

Parish Assembly

The Twenty Fifth Day of May Two Thousand and Twenty-Two

An Assembly of Principals and Electors of the Parish of St. Peter will be held in the Parish Hall on Wednesday 25 May 2022, at 7.30pm to:

1. Receive, and if deemed advisable, approve the Act of the Parish Assembly held on Thursday 21 April 2022.
2. Consider and if approved, authorise the issue of legal proceedings, subject to safeguards and expenditure of up to an additional £30,000.00 on the legal and professional fees to do so, and to authorise litigation financing, in respect of the historical financing of the Parish development at Clos Le Ruez.
3. Take into consideration the following recommendations to the Assembly of Governor, Bailiff and Jurats of licences for the year 2022, an Assembly for:

Company: Rocco's Limited

Category: First & Third Categories

Business: Rocco's Activity Centre
La Route de la Murette
St Peter
Jersey
JE3 7FQ

Rocco's activity centre. Indoor Café bar and seating along with outdoor undercover seating and outdoor seating in front of activities.

- 1 On the proposition of **Joao Camara**, seconded by **Chris Benest**, the minutes of the assembly held on Thursday 21 April 2022, which had been handed out previously, were approved.
- 2 The Constable addressed the assembly to advise that the focus of the proposed action is purely related to the action of the Bank in relation to the hedging options that were presented to the Parish.

He asked the current procureurs and Mark Renouf, Advocate of Seymour Law to explain: Procurer, Robert Surcouf advised the history in that in January 2011 a loan was taken with Barclays for £3.5 million at an interest rate of 6.82% covering the facility for 25 years. 18 months later, June 2012, the Parish had available reserves so decided to pay back £489,000 to Barclays. There was a break fee of £980,000.

The terms of the loan and hedging had been under review following the change in Procureur and when the Parish was approached by its Bankers in relation to the ending of LIBOR rates and the hedging arrangements relating to the Parish development at Clos la Ruez, the matter had come to a head. Due to the nature of the original documentation and its implementation and the proposed new documentation that we are being asked to consider, the Constable and Procureurs agreed that independent legal advice must be sought.

Advocate Mark Renouf addressed the assembly:

Noted it was an unusual Position for a Public Meeting to discuss a potential legal action, clearly as it is a "Public" forum, what is said here could be replayed to the bank.

Therefore, we could not to discuss the specifics of the Legal merits (the strengths and weaknesses of the case) – as it would undermine the Parish's case and its ability to progress it if that information was relayed to the bank.

Suffice to say, the Procureurs and Connétable are very aware of the fact that Parishioners are conservative about Parish expenditure and taking on risk. They are not going to pursue a case unless there is a good commercial reason to do so, in other words, there is a reasonable, commercial chance that the Parish will win and stand to gain significant damages, which outweighs the possible costs many times over.

Naturally, there is also no guarantee of winning – even the strongest cases can fail at or in Court and the Assembly needed to understand there is no guarantee of winning.

The Assembly were being asked to allow the Parish to issue legal proceedings against the Bank very soon due to legal timing issues.

The Assembly needed to understand that when you issue legal proceedings, you create a contingent liability, which is the possibility that the Parish will become liable for costs of the Bank, if it pursues its case to trial and loses, or conducts itself unreasonably.

Advocate Renouf then focussed on what the issue was about, and he summarised the contents of the Letter Before Action that had already been sent to Barclays as follows:

The Parish entered into a SWAP with the bank, which was a type of product meant to give the Parish a fixed interest rate, rather than a floating one.

The SWAP was not suitable because of its rate, duration, and amount: -

The rate fixed was 7.27%

It was fixed for a very long time indeed – 25 years.

It was also fixed for 100% of the mortgage value

(As mortgages fall in value over time, there is no need to “fix” for 25 years, or for the whole mortgage, to guard against unaffordability – even 10 years is regarded as a long time. We are now advised that this SWAP increased the risk to the Parish as we can now see from the fact it has cost the Parish so dearly)

He clarified that there was no criticism of the former Connétable or his Procureurs at that time – these SWAP financial instruments were very complicated, and we have been advised by London based hedging experts that the reality was, that there was little or no expertise outside the banks on how they worked, what they cost, or their pro’s & cons in 2011/12.

The London based hedging experts we have used to look at the financial side of this, have successfully given expert advice to many bodies in the UK who were mis-sold SWAPS, one claim alone settling for a lot more than £100m! (I am not going to mention their name at this stage as we wish to be able to choose as/when we reveal that to the Bank).

We say the Bank mis-sold the SWAP, because the bank did not explain the costs (our experts calculate the bank hid a cost of £1,687,388, and that the SWAP was manifestly unsuitable for the Parish - as the bank knew - and there were much, much cheaper alternatives which would have far better protected the Parish – namely something called an interest rate “cap”. The estimated extent of the claim is £2.4m+ as calculated by the financial expert professionals in London

For various reasons we wish to issue the proceedings in the next couple of weeks so that there can be no argument that the claim is “time-barred”. In practice, that means we do need the Assembly to authorise the issue of the proceedings.

THEREFORE, we ask that the Parish, through the Connétable and the Procureurs, be authorised, and will only issue the Proceedings and continue to pursue them, whilst:

- they are in receipt of legal advice that the claim is more likely than not to succeed, and they are in receipt of legal advice that the risks and benefits of pursuing the case make it commercially appropriate to do so.
- if offered, and we are pursuing on behalf of the Connétable and the Procureurs, agreement to litigation funding (which will minimise the exposure of the rate payers to legal costs/or adverse costs orders, in exchange for a share of the “winnings” or “benefits”. It must be noted that 3rd party litigation funders can take a substantial share of the award to cover the “risk” of the action, but the benefit is the Parish would not be exposed to risk of both sides’ legal costs, which can cost £ hundreds of thousands).
- if such litigation funding/insurance protection is not available, the Connétable and the Procureurs may still pursue the case, but they will carefully bear in mind the exposure of the Parish and proceed with caution, and either:

- (i) obtain further Parish Assembly approval; or
- (ii) Court approval; or
- (iii) both, should the potential costs exposure exceed more than 10% of the likely estimated benefit to the Parish.

In the meantime, including the £10,000 direct expenditure already authorised, a further £30,000 in fees be authorised, this additional element is to cover an independent QC's opinion, possible extra fees for the financial experts if necessary for the QC or the Court, and the legal fees for drafting and issuing the proceedings, any Court fees, and possibly an "After the Event" (ATE) insurance premium to cover any adverse costs orders by Barclays.

In practice, the merits would have to be substantially better than 50% for the Connétable and the Procureurs to wish to proceed, but we cannot discuss the strengths/weaknesses of the case in a public meeting as that risks leaking back to the bank.

Questions from the assembly:

Q: If we start and then decide against it after, would there be a high legal bill?

A: Advocate Renouf replied, never seen a case where if you start a litigation with some merit (Queens Counsel will confirm), where you are not being able to settle (drop hand settlement). Conduct case- if you pursue a case for many years to trial, you will run up a fortune in legal costs - at the start legal costs start at nil and accrue over the years. So, the costs depend on how long you continue. If you try to withdraw and costs are not agreed, only a Court can determine who should pay costs claims, having to have a "mini" trial or assessment to work out whether it was reasonable to pursue the action. Basically, in practice this never happens.

We are at the beginning. A sensible approach will be taken by the Constable and Procureurs, we will keep an eye on litigation, we have experience from the lawyers. Trial costs will be hefty, potential far more costs in the pipeline.

Procureur R Surcouf said we have had 18 months/ 2 years' worth of discussions with Barclays already, they are not interested in discussion, so we are left with no choice to go down this route. The QC will advise the strength of the case, there is the ability of possible funding, however we are on a tight timeline.

Q: Is the bank Barclays Private Wealth International.

A: No, it is UK PLC Barclays who trade in the UK and Jersey. 2 things happened; Actual loan forwarded by Private Barclays, the swap was sold by the PLC.

Q: Where is the additional £30,000 coming from, do we have a separate reserve, or will the rates go up to pay for this?

A: We have certain reserves but no litigation reserve. Will look at the costs for the next main assembly. If we get litigation funding this might cover pre-expenses but could be more of an expensive premium.

Q: Barclays are seeking to change the arrangements (LIBOR). Yet now we are changing the whole dynamic, we are trying to impose a change on the Bank?

A- They came to us to replace the paperwork due to LIBOR changes and in light of the past concerns we had already identified, we could not sign the new paperwork and we had to progress the examination of what took place previously.

LIBOR has come to an end and the Bank has been involved in rate fixing scandals. We already started looking at the rates to see what we could possibly do and had requested documents from the bank. We asked to repay the facility with no penalty based on the initial correspondence, where this seemed to be on offer, but Barclays then reverted and stated they would apply a penalty for breaking the swap early. Further research was taken, there was communication with the Bank but no positive response. It is a difficult position to be in, but the Connétable and the Procureurs believe we need to pursue this claim.

If we do not pursue the claim, we will have no choice but to re finance with the Bank to pay off the facility on current terms if no support given today.

Comment made: The Advocate has made the position clear of risks, it cannot be made any clearer.

Q: What is the current amount outstanding on the loan.

A: 2011 was £3.5 million, 2012 broke swap and paid back £489,000, currently have £2.4 million outstanding plus an early break fee of £800,000 so would be £3.2 million.

Q: What is the quantum of benefit to proceed

A: £2.4 million claim plus other losses- the claim is in realms of several million. The bank has always known what the quarterly breaks are and know what they are charging but never said anything.

Comment: On balance, reluctantly, it is a sound cause, but the parishioner holds reservations of how it will affect ratepayers as the current cost of living is high, the impact on parishioners but also sees the potential benefit if we take this forward.

Comment: The Parish still has to subsidise the current facility, if we won, this would fall away.

The Constable said we are seeking litigation funding, this may be a substantial amount but if possible, the ratepayers will not be affected.

Q: Is £30,000 going to be enough, do we need more.

A: An opinion of the Q.C is needed, if advice is against it then we will not do it. It could cost the Parish more over the next 12 years (left on mortgage) so better to spend the money now and receive an independent opinion.

Q: Could we get a new loan from a private investor.

A: This has been investigated however to get out of the current loan we would be in a worse situation. We have an excellent asset; refinancing is not an issue- it's breaking the hedging which is expensive. We are low risk Speaking to lenders now, they understand the parishes now. We can never go bankrupt; we are not high risk.

Q: If the Parish wanted to undertake further developments in the future, would any negative impact be caused?

A: Yes, financing by the Parish now, due to the terms - we do not have as good a credit rating due to the hedging. This was never explained at the time we did the hedging. The Parish is not defaulting, we are just trying to establish its legal rights. The Procurers have taken an oath that in effect means they act as if the Parish funds were their own. They have a duty to the ratepayer and to ensure we protect the funds. Even though we have a large asset, the ratepayers have paid out more money over the last few years due to the Swap than we would have had we received the alternative options. We have suffered a commercial injustice.

As there were no further questions, the assembly were asked.

- 1- Authorise the Constable and Procureurs to issue legal proceedings. This was proposed by **Joao Camara**, seconded by **Eric Tricot**. A show of hands was all in favour (19) with no abstentions.
- 2- Authorise an additional £30,000 on legal and professional fees. This was proposed by **Eric Tricot**, seconded by **Jonathan Welsh**. A show of hands was taken, all in favour (19) no abstentions
- 3- To authorise Litigation financing and to agree and to sign, to seek a company to take on the cost. This was approved by **Eric Tricot**, seconded by **Gerald Harrison**. A show of hands was all in favour (19), no abstentions.
- 4- To authorise a Litigation Insurance policy. This was approved by **John Refault**, seconded by **Eric Tricot**. A show of hands was shown, (19) all in favour, no abstentions

3- Chris Renouf from Ogier's, addressed the assembly: The company are applying for a 1st and 3rd (Taverners and Restaurant) licence. Rocco's activity centre is being constructed from a former driving range.

Plans were displayed in the hall prior to the assembly. This is to be a licensed premise for hospitality and corporate events.

Jonathan Le Brun primarily owns the establishment and has held licences for the main clubhouse (Red Roofs) for 29 years.

Rocco's activity centre will comprise of 3 crazy and mini golf areas, fully accessible to the disabled, locals and tourists.

There is a kitchen, small dining area and small bar and then a large external area and toilets. Café will be open from 9.00am -10.00pm, 7 days a week. Orders will be done by way of an app and then the food / drink will be delivered or collected. Alcohol will primarily be served to patrons of the golf activity but also to the public. At 5.00pm the areas will be closed to the public in readiness for Putts & Pints events, birthdays, and corporate events.

Since 2019 the closed area has been licensed by way of extending their current licence for holding "Putts & Pints" events. There will be buses available taking people to and from the event however they also have dedicated parking area for 35 cars.

There have been no complaints.

The **Chef de Police, Joao Camara** asked to confirm that the 1st and 3rd categories will cover the activity centre and outdoor areas only however, for the marquees on the course area, these are to be covered only by way of the ad hoc permits- Yes.

The Constable commented, in general, not many hospitality industries are doing new projects, this should be commended. It is an investment for the tourists and a credit is due to the family business. Their son, Stefan is becoming more involved and nicer to see this being passed from generation to generation. It is a family orientated dining experience during the day. This application was proposed by **Jonathan Welsh**, seconded by **James Machon**. A show of hands was requested- All in favour and none against.

The Constable wished them well.

As there was no further business the Constable thanked everyone for attending.

This concluded the business of the Assembly.

25 May 2022

R P Vibert
Connétable