



Decision of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP/PF13/0270

Re: Property at 23 Bowbutts Brae, Strachan, Banchory AB31 6PG ("the Property")

The Parties:-

MR MARTIN WYLIE, residing at the Property ("the Homeowner")

PEVERIL SCOTLAND, 183 St Vincent Street, Glasgow G2 5QD ("the Factor")

Decision by a Committee of the Homeowner Housing Panel In an Application under section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

David Preston (Chairman); Susan Shone; and Douglas MacIntyre (Housing Members).

Decision

The Committee hereby determines that the Property Factor Enforcement Order has not been complied with.

The decision was unanimous.

Reasons for Decision

The Committee issued a Property Factor Enforcement Order ("PFEO") on 20 October 2014.

In terms of section 23(1) of the 2011 Act, the Committee is required to determine whether the Factor has complied with the PFEO.

The Committee gave consideration to the extent to which the PFEO had been complied.

The Committee gave consideration to exchanges of emails between the parties and HOHP following the issue of the PFEO and found as follows:

1. The PFEO specified different period of time within which the Factor was directed to complete the specified requirements.

2. In a letter dated 8 December 2014, the Committee indicated to the parties the extent to which it considered that the terms of the PFEO had been implemented and the elements which remained to be completed. By its subsequent letter of 31 December 2014 the Committee extended the period within which the Factor was required to amend the Statement of Service to take account of and clarify the issues raised relative to this application for a further period of four weeks from the date of that letter, ie until 28 January 2015.
3. The letter of 8 December 2014 advised that the Committee considered that paragraphs 3, 4, 5 and 6 had been implemented, subject to production of evidence that payment had been made to the Homeowner's account. Paragraph 1 had not been implemented and paragraph 2 had been implemented in part.
4. On 2 February 2015 the Factor advised in an email to HOHP that they had written to the homeowners in the Bowbutts Brae development to ballot them on whether they wished the Factor to continue to be responsible for factoring the development. A copy of the letter referred to was attached to the email. The letter had been sent to the homeowners of the development on 28 January 2015, which was the day after expiry of the period within which the Statement of Services should have been effectively amended, after consultation as advised by the Committee on 31 December 2014.
5. The Committee noted that the letter to the homeowners made no mention of the changes to the Statement of Service as required by the PFEO, despite the extension of time provided to the Factor for the amendments to be made.
6. The Committee considers that the Factor has made no effort to implement the terms of the PFEO insofar as amending their Statement of Service is concerned. While they did suggest that they had amended the Statement of Service, the Committee in its letter of 8 December 2014 indicated that it did not accept that a valid alteration had been made and accordingly additional time was provided for that to be done. The letter to all the homeowners did not amount to an amendment of the Statement of Service but was merely a ballot to confirm the continuation of the Factor. In addition, the Factor has not confirmed to the Committee that the additional information regarding the Insurance Policies required by the PFEO.

The Committee accordingly hereby finds that the PFEO has not been complied with.

Effect of Decision

Notice of the failure to comply will be sent to the Scottish Ministers in accordance with section 23(2) of the 2011 Act.

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..."

13-2-15.

Chairman

Date

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..."

13-2-15.

C.

Date