



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/23UE/PHK/2015/0001

Property : Greenacres Park, Meysey Hampton, Cirencester
Gloucestershire GL7 5JH

Applicant : Greenacres Park Residents Association

Represented by : Mr John Day, Chairman
Mrs Helen Donnellan, Secretary

Respondent : Country Parks Limited

Represented by : Mrs Frances SurrIDGE, Managing Director

Application Type : Recognition of residents' association

Tribunal : Professor David Clarke, MA, LL.M, LL.D.
Mr Ian Perry BSc FRICS
Mr Mike Jenkinson

Date of hearing : 30 November 2015

DETERMINATION AND STATEMENT OF REASONS

Introduction

1. This is an application by the Greenacres Park Residents Association (“the Applicant”) under the Mobile Homes Act 1983 (“the 1983 Act”), as amended, Schedule 1, Chapter 2, paragraph 28(1)(h) for an order recognising the Applicant as a qualifying association within the terms of that legislation. The Applicant was represented by Mr John Day, the Association Chairman and by Mrs Helen Donnellan, its Secretary. Mr Thomas Selby, the Association Vice Chairman, was also in attendance at the hearing together with Ms Linda Vaughan, Treasurer and three other members of the Association.
2. The Respondent to the Application is Country Parks Ltd. It was represented by its managing director, Mrs Frances SurrIDGE. She was supported by Ms Rebecca Baxter, the Respondent’s Office administrator. Mr Steve Crawley, the Site Manager of Greenacres Park, also attended the hearing.
3. No other applications under the 1983 Act having been made to the Tribunal the issue was limited to that of recognition of the Applicant association. No inspection of Greenacres Park was therefore considered necessary.

Background

4. This application arises in the context of an unfortunate breakdown in relationships between the committee members of the Applicant and Mrs SurrIDGE. The Applicant had been formed in early 2014. At that time, 47 homeowners joined the Association constituting about 73% of the number of homes on the site. At all times since then the membership of the Applicant Association has comfortably exceeded the requirement of 50% of the occupiers of the mobile homes on the site to be members of the association.
5. On 17 March 2014, Mrs Donnellan, as Secretary to the Association, wrote to Mrs SurrIDGE requesting recognition of the Applicant association as a qualifying association within the Mobile Homes Act 1983, as amended. She enclosed a copy of the Applicant’s constitution which adopted the recommended format and clauses. It included a clause repeating the provisions of paragraph 28 (1)(g) of Schedule 1, Part 1, Chapter 2 of the 1983 Act as amended. In a letter of 28 March 2014, Mrs SurrIDGE formally recognised the Applicant as a Qualifying Residents Association.
6. The Tribunal was supplied with a large bundle of documents containing copies of communications between the parties subsequent to that date. It is not necessary to review that correspondence in detail. It culminated in a letter of 17 November 2014 from Mrs SurrIDGE to Mrs Donnellan claiming that the Association no longer met the qualifying criteria and that the Respondent therefore ceased to recognise the Applicant as a Qualifying Association.
7. The dispute that led to that letter withdrawing recognition centred on the meaning and application of paragraph 28 (1)(g) of Schedule 1, Part 1, Chapter 2 of the 1983 Act as amended. This a statutory requirement for recognition as a qualifying residents association. It reads:

“with the exception of administrative decisions taken by the chairman secretary and treasurer acting in their official capacities, decisions are taken by voting and there is only one vote per mobile home”.

8. Quoting that requirement, Mrs Surridge wrote to the Applicant on 13 October 2014 asking that in future all letters to her should contain the date of the meeting where residents met to discuss the issue, assurances that the meeting was quorate, the concern raised and confirmation that any action was approved by majority vote. She also indicated that the number of votes in favour, against and abstentions would be useful in giving an indication of the extent of the concern. She added that she expected to receive correspondence on a quarterly basis following a meeting not on an ad hoc basis. This took rather a narrow view of the statutory requirement and, in particular, indicated that she expected correspondence only quarterly after a meeting. This letter generated lengthy correspondence between the parties, with no agreement on what was permitted by paragraph 28(1)(g). By way of example, the Association had raised a query on behalf and at the request of residents asking for clarification of the Respondent’s policy on the renting of garages. Mrs Surridge only responded by asking if it had been raised at a general meeting and saying the association was not permitted through its officers to raise the issue without being mandated to do so at a general meeting.

9. The Applicant, finding that communications from their officers were not being responded to, sought to convince the Respondent that the Committee members had the full authority of the members to act on their behalf at all times and sent, on 27 November 2014, a signed letter from 46 members to that effect. It was followed by a letter of 22 December reporting a resolution of a meeting with the same purpose. The Respondent, via a letter from Ms Baxter on 21 January 2015, rejected that approach and set out an even narrower view of the meaning of the statutory words opining that the committee members were confined to administrative decisions ‘such as writing a letter on a matter previously voted upon at a meeting’. It was suggested that the officers, if they felt immediate action was necessary, should call a meeting and initiate a vote before taking that action.

10. The Respondent Association, perhaps not realising that the words were statutory, at their meeting of 14 March 2015, amended their constitution by deleting the words that incorporated paragraph 28(1)(g) and specifically ‘empowered the committee to act on behalf of the members on day to day issues of concern and on any requests made by the members verbally and/or in writing to the committee’. This produced a response from the Respondent pointing the Applicant to paragraph 28 and maintaining their position that they refused to recognise the Association. In the meantime, any communication from the Association was merely acknowledged and ‘the letter placed on the file’. No substantive responses were forthcoming from the Respondent to any communications from the officers of the Association.

11. The Applicant tried again to seek accommodation with the Respondent, by changing its constitution again on 13 June 2015, changing ‘empowered’ to ‘represent’, and clarifying the quorum figure. Ms Baxter responded by

repeating that the Respondent's Constitution remained in contravention of the law.

12. Consequently, this application to the Tribunal was made on 20 July 2013.

Issues for the Tribunal

13. There are, potentially, three issues for the Tribunal to decide:

1. Whether a site owner is permitted to withdraw recognition of a residents association after previously granting such recognition.

2. What the proper meaning of the words in paragraph 28 (1)(g) of Schedule 1, Part 1, Chapter 2 of the 1983 Act as amended actually mean in practice;

3. Whether to grant to the Applicant recognition as a Qualifying Association.

14. Neither party made any representations on the first issue. The 1983 Act does not specifically permit withdrawal of recognition; but neither does it indicate that it is not possible. However, given that a tribunal is empowered to grant such recognition on an application such as this, it is not likely to be a significant question for determination. Certainly, we do not need to give a definitive view on the position in this case. We proceed on the basis that recognition may be withdrawn.

15. The second issue is the proper meaning of paragraph 28 (1)(g) of Schedule 1, Part 1, Chapter 2 of the 1983 Act as amended. Its interpretation is central to the issue of whether the Respondent was entitled to withdraw recognition of the Applicant as a Qualifying Association. More importantly, an acceptance of its meaning by both parties will be crucial to improving relations between them if this Tribunal makes an order recognising the Applicant as a Qualifying Association. In giving guidance, the Tribunal has sought to draw an acceptable balance between the role of an association in representing its members and the statutory wording of paragraph 28.

16. Mr Day on behalf of the Applicant, proposed the distinction between, on the one hand, representing a single member of the Association who requests an officer to raise an issue on her or his behalf with the Respondent and, on the other, raising an issue that impacts on all residents of the park. The Tribunal agrees that this is a helpful starting point and the Respondent did not disagree at the hearing. The first action can be seen as an administrative decision. It is merely doing what the individual resident is entitled to do, namely write to the Respondent. It is very clearly a situation where the Association is representing one of its members. It would also apply where more than one (but a small number) of residents asked the Association to raise a matter for them in a situation where the vast majority of the residents are not affected. An example might be the branches of a tree overhanging two or three sites which are thought to be in a dangerous condition. By way of contrast, a wish by the Applicant to request a change by the Respondent that impacts on all residents, such as a change in the rules, policy or the operation of the site as a whole, is a decision that is more than administrative and would need an authorising vote in a properly constituted meeting.

17. It is worth adding that the Tribunal had some sympathy with the Respondent who wanted transparency about who the Association is writing on behalf of. The Association do also need to be sure that letters sent on behalf of one or more individual members are not to the detriment of any other resident. It might also choose not to write on every minor issue arising between a member and the Respondent.

18. Another issue that has been a bone of contention between the parties is the extent to which the Applicant can write to third parties. It is the view of the Tribunal that correspondence that only seeks information, whether from a local authority, health and safety executive or a national advisory body, is the result of an administrative decision by the officers. Similarly, the officers can ask the Respondent for information, such as clarification of its policy on letting garages. However, any decision to use such correspondence to third parties to make criticism of the Respondent or ask for any form of intervention on behalf of residents, such as requesting consideration of a change in policy of letting garages, would be one requiring an authorising vote in general meeting.

19. Finally, the Applicant ought to be able, through one of its officers, to contact the Respondent directly in an emergency. The example was given of a water leak through a fire hydrant on 30 December last year which necessitated immediate action from the water board team and the subsequent visit of a plumber. It was perfectly proper for the chairman of the association to act in that situation.

20. In other situations, the Applicant's officers will need to seek a vote in general meeting before deciding to act on behalf of their members. It is worth observing that we were told that some of the issues raised by the Applicant that led to disagreements between the parties, such as failed street lighting or pot holes in the road, had in fact been raised in a previous meeting of the association but this fact was not passed on to the Respondent. What may assist in future is some clarity in resolutions at a meeting such as 'if X situation is not resolved by discussions with (eg) the site manager then we authorise action to be taken by the officers by doing Y'. The Respondent will not be entitled to see minutes of the meeting but since it can ask for confirmation that there was an authorising vote the officers may find that providing this information when the issue is first raised, will smooth resolution of the issue.

21. The final issue is a decision on the application itself. The Respondent made it clear that it did not oppose the existence of a Qualifying Association; indeed, Mrs Surridge confirmed that initially she welcomed it. She also made it clear that she accepted the position that the Applicant could write to the Respondent on behalf of an individual. For her, the issue was accountability. She needed to be sure that the members had authorised decisions that were more than administrative and that the officers were accountable to the association's members. If that was secured, she would not oppose recognition of the Applicant.

22. The Tribunal was of the view that the Applicant's constitution, in its current form, did not meet the requirements of paragraph 28 (1)(g) of Schedule 1, Part 1, Chapter 2 of the 1983 Act as amended. This is because it states that;

'All major issues concerning the whole of the park will be decided upon by voting at a General Meeting'.

This could be interpreted as allowing minor issues affecting the whole of the park that are more than administrative decisions, being made by the officers. Consequently, this provision should be deleted.

23. The Tribunal was also of the view that, whether or not it is a requirement, it would certainly be highly desirable to reinstate within the constitution the statutory wording of paragraph 28(1)(g). This will mean that there is no misunderstanding in the future about its applicability.

24. The Applicant, through its officers, was agreeable to undertaking to put these changes to the members at the Association's meeting in January 2016.

25. By way of final comment, the efficient and effective running of the park will be aided and assisted by good day to day relations between the residents, the Officers of the Association, the Site Manager and the Respondent's officers. The Tribunal hopes its guidance will enable such good relations in the future.

Order of the Tribunal

26. The Tribunal orders that the Applicant, Greenacres Park Residents Association be recognised as a Qualifying Association subject to the following conditions:

1. That the constitution of the Association is amended in paragraph 5 thereof by the deletion of the words:

'All major issues concerning the whole of the park will be decided upon by voting at a General Meeting'.

2. That the constitution of the Association is amended in paragraph 5 thereof by the reinsertion of the words:

'With the exception of administrative decisions taken by the Chairman, Secretary and Treasurer acting in their official capacities, decisions of the Association shall be taken by voting and there is only one vote per mobile home'.

3. That one copy of the constitution as amended is sent to the Respondent, and one copy to the Tribunal office, within 14 days of the changes being effected.

These conditions are made under the Case Management powers of the Tribunal under section 6 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

Rights of Appeal

27. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

28. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

29. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

30. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking".

Professor David Clarke
9 December 2015