is a priority.

### **Destructive Local Criticism**

There appears to be little local understanding that all of the Trustees are volunteers working without remuneration or expenses. The same applies to all of the Advisers assisting the Trustees. I am still in full time work and can only give limited amounts of time to the Trust, but I have had to advise and assist with myriad issues in the 6 months since I became a Trustee, involving many hundreds of hours of my time. I know the workload of other Trustees and Advisers much exceeds my own. In my view destructive local criticism of the Trustees, as exists in some quarters, is simply counter-productive. To save the House and Park is a project that requires co-operation and a spirit of amity and acceptance that we are all doing our best for a Community asset. There is no doubt that more professional assistance is needed in the affairs of Northwood House and Park. However the progress that has been made since 1.10.2010, when the Trustees commenced with just £810 from IWC, has been remarkable. Instead of voicing critical opinions, when the Trustees are doing their best in difficult circumstances, I would ask those who voice these matters whether or not they are prepared themselves to roll up their sleeves and really assist with a significant donation of time and effort or money. If they have skill-sets we are missing I am sure much will be found for them to do.

### **Philip Thwaites**

One person other than our Chairman, who has given real dedication to her duties, deserves special mention. It is my view that if Philip Thwaites had not put in the huge amounts of work and effort he has done the House and Park would be in a much sorer state. His personal workload from clearing room after room of debris to cleaning and decorating, pruning Ivy, collecting leaves and even rodding drains in the House of years of built-up fat has been magnificent. At Christmas I came across him with Margaret Ankers rodding a drain in the park itself which had become blocked with leaves. We joked then that not many Business Advisers or Trustees would come out on a cold late December day and perform such a task.

Philip has been a tower of strength in organisation of our volunteers and he has given to the Trust his business experience at a vital time. I consider the local community should know just what a fantastic contribution he has made. It is the more disturbing in these circumstances that I am informed some in our community are responsible for peddling deliberate calumnies concerning Philip. My advice to these misguided individuals is that they should cease what they are doing because it is without doubt defamatory.

The latest one I have heard which suggests that Philip will retain profits from a company set up by the Trust is completely untrue. The fact is that he was asked by the Trustees to agree to be a

Director of a trading company limited by guarantee which was formed in accordance with Charity Commission advice so that it could be demonstrated that the Trustees were not intending to trade permanently, which is not permitted by the 2002 Scheme. All of this is mentioned in the Consultation paper. That Company limited by Guarantee was purchased off the shelf with standard Articles that have not yet been tailored to the Trust's requirements. It remains dormant while the Trust's future structure is in debate. It is owned by the Trust. Further Directors will be appointed when it commences to trade and I know the Trustees will require that its profits are all donated to the Trust, unless any are required to be retained in the Company to meet accounting or company law regulatory requirements.

### **Elizabeth Mackenzie**

Liz was properly nominated as a Trustee in 2007 by Cowes Community Partnership, which is one of the nominating bodies which exists under the 2002 Scheme, and she duly became a trustee in accordance with the Scheme for a 4 year period. Since that date she has served as a trustee of NHCT without remuneration volunteering her services. She is the longest serving Trustee currently on the Board. In the 6 months I have been a trustee she has attended almost every fortnightly meeting of the Trustees and has taken responsibility for a wide raft of matters which have been delegated to her by the Board of Trustees. Currently she is assisting me in understanding and amassing documentation in connection with important legal research on behalf of the Trust as well as being on the Finance Sub-Committees set up recently by the Board of Trustees and which I am now chairing.

In some quarters it is being put about that Cowes Community Partnership is moribund and these individuals obviously consider this affects Liz's status as a trustee. I have to say to these individuals that until the current Scheme is changed, which was a central tenet of the Consultation, that the current status of that body is irrelevant to Liz's position as a trustee pursuant to her 2007 nomination. Having been validly nominated she is entitled to remain a trustee until the expiry of her term. Misguided individuals who have put out blogs expressing the view that her status rests on the activity of Cowes Community Partnership simply do not understand the concept of a power of nomination. Liz is not and never has been a delegate for Cowes Community Partnership and none of the other trustees who have been nominated in accordance with the 2002 Scheme are delegates. They are trustees for a 4 year term once properly nominated and it is as simple as that. I do not believe the Charity Commission would accept a Scheme whereby a trustee was in effect under the control of his or her nominating body. That would run counter to the concept that trustees owe individual and collective fiduciary duties. By way of hypothetical example, if Cowes Town Council were to be abolished by Act of Parliament tomorrow, it would not affect the validity of the nomination it made of Ann Thwaites in 2009. Indeed there is no requirement under the 2002 Scheme for a trustee nominated by a body given that power to be a member of the body which makes the nomination.

In fact I am told Cowes Community Partnership still exists as a constituted body in funds and it still supervises local works – the example I have been made aware of is the project at Mornington Woods. I am also informed that the Mayor of Cowes Town Council and Councillor John Matthews have recently been nominated by Cowes Town Council to be on the Partnership. The Vice Chairman of CCP has written conceding that it has not held regular meetings recently and he accepts that there is a necessity that it appoints some new officers to fill vacancies. The reason for the inactivity has been a dearth of new projects for which funding could be obtained. They would like that

position to change and welcome suggestions. I can think of a good few in Northwood House and Park.

As the 2002 Scheme is still in existence, under its terms Cowes Community Partnership has a power to nominate a new trustee when Liz's term of office expires or it could re-nominate her. It appears that some in the Community consider that there are powerful reasons for reconsidering who should be the nominating bodies of Trustees. That is a separate matter of debate which should be conducted in a civilised and intelligent fashion in the context of a new Scheme. To accuse Liz of not being properly nominated and to be "feathering her nest" somehow through her carrying out of voluntary unpaid duties as a trustee of NHCT, is in my opinion as equally defamatory as the calumnies being pedalled about Philip.

### **A new matter since the Consultation closed - the Nursing Home**

Extraordinarily I understand rumours are circulating that there is a proposal by the Trustees to sell the House for a Nursing Home. This is wholly inaccurate. An unsolicited outline development proposal has very recently been submitted to us. It has not yet been considered at a meeting of the Trustees. The next one will be on 17.6.2011. It is my view that until the Trust's Scheme is reworked (see the Consultation paper) and the Trustees have clarity as to the future structure of the Trust, no such proposals from wherever they may come, can be meaningfully progressed. In any event no sale is possible without a rigorous tender process followed by the consent of the Charity Commission.

The purpose of the Consultation was to seek public consensus for a structure, suitable to put through an enabling development, to ensure the future of the House and Park. It is my instinct on preliminary analysis of the response of some of our important stakeholders that there may not be any clear consensus – at least so far as those stakeholders are concerned. More work obviously needs to be done. Of one matter I am certain, the public can be assured that wide publicity and consultation will precede any long term decisions about the future of the House and Park and it is my own ambition, shared I know by all other Trustees, that the fine public rooms be retained for public user if this is feasible.

### **The Future**

Northwood House and Park are wonderful assets. I would invite all parties to work with the Trustees in a positive and constructive manner towards an exciting future for the House and for the Park, for everyone to enjoy. Meanwhile I hope this article will reassure local people as to the Trustees' intentions.

### **David Christie**

(Trustee Northwood House Charitable Trust)

This Article expresses my personal views and has not been the subject of agreement amongst the Trustees as a body.