

## **RBYC Western Development**

### **Frequently Asked Questions (FAQ's) 2019**

The Committee and TCM have used their best endeavours to answer many of the questions that have been asked by the Members over the course of the last few months. It is hoped that all or most of the ground is covered below but if there are things that we have missed the Committee and TCM will be happy to try to answer them. Members will appreciate that unless and until planning is granted, nothing will happen and no decisions will be needed from anyone.

The answers to the questions are separate. The answers are answers to the questions and not a commentary on the other's answers. The Committee's answers have been prepared without input from Mike Baker Harber and Stephen Herring (see Question 17 below).

#### **1. Will the value of the RBYC be diminished by granting a right of way to TCM through to their project?**

**TCM:** Taking the question in isolation the answer is of course yes. However, this is the wrong question. If the project does not go ahead no right of way will be involved. If it does go ahead, this will be on the basis that a substantial lump sum will come to the Club and an annual income. The Club will also be given the freehold of the site including that right of way. We see the issue not as one of diminished value but as whether or not the lump sum and income is more than enough to compensate for this? This is, to our minds, an instinctive judgement call for the Members. Obtaining an expensive valuation is in our view a waste of money since if we pay for it, the profit coming to the Club will be reduced by the same amount we pay.

**Committee:** Yes. The Committee has surveyors on standby to produce an up to date valuation of the current estate and the potential diminution in value should a right of way be granted. This work will be undertaken if and when planning consent is obtained by TCM. Any rights of way would be granted in perpetuity to the apartment owners and commercial tenants, notwithstanding that the Club may be gifted the freehold of the 'TCM' site. Diminution in the value of the Club's property might not be the only issue as regards valuation; see Committee response to Question 5.

#### **2. How many neighbours currently have pedestrian or vehicular access via the Club carpark?**

**TCM:** We do not understand the relevance of this question. Four club members have access together with nine Augers residents. Auger's right of way are very limited and confined to the north end of the Club's property. It has been suggested that we were remiss in not consulting Augers' residents. If we were we apologise but they had the same opportunities as everyone to attend our presentation at the Town Council's offices. Incidentally the suggestion that our current proposal is far "bigger" than the "scheme" we are said to have put in that presentation is wrong: there was no "scheme" as such, only an outline concept.

**Committee:** There are two registered charges of rights of way over part of the estate.

- Augers Residents

- Occupiers of No 85

Any other vehicular or pedestrian access is by way of the benefits of membership of the Club.

### **3. Were neighbours consulted before the planning application was submitted?**

**TCM:** We had hoped that neighbours had been sufficiently consulted but if any were forgotten we unreservedly apologise.

**Committee:** The Members' meeting which took place in the Club in 2017 and the public consultation open meetings should have alerted neighbours. The planning application is, of course, by TCM and not by the Club. Despite these factors, the Committee acknowledges that it could have done more to communicate with neighbours, or to prompt TCM to do this. No discourtesy to neighbouring Members or other neighbours was intended on the part of the Committee.

### **4. What is the RBYC's annual income from the Auger's ground rents?**

**TCM:** We understand it is £900 per annum.

**Committee:** £900 per annum. Our head lease is not with individual flat owners, but with a management company representing the owners. Administration of this management company was poor in the past, but under new management it now performs its obligations under the terms of the lease.

### **5. What will RBYC receive up front for access?**

**TCM:** Nothing. If all goes ahead we will give the Club the freehold, any profit on selling the apartments and all rental income. See Question 8 and 16 below.

**Committee:** We have understood for some time that a payment by TCM up-front for access is not on the table as far as TCM is concerned. If so, this means that the Club would most likely be asked to transfer, or unconditionally agree to transfer, access in return for future development profits and income streams. That will require the economics of the development to be fully understood, with due diligence to be carried out and advice taken. It is understood that all TCM's project costs would come out ahead of the profit to be transferred to the Club, so the extent of these needs to be known. There would in any event be risk of cost overrun and a degree of market and other risks taken by the Club which will need to be assessed and explained.

Assessing the value of the access will require the Club taking professional advice (see Committee response to Question 1). It may be that the value for these purposes is not, or is not only, the diminution in the value of the Club's property but is to be determined in accordance with established principles as a portion of the increase in the value of TCM's property which would be created by having the access. It is undoubtedly the case that if TCM's property had been acquired by a third party developer any discussion of access would involve an up-front payment to the Club – but of course the Club would not receive the developer's future profits. TCM's generosity in transferring to the

Club all development profit plus future income streams potentially gives the Club more (potentially much more) than it would receive by way of an upfront payment for access. But the proposed method and timing of TCM's philanthropy means that if for any reason the Club ultimately received less than the value of access (however determined), TCM would be transferring risk to the Club.

The different ways of assessing the value of access in the applicable circumstances and the uniquely generous gesture of transferring all development profits and future income streams to the Club mean that Members might not be concerned to be assured in all circumstances of a 'pound for pound' equivalence between the aggregate benefit received by the Club and value of the access – as they would if an up-front payment by a third party developer were being negotiated.

It is also worth noting that analysing the issue by reference to the position which would apply with a hypothetical third party developer is not necessarily the only or even the correct approach. There might be no real market for development of the TCM site of the type and scale proposed by TCM other than by TCM itself. Certainly, the only proposal currently on the table is the one from TCM.

The issues to which this Question 5 gives rise are complex and will be addressed carefully by the Committee with the benefit of professional advice before a proposal is put to the Members for approval.

**6. What will it cost the RBYC to collect/manage the Western Development tenancies?**

**TCM:** We would expect a management company to charge around 12.5% of any rental income. We wonder whether this could not be handled inhouse by the Club's office?

**Committee:** No decisions have been made regarding the management, either in house or via agents, of the retail units. The Committee would need to take professional advice. The costs of management would need to be taken into account in assessing the risks to the Club and the net benefit it will receive. See the answer to Questions 7 and 10 on broader issues about the Club's management of tenancies.

**7. What would be the annual maintenance cost for the RBYC?**

**TCM:** The Leases of the apartments and the retail units will contain maintenance and repairing obligations so the answer should be nil. Additionally, they will have to pay rates and their share of building insurance. However, see Question 8 below.

**Committee:** Hopefully nothing, provided the retail units remain fully let with the tenants performing. There would be potential exposure to the Club in the event of non-performing tenants or the retail units ceasing to be let for any reason.

**8. What would the annual rental income be from a) the apartments and b) the retail units?**

**TCM:** The annual ground rent for the apartments has yet to be fixed but it is likely to be around £200 p.a. per unit so total £1200 p.a. The capitalised value of those ground rents is around £8,400. We have been advised by independent professional experts to expect around £60,000 p.a. for the retail units. We regard this figure as optimistic especially in today's climate. There will be tax implications upon which we are taking advice. It is our intention to let the restaurant and retail unit prior to handing over the freehold to the Club. We have offered the Council a new visitors centre at a "peppercorn rent" which means no rent from this element but they would still be responsible for rates, insurance and service charges. We believe the visitor centre in town is shortly to close down.

**Committee:** The Committee has previously seen no projections or estimates for the ground rent from the apartments or in particular the likely achievable rental income from the commercial units. This will be a matter for professional advice and is one of the key issues in the context of Question 5.

**9. What are the business rates on the retail units?**

**TCM:** Currently £13,620 p.a. for the whole building as is, payable by the lessees but this will increase.

**Committee:** Not currently known.

**10. What happens if the retail units cannot be let? What will this cost the Club?**

**TCM:** This is the best question of them all and the most difficult to answer at this juncture. It is a matter which we are already discussing with the Committee. The exposure would be the business rates, insurance and service charges. However, we think such a scenario is most unlikely. In a worst case we have no doubt that the premises could be let on an interim rent free basis with the tenant paying those outgoings. This would mean the Club would receive no rental income but would have no expense for what would hopefully be a short period. If and when planning is given and all the other formalities have been completed and agreed following an EGM and the numbers are marginal, it is unlikely that we would proceed with the project in any event.

**Committee:** There are a number of issues around the letting of the retail units (both initially and ongoing) which will need to be addressed with the benefit of professional advice and mitigated to the extent possible by agreement between the Club and TCM, or failing that explained to and accepted by Members:

- (i) retail units not let before access granted;
- (ii) retail units not let before freehold transferred to Club;
- (iii) risk of tenant default/insolvency and re-letting and the amount of potential exposure to the Club arising from that;
- (iv) the Club's (lack of?) power under its Memorandum of Association to own and manage commercial property (to be addressed as necessary)

by a Special Resolution of Members changing the Club's objects); see further Question 27.

In summary, the risks at (i) and (ii) would be best addressed by favourable long-term business tenancies being committed to before access is granted and certainly before the freehold is transferred to the Club.

**11. Will the retail units be lien free from past tenant's legal rights?**

**TCM:** It is intended that the Club will be given a clean title without any liabilities. This is a matter of negotiation between us and Josephine Crawford, the Head Lessor, with whom we are in friendly dialogue. The Sub Lessee of the Quayside Café has "done a runner" and is not in the picture. If Josephine wishes to stay on in a new unit she will be welcome but at a current market rent. If she needs to be served with a Section 25 Redevelopment Notice she may be entitled to compensation which would have to come out of our "profit", so less money for the Club. Her current tenure is problematic as a previous Club Commodore unilaterally and arbitrarily reduced her rent without any consultation with us! It expires in April.

**Committee:** The Club has no information on the state of existing tenancies, but would expect to receive clean and unencumbered title. Any cost to TCM of achieving that would no doubt form part of the cost of the project ahead of the profit to be transferred to the Club.

**12. What arrangements will there be in place against any future inheritance issues in the event of the death of any member of TCM?**

**TCM:** We hope the situation will not arise, at least in the near future (!) but the question is irrelevant as TCM is a corporate entity.

**Committee:** To be addressed in the final agreement between the Club and TCM to protect the Club against any risk of change of control of TCM (see also the response to Question 13, which could give rise to similar issues.)

**13. Where would the Club stand legally if the site is sold or mortgaged?**

**TCM:** We simply do not understand this question or its context. If TCM did obtain a right of way it could neither sell nor mortgage the site without the express approval of the Club. For the avoidance of doubt, the sequence contemplated is: 1) planning approval, 2) detailed negotiation between TCM and the Committee and its advisors (taking account of such issues and any restrictions in the Club's Articles) and 3) an EGM at which 75% of the Club's membership will have to approve the scheme.

**Committee:** If the Club agrees to give access and otherwise agrees to the development in return for future profits, future rentals and/or a future transfer of the freehold, it will be necessary in the agreement between the Club and TCM for the Club's rights to be recognised and protected against being overreached by the rights of such third parties (buyer or mortgagee). This is an important issue for the final agreement.

#### 14. Who will pay to make good the RBYC carpark?

**TCM:** It is inevitable that the carpark will suffer from wear and tear during the course of building operations. TCM would be happy to make this good or indeed resurface the whole carpark (a very considerable cost) if asked to do so but this would reduce the scheme's overall profit to be handed over to the Club.

**Committee:** The Club will expect TCM to make good any construction damage to the car park within their project costs. This will be a cost which will come out ahead of the profit to be transferred to the Club. (Improving the current state of the car park would clearly be a good thing.)

#### 15. How many carparking spaces will be lost if access is given through the carpark?

**TCM:** We believe only one since, in accordance with current planning requirements, the scheme allows two parking spaces for each new apartment plus guest/visitors parking within the confines of the new development. The retail units will not be allowed parking and will have to service their needs as they do now via the Quay.

**Committee:** Not known currently, but probably one if access to the new site is signal controlled.

#### 16. How much profit will there be for the Club, aside from any rental income?

**TCM:** This is of course a question we must expect and we quite simply cannot guarantee anything. What we can say is that we will not proceed if the figures are marginal. Doing the best we can at this juncture and based upon independent professional advices we have received, the numbers look roughly as follows:-

Sale proceeds of the apartments less our acquisition costs, professional fees and building costs (allowing a substantial contingency for any piling etc.) we **ESTIMATE** will leave £200,000-£250,000 profit to hand over to the Club together with the rental stream and the freehold interest in the site. We cannot and will not guarantee any numbers but, as stated above, will not proceed if they are in any way marginal. There will be tax implications upon which we are taking advice. It would be nice if certain members could show some appreciation for this wholly altruistic venture on our part (with our accounts audited by the Club's accountants and Treasurer) instead of questioning our integrity.

**Committee:** No response currently possible. Subject to due diligence on the development. The issues flagged in the Committee's response to Question 5 are related.

#### 17. Are there not serious conflicts of interest given that two Flag Officers are members of the TCM team?

**TCM:** Correct. But Stephen Herring and Mike Baker-Harber have, in writing, declared their interest and offered to and do absent themselves from relevant

Committee Meeting agenda items when asked to do so. We are advised this is not an issue.

**Committee:** Yes. The conflict position has been addressed in accordance with company law and the Club's Rules by appropriate declarations and where applicable the two Flag Officers leaving meetings at the Chair's request and not voting. This has operated satisfactorily. The issue is likely to become more acute, and will require careful management, as detailed discussions between the Committee and TCM get under way and the project continues through to completion over the coming years. Annual election of Flag Officers is, of course, a matter for the Members.

**18. Are there two alternative accesses via the RBYC?**

**TCM:** One is via the Catamaran Store/workshop area and the other involves TCM purchasing a small piece of neighbouring land from Tommy Yau. Our negotiations with him have currently reached a bit of an impasse. Even access via his land would require a right of way from the Club.

**Committee:** Access is required through the Club's estate in either event, but we understand that part only of that might be obtained by TCM from Mr Tommy Yau. Negotiation (if any) between TCM and Mr Yau is obviously a matter for those parties and not the Club.

**19. How will the Racebox be affected?**

**TCM:** Not at all.

**Committee:** We understand that the upriver view from the racebox will not be affected and have received assurances from TCM. We also understand that the proposed elevated platform is driven by TCM's planning issues, although it would also have the benefit of giving enhanced views downriver. We assume that the cost of the elevated platform (and any necessary shoring up or reconstruction of the current racebox structure) would be a development cost which would be recovered by TCM ahead of the profit to be transferred to the Club.

**20. The Planning Application originally stated that access via the Club had been "agreed". By whom and when?**

**TCM:** There was indeed a mistake in some of our documentation. The offending documents were promptly withdrawn, corrected and resubmitted. We have apologised to all and repeat that apology.

**Committee:** This was a mistake which was pointed out in writing to TCM and to Maldon District Council, and reported to the Members by the Commodore's recent circular. It has been acknowledged by TCM with apologies and revised documents have been submitted by TCM.

**21. Will TCM insist on retaining control as to how the Club spends the anticipated profit and rental stream?**

**TCM:** The answer is yes but we will not retain direct control. Trustees will be appointed who have the best interest of the Club very firmly at heart and decisions will be left to them. What we are not prepared to agree is that everything should simply be handed to the General Committee, some or all of whose members we quite simply do not know and may not know in the future. This issue will have to be discussed in detail with the current Committee members who are of course all well known to us.

**Committee:** Any control which TCM wishes to retain will need to be addressed in the final agreement. The Committee currently has no detail on the extent or nature of that intended control. If the anticipated profit and rental stream were, for example, to be paid to a trust rather than the Club itself it could give rise to a question as to whether the Club itself (as opposed to a separate trust) was receiving **any** benefit in return for access and any other benefits transferred by the Club to TCM. If the conditions which TCM seek to impose are not acceptable to Members there will be no final agreement. The Committee would prefer that the benefits to be conferred on the Club would become unrestricted assets of the Club to be applied as the Committee decides from time to time in accordance with its broad legal duty to promote the success of the Club. Any restrictions which TCM require are, of course, something they are free to seek but they would need to be assessed by the Committee in the first instance (and ultimately by the Members), taking account of the likely benefit to be received by the Club, any detriment to the Club and any risks to the Club. This is an important issue to be addressed at an early stage. The Committee is aware of the confusion and contention which can arise over the purposes to which the proceeds of philanthropy are to be applied unless this is clearly agreed and understood by all concerned at the outset.

**22. Have not the Environmental Health authorities raised issues with regard to "acoustic conditions" as a result of having new residential neighbours?**

**TCM:** Correct. This would involve changes, primarily by way of double glazing, to the Club's dining room west windows and skylight (which we believe leaks anyhow so would benefit from some work). Additionally, acoustic monitors would be needed in the dining room and courtyard when there are Club functions. We have not explored the costs of these measures as yet, although we have made a generous allowance in our current estimates. This was sprung on us at the very last moment by the planners. We were advised that no such report was required but nevertheless produced one, at considerable expense, to satisfy them.

**Committee:** Modifications to the fabric of the Club will need to be agreed by the Club. The cost of agreed modifications will no doubt form part of the development cost which will come out before the profit to be transferred to the Club. If, even with modifications, the current ability of the Club to hold events with music will be restricted that will be a major issue. The recommendations / requirements of the Environmental Health authorities which emerged in the response to the planning application were not disclosed to or otherwise



previously known to the Committee. (As a separate but related issue on noise, the Committee is not aware whether any issues around starting signal noise from the Racebox have been or will need to be addressed.)

**23. What overall impact on the Club premises would there be?**

**TCM:** We really cannot add to the comments made by the Committee which obviously make good sense.

**Committee:** A number of impacts are identified in some of the previous questions (diminution of value on grant of access, Question 1; making good of the car park, Question 14; loss of car parking spaces, Question 15; the racebox, Question 19; acoustic issues, Question 22). Apart from these, the most obvious impact would be disruption during the construction process, including possible adverse impact on the ability to hold revenue generating outside events during that period. The extent of that is not yet known. If access were agreed under the Catamaran Store (see Question 18) the disruption caused by construction would be increased. (There would also be some loss of space but probably not of great overall significance.)

**24. Are there any constitutional issues for the Club in taking the freehold to the neighbouring site?**

**TCM:** We acknowledge that there will need to be changes made in the Club's Memorandum of Association. This will need to be addressed at the proposed EGM.

**Committee:** This is already referred to at (iv) in the Committee's response to Question 10. It is likely that an amendment to the Club's objects in its Memorandum of Association would be required by a Special Resolution of Members. Some Members have raised this by comments such as "this is a yacht club, not a property company". The constitutional issue is linked to the responsibilities and commercial risks which the Club would take on by owning property subject to leases of commercial units. A change to the Club's Memorandum of Association would most likely be addressed at the EGM for approval of the deal.

**25. How would the Club be affected if planning consent is refused and consequently TCM decides not to develop the site?**

**TCM:** We have not thought this far ahead. If we decide not to develop the site the Club will not be affected one way or the other save that it will not receive the profit and rental stream we had hoped to hand over. If however the Club is in any way physically affected by any future plans the Club will of course have to be consulted and its agreement sought.

**Committee:** What happens if planning is refused is a matter for TCM. Subject always to that, a couple of observations. If TCM were to develop the site in a materially less ambitious way the currently intended benefit through transfer of profit to the Club would presumably not arise. If the site were sold by TCM to a

third party any planning issue and issue of access would be matters to be dealt with at arm's length between the Club and the third party.

**26. As TCM intends to kindly donate the site to the Club, one member asked why they don't avoid the expense and aggravation of this plan and just do so? Then the Club can build a new state of the art yacht club there and sell the existing club to a developer to pay for it?**

**TCM:** And write off our investment?! And destroy the iconic heritage of the Club we all love?

**Committee:** We are not aware that TCM would consider this possibility and so it has not so far been pursued. If it has any traction with TCM it can of course be taken further.

**27. Will the Club not need to spend money on professional advice? How much will that be and who will bear the cost?**

**TCM:** Obviously the Committee will make its own decisions after taking professional advice. If we are asked to pay for this we can have no objection but it will reduce the amount of profit that we have available to hand over to the Club.

**Committee:** Yes, both legal and surveying advice will be required by the Club going forward, starting with the valuation of the access (both full access and partial access if there is partial access through Mr Yau's property). It is difficult to assess at this stage the amount of professional fees which the Club will incur overall but it could be several tens of thousands of pounds. It is an open issue as to who will bear the cost. Some Members have suggested all costs of the Club should be borne by TCM. If that were to be agreed, the costs would most likely be a development cost of TCM which would be paid before any profit transferred to the Club.

**28. Will there be an EGM for Members to vote on this? And when?**

**TCM:** Yes. See our answer to question 13 above.

**Committee:** Yes, there will need to be an EGM for Members to approve the arrangements and, in particular, the granting of access because of the terms of the Club's Articles. The outline sequence of events will be, assuming TCM obtains the planning consent requested:

- (i) discussions between the Committee and TCM leading up to a detailed 'heads of terms', with the Club taking commercial and legal advice in that process;
- (ii) the 'heads of terms' put before Members at an EGM for approval (together with amendment of the Club's Memorandum of Association; see Question 27) by Special Resolution of 75% of Members voting (in person and, if on a ballot, including proxies);
- (iii) subject to the granting of that approval by Members, negotiation of final documentation between the Committee and TCM, again with the benefit of professional advice.

It is not currently possible to estimate the timing of this process but the time necessary to achieve stage (i) should not be underestimated.