

HM COURTS AND TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL

Case No. CHI/00HE/PHK/2012/0003

DECISION AND REASONS

Application : Paragraph 28(1)(h) of Chapter 2 of Schedule 1 Mobile Homes Act 1983 as amended ("the 1983 Act")

Applicant/Residents Association : Manor Park Residents Association, represented by Mrs D Swift

Respondent/Site Owner : Hills Leisure UK Limited (trading as Hills Park Homes)

Park : Manor Park, Resugga Green, Penwithick, St Austell, Cornwall, PL26 8YP

Date of Directions : 3 April 2012

Date of Hearing : considered by the Tribunal on 11 July 2012 without a hearing pursuant to Regulation 21 of the Residential Property Tribunal Procedure and Fees (England) Regulations 2011, and in accordance with the directions given by the Tribunal

Members of the Tribunal : Mr P R Boardman MA LLB (Chairman), and Mr J S McAllister FRICS

Date of Tribunal's Reasons : 11 July 2012

Introduction

1. This is an application by the Applicant/Residents Association for an order by the Tribunal that the Applicant/Residents Association is a qualifying residents' association

The relevant legal provisions

2. The material parts of the 1983 Act as amended are as follows

Chapter 1 of Schedule 1 Part 1

28 (1) A residents' Association is a qualifying residents' association in relation to a protected site if-

- (a) *it is an association representing the occupiers of mobile homes on that site;*
- (b) *at least 50% of the occupiers of the mobile homes on site are members of the association;*
- (c) *it is independent from the owner, who together with any agent or employee of his is excluded from membership;*
- (d) *subject to paragraph (c) above, membership is open to all occupiers who own a mobile home on that site;*

- (e) *it maintains a list of members which is open to public inspection together with the rules and constitution of the residents' association;*
- (f) *it has a chairman, secretary and treasurer who are elected by and from among the members;*
- (g) *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 each mobile home; and*
- (h) *the owner has acknowledged in writing to the secretary that the association is a qualifying residents' association, or, in default of this, the court has so ordered*

3. The Tribunal has jurisdiction to deal with the issues in this case by virtue of The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011

Correspondence

4. By a letter dated 4 October 2011, on paper headed "Manor Park (Resugga Green Park) Residents [sic] Association", and signed by Mrs Bray as secretary, the Respondent/Site Owner was asked for formal recognition of Manor Park (Resugga Green Park) Residents' [sic] Association. The letter confirmed that they had met the criteria for a qualifying residents Association as defined in paragraph 28 of the implied terms of their written statement. The list of members and the constitution of the Association could be inspected at 23 Manor Park at a time and date convenient to both parties. The Respondent/Site Owner was asked to send written acknowledgement of acceptance of the Association as a qualifying residents Association as defined in paragraph 28 of the implied terms
5. By a letter dated 21 October 2011 [which was marked "without prejudice", but in light of its contents, and in light of the fact that it has been included in the bundle before the Tribunal, the Tribunal has treated it as a non-privileged document] the Respondent/Site Owner asked for the following information :
- a. the full official registered address of the association
 - b. all the information in paragraph 28 of the implied terms of the written statement
 - c. further information to ensure that the association was run correctly, including insurance, copies of advertisement of meetings, weekly signed updated list of current members, and venue, so as to ensure that they met the legal requirements of being a residents' association
 - d. the person who would be taking legal responsibility for the Association in the event that the Respondent/Site Owner needed to take legal proceedings against the Association, including whether the association was a company or partnership
6. By a letter dated 5 November 2011, bearing the heading "Re MPRA", Mrs D Swift enclosed the constitution, a copy of which is attached to this decision and reasons as Appendix 1. Mrs Swift stated that they had read, understood, and complied with paragraph 28 of the implied terms which answered most of the questions in the Respondent/Site Owner's letter. They had taken legal advice and had been given to understand that no insurance was required. They had 31 homes who had signed to be members of the Association, and the signed list was available to be viewed at the secretary's address at a time convenient to both parties. All meetings would be advertised by a

lessee given by hand to each member's home. They had voted in a new secretary, as Mrs Bray had resigned because of unforeseen circumstances

7. By a letter dated 17 January 2012, bearing the heading "Re Manor Park Residents Association", Mrs Swift requested a reply by 31 January 2012
8. By a letter dated 25 January 2012 [which was also marked "without prejudice", but which the Tribunal has treated as a non--privileged document for reasons already given], the Respondent/Site Owner requested similar information to that requested in the letter dated 21 October 2011
9. By a letter dated 24 February 2012, on paper headed "Manor Park Residents Association", Mrs Swift asserted that the Respondent/Site Owner's questions had all been answered, and requested recognition of the association by 24 March 2012
10. By letter dated 13 March 2012 [which was also marked "without prejudice", but which the Tribunal has treated as a non--privileged document for reasons already given], the Respondent/Site Owner made a further request for similar information to that requested in the letter dated 21 October 2011
11. By a letter dated 16 March 2012, bearing the heading "Re Manor Park Residents Association", Mrs Swift gave the following information in relation to paragraph 28:
 - a. the Association represented the occupiers of mobile homes on the Park
 - b. over 50% of the occupiers on the Park were members of the Association
 - c. the association was independent from the Respondent/Site Owner and its agents and employees
 - d. membership was open to all occupiers who owned a mobile home on the Park
 - e. they did have a list of members which was open to public inspection together with the constitution of the Association
 - f. they had a chairman, secretary, and treasurer, who had been elected by the members of the Association
 - g. decisions were taken by voting, with only one vote per mobile home
 - h. they were awaiting written acknowledgement from the Respondent/Site Owner that the association was a qualified residents' Association
12. Mrs Swift also gave the following information :
 - a. they had spoken to IPHAS who inform them that they did not require insurance
 - b. they did not advertise their meetings
 - c. they did have updated and signed lists of current members
 - d. they held their meetings at different places
13. By letter dated 20 March 2012 [which was also marked "without prejudice", but which the Tribunal has treated as a non--privileged document for reasons already given], the Respondent/Site Owner stated that it was becoming increasingly apparent that the association were disregarding what they were being asked. For the Respondent/Site Owner to consider whether the association was what the Respondent/Site Owner would regard as a genuine qualifying residents Association they had to provide evidence to prove that they complied with paragraph 28, as opposed to copying the page

from the Internet. So far what had been provided was what paragraph 28 said. The Respondent/Site Owner commented as follows :

- a. the Respondent/Site Owner considered insurance to be essential in the running of any event/meeting where people would be attending
- b. if they did not advertise their meetings, how could they officially call a meeting without publicising it
- c. the Respondent/Site Owner asked for copies of the signed lists of members and the different dates when they had been updated
- d. the reference to "different places" was unhelpful as the Respondent/Site Owner was trying to establish whether they had a qualifying residents Association; the Respondent/Site Owner asked for the dates and addresses of previous meeting venues as well as future ones
- e. they had not answered who would be taking legal responsibility for the Association
- f. the Respondent/Site Owner asked when the Association had started
- g. the Respondent/Site Owner asked for a detailed signed copy of the constitution and rules
- h. Mrs Swift was not the only person claiming to be running a qualifying Association on the Park

14. No other correspondence between the parties has been submitted to the Tribunal

The Respondent/Site Owner's statement of case

15. The Respondent/Site Owner stated that the Respondent/Site Owner had never refused to recognise Mrs Swift's residents' Association, but before the Respondent/Site Owner could consider whether it qualified for official recognition, they needed actual proof that what Mrs Swift was running was a genuine qualifying Association
16. The constitution provided was an unsigned constitution. There was an area on the document specifically for a signature but it had not been signed. It could not be considered as proof
17. Despite previous requests Mrs Swift had only now submitted a supposed list of members [a copy of the document entitled "Owner Members of Association" is attached to this decision and reasons as Appendix 2]. It was not signed by the individual members and accordingly did not mean anything. If an association was asking for official recognition, the Respondent/Site Owner was entitled to be assured that it was being run in a correct manner. Information had been requested, but not provided, including copies of advertisements of meetings, the venue of meetings, and insurance. If Mrs Swift had set up a qualifying residents' Association it would be relatively simple to provide copies of advertisements of meetings and dates and venues. Without advertisements of meetings or venue, meetings could not take place as all the residents on the Park needed to be fully aware of where and when the meeting was going to take place. The Respondent/Site Owner had spoken to a couple of residents on the Park and they were unaware of any meeting having taken place. Insurance was necessary to prove that the association was being run properly, as if they were organising meetings of people they needed to have adequate insurance in place to cover public liability in the event of a trip or a fall

18. The government had produced a Park Home Fact sheet, of which a copy was attached to the Respondent/Site Owner's statement of case, setting out the minimum guidelines for a qualifying residents' Association. They were only guidelines. The Respondent/Site Owner was entitled to ask for any other evidence believed to be reasonable to prove that the association was a qualifying Association and was being run in a correct manner. On page 6 of the fact sheet, it clearly stated that the Association needed to "provide sufficient evidence", which Mrs Swift had not done, in that there was no signed constitution, no individually signed members lists, and a failure to supply all other information requested
19. The Association fell short of the official regulations, and by recognising it officially the Respondent/Site Owner would be endorsing an association which did not appear to be being run in a correct manner

Inspection

20. Neither party has requested that the Tribunal should inspect the Park and, in light of the limited issues in this case, Tribunal has not carried out an inspection

The Tribunal's findings

21. The Tribunal finds that:
- a. the reference in paragraph 29(h) of Chapter 1 of Schedule 1 Part 1 of the 1983 Act to "*the owner has acknowledged in writing to the secretary that the association is a qualifying residents' association, or, in default of this, the court has so ordered*" implies, by the natural and ordinary meaning of the words used, that it is for the Applicant/Residents Association to persuade the Tribunal that the Tribunal should make the order referred to
 - b. however, the Tribunal is not so persuaded on the evidence before it in this case
 - c. in particular, the Tribunal is not satisfied, for the purposes of paragraphs 28(a) and (b), that the Applicant/Residents Association is an association representing the occupiers of park homes on the Park, or that at least 50% of the occupiers of the park homes on the Park are members of the Applicant/Residents Association because :
 - the Tribunal is not persuaded about the correct name of the association, in that the name of the association is :
 - "Manor Park Residents Association", according to the constitution (which states that it was "adopted at the AGM held on 16 September 2011", Mrs Swift's letters, and the application before the Tribunal
 - "Manor Park (Resugga Green Park) Residents Association", according to the letter dated 4 October 2011 (after the date when the constitution was said to have been adopted at the AGM, namely 16 September 2011), and signed by Mrs Bray as secretary
 - not stated at all on the document entitled "Owner Members of Association" copied at Appendix 2
 - although the document entitled "Owner Members of Association" copied at Appendix 2 contains a statement, signed by chairman, secretary, and treasurer, that "The persons

listed are all owners of the properties where they reside and are all paid up members of the Association” :

- the document itself does not confirm that the association referred to is the Applicant/Residents Association
- the householders listed have not themselves signed the document, and there is no other evidence before the Tribunal to indicate their consent to their names being so listed
- in relation to the statement in Mrs Swift’s letter dated 16 March 2012 that “we do not advertise our meetings” :
 - the Applicant/Residents Association has not sent to the Tribunal any response to the comment in the Respondent/Site Owner’s letter dated 20 March 2012, namely “if you do not advertise your meetings, how can you officially call a meeting without publicising it?”, or to the similar comment in the Respondent/Site Owner’s statement of case, despite the Tribunal’s direction that the Applicant/Residents Association should reply to the Respondent/Site Owner’s stated position within 14 days
 - the statement is inconsistent with the Applicant/Residents Association’s assertion that it represents the occupiers of park homes on the Park
- there is no response before the Tribunal from the Applicant/Residents Association to the statement in the Respondent/Site Owner’s letter dated 20 March 2012 that “you are not the only person claiming to be running a qualifying association on Manor Park”, despite the Tribunal’s direction that the Applicant/Residents Association should reply to the Respondent/Site Owner’s stated position within 14 days

22. The Tribunal accordingly declines to make an order that the Applicant/Residents Association is a qualifying association for the purposes of paragraph 29

Appeals

23. Any party to this decision may appeal against the decision to the Upper Tribunal (Lands Chamber) with the permission of the Residential Property Tribunal. An application for permission must be made to the Residential Property Tribunal within 21 days of this decision. The provisions relating to appeals are set out in Regulation 38 of the Residential Property Tribunal Procedures and Fees (England) Regulations 2011

Dated 11 July 2012

.....
P R Boardman
(Chairman)

HM COURTS AND TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL

Case No. CHI/00HE/PHK/2012/0003

Application : Paragraph 28(1)(h) of Chapter 2 of Schedule 1 Mobile Homes Act 1983 as amended ("the 1983 Act")

Applicant/Residents Association : Manor Park Residents Association

Respondent/Site Owner : Hills Leisure UK Limited (trading as Hills Park Homes)

Park : Manor Park, Resugga Green, Penwithick, St Austell, Cornwall, PL26 8YP

Appendix 1

Applicant/Residents Association's Constitution

**MANOR PARK RESIDENTS ASSOCIATION
CONSTITUTION**

- 1. The name of the Association shall be Manor Park Residents Association.
- 2. The Aims of the Association shall be:
 - a) to represent the interest of members in consultations with the park owner and with the local authority and other bodies.
 - b) to make representations when the Association has received notice from the park owner about matters affecting the Park.

3. Membership is open to all occupiers of owner-occupied park homes stationed on Manor Park over the age of eighteen years irrespective of nationality, race, colour, age, gender, political, religious belief or sexual orientation.

The park owner and any agent or employee of his shall be excluded from membership.

Membership shall be indicated by a signature on a membership list.

A list of the membership shall be open to public inspection together with the constitution and any rules of the Association.

4. Where a subscription or membership fee is paid the amount payable per household shall be determined at the Annual General Meeting of the Association.

5. The members entitled to vote shall by voting at a general meeting elect a chairman, secretary and a treasurer from among the members.

Other committee members may be elected by the membership as required.

With the exception of administrative decisions taken by the chairman, secretary and treasurer acting in their official capacities, decisions shall be taken by voting.

An officer of the Association may be removed from office by a vote at a General Meeting.

6. There shall be an Annual General Meeting in September each year to:

- a) Accept the Chairman's Annual Report.
- b) Accept the Treasurer's financial statement of accounts.
- c) Elect Chairman, Secretary, Treasurer for the next year.
- d) Elect any other committee members as required.
- e) Consider any other items previously notified to the secretary or raised at the meeting.

Notification of the AGM will be given to all members at least fourteen days before the meeting.

- 7. The Chairman may call a General Meeting of the members at any time. The Chairman must call a General Meeting within fourteen days of receiving a request to that effect signed by not less than 10% of the members who are entitled to vote at such a meeting.

In all cases the Secretary will circulate details of General Meetings at least seven days in advance.

The decision of General Meetings are to be carried out as determined by the meeting.

- 8. The Quorum for General Meetings will be 20% of member homes in the Association and therefore no General Meeting will be held without at least this number being present.

- 9. Only one member per owner-occupied park home may vote at meetings of the Association. Where a park home is owned and occupied by more than one person only the occupier whose name appears first on the agreement with the park owner shall be eligible to vote.

Motions formally raised at a General Meeting shall be decided upon by a simple majority of those present, except those relating to the Constitution which will require a two thirds majority, one vote per park home.

A resolution shall be decided on a show of hands unless a ballot is demanded.

- a) by the Chairman of the meeting or
- b) by a proposal from a member which is seconded and passed by a majority vote.

- 10) All money raised by or on behalf of the Association shall be used to further the Aims of the Association and for other purposes as decided by the Association. The Association's finances shall be accounted for by the Treasurer; moneys withdrawn from or transferred between the Association's bank accounts shall be authorised by two of the three officers or as nominated by the Association.

A bank account shall be opened in the name of the Association and the Treasurer shall keep proper records of all the finances of the Association at all times. These shall include records of:

- a) all sums of money received and spent by the Association
- b) the assets and liabilities of the Association.

- 11) The Constitution may only be altered at an Annual General Meeting or a General Meeting. Notice of any proposed amendment(s) to the Constitution must be handed to the Secretary not less than fourteen days before the General Meeting.

Changes to the Constitution must be agreed by two thirds of the members present and eligible to vote at a General Meeting.

b

Page 3

The Constitution must then be changed to reflect the amendments.

Changes to the Constitution must be notified to the park owner.

12. The Association may only be dissolved at a General Meeting called for that purpose. At least fourteen days notice must be given to all members.

A proposal to dissolve the Association shall only take effect if agreed by a simple majority of the members present and eligible to vote at the meeting.

All funds and documents relating to the Association shall be disposed of in accordance with the decisions of the meeting.

This Constitution was adopted at the AGM held on 16th September 2011

Signed: Chairman.....

Signed: Secretary.....

Signed: Treasurer.....

HM COURTS AND TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL

Case No. CHI/00HE/PHK/2012/0003

Application : Paragraph 28(1)(h) of Chapter 2 of Schedule 1 Mobile Homes Act 1983 as amended ("the 1983 Act")

Applicant/Residents Association : Manor Park Residents Association

Respondent/Site Owner : Hills Leisure UK Limited (trading as Hills Park Homes)

Park : Manor Park, Resugga Green, Penwithick, St Austell, Cornwall, PL26 8YP

Appendix 2

Document entitled "Owner Members of Association"

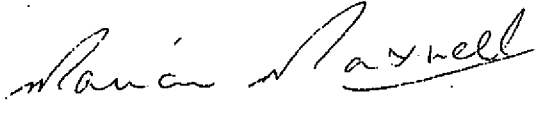
8

OWNER MEMBERS OF ASSOCIATION

HOUSE No.	HOUSEHOLDER
4	Simon MORRIS
8	Frank HULME
10	Shaun & Beverley EASDON
15	Wally & Violet CHALMERS
16	Brian YOUNG
23	Will & Rose WHITTY
25	Ron (Nick) NICHOLAS
26	Bruce PEDDLE
27	Warren & Maureen FARRER
28	Bob GRAND
29	Peter NEWBERY
30	Graham & Margaret RICHARDSON
34	Dave & Vera SPARKS
36	Clive & Jean ROALFE
37	Bill & Pat SHEPHERD
38	Richard & Vicki BRAY
41	Bernie & Pam TRUAN
42	John & Hilary FLAHERTY
45	Ken & Christine MOUNTCASTLE
48	George & Jean MADGE
49	John & Vicki DRITTLER
50	Di & Lyn WEST
52	Derrick & Sarah WALKER
53	Hazel MAYES
55	Beryl BLACKWELL
56	Rosemary JEPHCOTE
57	Pat & Janet KIMBER
58	Pip & Jean BEARDS
59	Marian MAXWELL
60	George & Dee SWIFT
62	Ray & Shirley BOWDEN

The persons listed are all owners of the properties where they reside and are all paid up members of the Association.

Chair - Marian Maxwell



Secretary - Dee Swift



Treasurer - Warren Farrer



31 MEMBERS }
 42 UNITS ON SITE } 26.8.12.
 (OCCUPIED)