



Decision of the Homeowner Housing Committee issued under Sections 14 and 17 of the Property Factors (Scotland) Act 2011 and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP/PF/13/0236

Re: Property at 77 Delph Wynd, Tullibody, Clackmannanshire FK10 2TD ("the Property")

The Parties:-

Colin Goodwin, 77 Delph Wynd, Tullibody, Clackmannanshire FK10 2TD ("the Applicant")

Greenbelt Group Limited, a Company registered under the Companies Acts in Scotland (SC192378) and having its Registered Office at McCafferty House, 99 Firhill Road, Glasgow G20 7BE("the Respondent")

Committee Members:

George Clark (Chairman) and Andrew Taylor (Surveyor member)

DECISION

The Committee has jurisdiction to deal with the Application.

The Respondent has not failed to carry out its property factor's duties.

The Respondent has not failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

We make the following findings in fact:

- 1 The Applicant is the owner of the Property, which forms part of a development of 94 dwellinghouses by Persimmon Homes Limited, at Laurel Bank, Tullibody ("the development").
- 2 The Respondent is the owner of and manages and maintains land on the development ("the land").

- 3 The land is available for use by the Applicant and the owners of the other properties in the development and the Respondent, therefore, falls within the definition of “property factor” set out in Section 2 (1)(c) of the Property Factors (Scotland) Act 2011 (“the Act”)
- 4 The Respondent manages and maintains the land on the development plan attached to the written Statement of Services aftermentioned and the owners of the 94 properties in the development contribute towards the maintenance costs of the land.
- 5 The property factor’s duties which apply to the Respondent arise from the written Statement of Services dated 8 March 2013, sent to the Applicant on 18 March 2013.
- 6 The Respondent’s property factor’s duties arose with effect from 1 October 2012.
- 7 The Respondent was under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of its registration as a Property Factor.
- 8 The date of Registration of the Respondent was 1 November 2012.
- 9 The Applicant has notified the Respondent in writing as to why he considers that the Respondent has failed to carry out the property factor’s duties and its duties arising under section 14 of the 2011 Act. He did this by letter of 15 July 2013.
- 10 The Applicant’s letter of 15 July 2013 raised six individual complaints about services provided by the Respondent.
- 11 The Homeowner Housing Committee issued a Direction on 22 February 2014 that the matters referred to in Complaints 1 and 6 lay outwith the jurisdiction of the Committee
- 12 The Applicant’s concerns have not been addressed to his satisfaction.

HEARING

A hearing took place at Stirling Enterprise Park, John Player Building, Stirling on 7 May 2014. The Applicant was not present or represented at the hearing. The Respondent was represented at the hearing by Wendy Quinn, its Legal and Compliance Manager and Janet McQuillan, its Head of Operational Services. They were accompanied by Gerry Gillespie, an independent woodland inspector who carries out all UK wide woodland inspections on behalf of the Respondent, was formerly employed by the Respondent and was the Site Supervisor at the time the complaints were intimated by the Applicant.

Introduction

In this decision, the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as “the 2012 Regulations”. The Homeowner Housing Panel is referred to as “HOHP”. All date references are to 2013, unless otherwise stated.

The Respondent became a Registered Property Factor on 1 November 2012 and its duty under section 14(5) of the 2011 Act to comply with the Code arises from that date.

The Committee had available to it and gave consideration to: the Application dated 28 June 2013 (received by HOHP on 5 July) and documents lodged with it; the Applicant's letter to the Respondent of 15 July and its enclosures; a letter from the Applicant to HOHP dated 3 August, with enclosures; a letter from HOHP to the Applicant dated 18 September; a letter from the Applicant to HOHP dated 19 September; exchanges of letters between the Applicant and the Respondent, beginning with a letter by the Respondent dated 23 August, with further correspondence dated 30 August, 12 September, an undated letter from the Applicant responded to on 4 October, a further undated letter from the Applicant, a letter from the Respondent dated 4 November with an undated response by the Applicant; and a dossier of documentation provided by the Respondent at the hearing.

Preliminary Matters

The Committee considered representations by the Respondent to the effect that Complaints 2 and 5 were outwith its jurisdiction and should not be further considered by the Committee. Complaint 2 stated that the Applicant had never seen a contract to state what work and areas would be maintained by the Respondent and made specific reference to the woodland area between Persimmon and Taylor Wimpey developments, described by the Applicant as "buffer zones" and the four walls in the development which did not form boundaries of properties. After hearing the representations on behalf of the Respondent and adjourning to consider these and the title deeds relating to the development, the Committee determined that the "buffer zones" and two of the four walls referred were not within the development of which the Applicant's property formed part, that, whilst the Respondent was responsible for their maintenance, that responsibility arose from a separate contract and that the Applicant was not required in terms of the title deeds relating to his property to pay for the cost of their management or maintenance. The Applicant had made no complaint regarding failure to maintain the other two walls referred to in Complaint 2, which did form part of the development and the Committee determined that, as regarded the buffer zones and walls, Complaint 2 was outwith its jurisdiction. The Committee also concluded that the Applicant had received the written Statement of Services dated 8 March and that the remaining portions of Complaint 2 should not be further considered at the hearing.

The Committee asked the Respondent to accept that Complaint 5 was linked with the remaining Complaints and should, therefore, remain to be considered by the Committee. This was accepted by the Respondent.

Summary of Written Representations

(a) From the Applicant

In Complaint 3 of his application to HOHP, the Applicant stated that the work carried out on the woodland surrounding the development was far from satisfactory and that the woodland was just left to its own devices. Every year these areas became overgrown with weeds and nettles during the summer months and no work was carried out on the trees and shrubs. There were several uprooted trees in woodland which he believed required attention and in particular there was one tree which was suspended over the path through the woods supported only by a flimsy tree. These trees had been in that condition for over a year with no intervention from the Respondent and the only work he had ever observed there was trimming of foliage around fence lines.

In Complaint 4 of his application, the Applicant stated that he had requested the Respondent to issue documentation to all residents showing what work the Respondent had performed throughout the calendar year, but he had been told that this could not be done. This was linked to Complaint 5, in which he said that he had never received documentation or proof to confirm the Respondent's statements, but was just told that everything was in "above expected condition" and that the site manager was delighted with the site.

(b) From the Respondent

In relation to Complaint 3, the Written Statement of Services clearly stated that there was no maintenance plan attached to the property titles for the areas, managed by the Respondent, to which the residents of the development contributed. There was a landscape plan for the original setting out of the areas when the development was built, but no aftercare or maintenance schedule. This was unusual but not unknown. In these circumstances, as noted on the Written Statement of Services, the Respondent referred back to the original planning conditions for the development, the Respondent's own generic maintenance specification for whatever components were on the public open spaces and also worked within industry best practices and guidelines. The Respondent had also provided the Applicant with the most recent woodland audit information at the time and it showed there were no current issues that required attention.

The Respondent stated that, in respect of the existing mature woodland, under storey, natural vegetation and informal paths were managed in line with the original planning consents as a large natural mature woodland area. This involved managing the health of the woodlands and the health and safety of surrounding areas. Generally, works were only carried out where there was a threat to both. The Respondent was aware that there were windblown trees within the woodland, but there was no obstruction to the informal path routes and they did not pose any threat to abutting properties. It was considered that these fallen trees, some still living and some dead continued to make a contribution to the micro ecology and biodiversity of the woodland and could be left in situ. Works to extract some or all of these trees could result in disturbance to the secondary layer and/or ground flora that would be of greater detriment to the woodland.

With regard to Complaint 4, the Respondent stated that the Written Statement of Services, Customer Care Charter and Plan had been sent to the Applicant with the Respondent's bill dated 18 March, which detailed the financial breakdown of the charges made and, in compliance with the Code, further copies had been sent to the Applicant on 9 August, following on his request for them in an e-mail of 15 July. The Respondent had also offered to make available, at its office and by prior arrangement, inspection reports and contractors' invoices from 1 November 2012 onwards.

As regards Complaint 5, the Respondent contended that it had provided the Applicant with detailed responses to all his queries in relation to the woodland areas in respect of which he was charged for upkeep and that, via the Written Statement of Services, Woodland Audit reports and responses to the local authority Trading Standards Department (with whom the Applicant had lodged a complaint), the Respondent had provided a comprehensive report on what works were being carried out, what was required in regard to woodland management and what specification the Respondent was working to in the absence of a maintenance specification forming part of the property titles. The Respondent was unable to see anywhere documentation that indicated that the site manager was delighted with the site, but could see that the Regional Manager who visits the site each month to inspect it and the independent inspector who carries out the woodland audit each year had both reported that the woodland, both mature and young within the areas for which the Applicant was being charged were being managed and maintained in line with Planning Conditions, the Respondent's own generic specification pertaining to its Service Agreement with its appointed contractor and industry best practice.

The Applicant's complaint to HOHP is that the Respondent has failed to comply with Sections 7.2 and 7.4 of the Code as required by Section 14 of the 2011 Act and has failed to carry out the factor's duties under Section 17 of the 2011 Act.

Summary of Oral Evidence

The Respondent had provided for each member of the Committee a dossier of copy documents and photographs, reference to which was made at various points throughout the hearing. The Committee found this approach very helpful, and directed the Clerk to send to the Applicant copies of any documents or photographs within the dossier that the Applicant had not already received.

Janet McQuillan directed the Committee to the wording in the title deeds, which refer to a landscape specification rather than a maintenance specification. Documentation available on the local authority Planning Portal also does not make any reference to items of maintenance. There is, therefore, no maintenance specification for the development. This was made clear in the Written Statement of Services, which states that the Respondent would be following the Woodland Management Plan for all compartments of the development, including the green space for which the residents had to pay, all in accordance with the Respondent's

generic specification. This plan, which quantified the details of woodland works required to meet the planning conditions for the development regarding the management of areas zoned for long term woodland retention and additional new planting, was in the course of being updated and revised and draft revisals were currently being considered by the Clackmannanshire Council.

Gerry Gillespie then gave evidence to the Committee. He stated that there was a distinction to be drawn between young and established woodland. For young woodland, in the first two or three years, areas around the bases of the young trees and plants would be kept weed-free, to ensure that pernicious weeds did not over-run the planted area. Some formative pruning and re-spacing would be carried out and, if required, re-stocking. He would expect young woodland to be established within a period of 7-10 years and stated his opinion that, based on his inspections, the young woodland within the development was now well established.

With regard to the more established woodland, which pre-dated the development, modern thinking was that there should be glades and walking areas. Longer-living species were planted the furthest distance from the houses. Closer to the houses, the best practice was to plant trees such as rowan and alder and to plant less densely, in order to avoid issues of light and shade for householders. No formal accesses had been created in the development, but there were informal tracks and paths, which were well-used as short cuts to other residential areas in the vicinity. Mr Gillespie directed the Committee to a series of photographs which he had taken on Monday 5 May and which were contained in the dossier handed to the Committee members. He told the Committee that these showed a setting that was typical of any urban woodland. Weeds and fallen, decaying timber contributed to the ecology of the woodland, so would not normally be removed. The photographs showed well-established clearance areas to the rear of the residents' garden fences. There is a ridge in the woodland, at the top of which is long-established broom, but the Respondent maintained a desire line which had been worn through it and cut back the gorse accordingly. The ground flora in the woodland is as he would expect to see.

In response to a question about the uprooted tree referred to in Complaint 3. Mr Gillespie advised the Committee that, if this was the tree shown in photographs provided by the Applicant, it was no longer there. He stated that he had only once seen a rootheave tree close to one of the informal pathways and it had been removed. The practice was to deal with any tree which posed a risk to users, but otherwise to leave fallen trees, as they contributed to the overall ecology of a woodland area. All windblown trees are assessed, in order to establish if they constitute a hazard.

Janet McQuillan told the Committee that her staff visit every site on a monthly basis, in order to monitor the performance of the contractors who carry out maintenance on the Respondent's behalf. Their performance is then scored and a "league table" of these scores is kept. The work of the contractors is not time-based and they are assessed against the specification to which they are contracted

to work. She also told the Committee that the Respondent provided an out of hours emergency phone helpline, which was manned during storm conditions. She asserted that the Respondent complies with the criteria set down in the Woodland Management Plan and that the company's generic specification exceeds the planning requirements and is set out in the Written Statement of Services.

Wendy Quinn told the Committee that the company's Customer Care team had reported 15 communications from residents within the development in the last 2 years. Ten of these related to maintenance and all had been dealt with. She added that the Applicant's complaint was in almost identical terms to a complaint he had made to the local Trading Standards department and which had not been upheld. The dossier contained all the information (redacted where appropriate) that the Applicant would have seen if he had taken up the Respondent's offer to let him see, at its office, inspection reports and contractors' invoices. She was satisfied that the information provided to the Applicant fully complied with the Respondent's obligations under the Code of Conduct. She stated that the Respondent refuted the Applicant's claim that the level of service was inadequate and was satisfied that the Committee had been given sufficient by way of written representation, documentation and oral evidence to support the Respondent's case. The Respondent took very seriously its obligations and duties under the Act. The new requirements involved all factors in a learning process and the Respondent was doing its very best to comply.

REASONS FOR DECISION

The Committee determined that the Respondent has not failed to comply with Sections 7.2 and 7.4 of the Code, as stated in the Application.

Section 7.2 requires property factors to notify a homeowner in writing when the in-house complaints procedure has been exhausted without resolving the complaint. This letter should provide details of how the homeowner may apply to the Homeowner Housing Panel. The Committee notes the terms of the letter sent by the Respondent to the Applicant on 23 August, the final paragraph of which states "If you remain dissatisfied with this response, and if you consider that we have failed to carry out our "property factor" duties in terms of the Property Factors (Scotland) Act 2011 ("The Act") or if you consider we have failed to comply with the Code of Conduct (set out in the Act) you can ask for a determination by the Homeowner Housing Panel." The paragraph also gives the Applicant details of the website address of the Panel. The Committee determined that, for that reason, the Respondent has not failed to comply with Section 7.2 of the Code.

Section 7.4 of the Code requires property factors to retain (in either electronic or paper form) all correspondence relating to the homeowner's complaint for three years as this information may be required by the Homeowner Housing Panel. The Applicant has not, however, provided any evidence to support the allegation that

the Respondent has failed to comply with this requirement and the Committee believes that it has had available to it copies of all correspondence relating to the complaint. The Committee determined that, for those reasons, the Respondent has not failed to comply with Section 7.4 of the Code.

The Committee, therefore, held that the Respondent has not failed to comply with the Code as required by section 14(5) of the 2011 Act.

The Committee also determined that the Respondent has not failed to carry out the property factor's duties under Section 17(5) of the 2011 Act

The Committee is satisfied from an examination of the title deeds, the Woodland Management Plan, the Written Statement of Services and the evidence, both written and oral, presented to the Committee, in relation to Complaint 3, that there is no woodland maintenance specification against which the performance of the Respondent can be assessed and that the woodland is managed by the Respondent, as stated in its Written Statement of Services, in line with planning conditions, the Respondent's current generic specification and industry best practice and standards. The provisions in the title deeds are, in effect a landscape specification and do not constitute a maintenance specification. The Committee was also impressed by the very full explanation given by Mr Gillespie at the hearing as to best practice in relation to new and established woodland. He stated that the specific tree referred to by the Applicant was no longer there. With no maintenance specification within the Deed of Conditions in the title deeds, it is not possible for the Applicant to assess the performance of the Respondent other than by reference to the Written Statement of Services and the Committee is not persuaded from the evidence presented to it that the Respondent has failed to carry out its duties as set out in the Written Statement of Services. For these reasons, the Committee does not uphold Complaint 3 of the Application.

In Issues 4 and 5, the Applicant stated that he had asked the Respondent to issue documentation to all residents showing what work had been performed throughout the calendar year, but had been told this could not be done. He asserted that he had never received any documentation or proof to confirm the Respondent's statements regarding the condition of the site. The Committee has, however, seen a copy of the Invoice issued to the Applicant on 13 March 2014 and it includes a breakdown by date, of all the works carried out by the Respondent and its main contractors in the period from 1 March 2013 to 28 February 2014. This covers the entire period since the Written Statement of Services was issued. The Respondent also offered to allow the Applicant to inspect all Inspection Reports and contractors' invoices at its office in Glasgow. The Committee remains of the view expressed in its Direction of 22 February that it was not reasonable, given modern technology, to restrict the Applicant to seeing this documentation in Glasgow, but holds, nevertheless, that the offer was made and that the Respondent complied with the requirement of the Direction to provide paper copies or an electronic file containing the reports and invoices to which they referred. The Respondent stated in written submissions and emphasised at the Hearing that the contract for the

woodland management and maintenance is not time based and the woodland is managed and maintained in line with planning conditions, the Respondent's generic specification and industry best practice. The view of the Committee is that, at the heart of his complaint, is a belief by the Applicant that the Respondent's contractors do not spend sufficient time working on the woodland maintenance to justify the factoring charges made by the Respondent. For these reasons, the Committee does not uphold Complaints 4 or 5.

The Committee having determined that Complaints 1,2 and 6 should be excluded from consideration as they did not fall within the jurisdiction of the Committee and having decided not to uphold any of the remaining complaints, namely Complaints 3, 4 and 5, the Committee determined that it would not make a Property Factor Enforcement Order:

APPEALS

The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

"...(1)An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.

(2)An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

Signed ..

Date 7 May 2014

GEORGE CLARK

Chairperson