



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

Case Reference : CHI/18UH/PHK/2021/0001

Property : Summerlands Court, Liverton,
Newton Abbot,
Devon TQ12 6HB

Applicant : Summerlands Court Residents Association

Representative : Carol A Tolchard (Secretary)

Respondent : Paul Jacobs

Representative : Agents & Properties (Taunton) Limited

Type of Application : Recognition of a Qualifying Residents'
Association
Para 28 Chapter 2 Schedule 1 Mobile
Homes Act 1983

Tribunal Member(s) : Judge Tildesley OBE

Date of Decision : 6 April 2021
On the papers

DECISION

Summary of Decision

1. The Tribunal decides that Summerlands Court Residents Association is a QRA within the meaning of Paragraph 28(1) of chapter 2 of part 1 to schedule 1 of the Mobile Homes Act 1983.
2. The Applicant requested an Order requiring the Respondent to reimburse the Applicant with a hearing fee of £100. The Tribunal is minded to so order in view of the Applicant being successful with the Application. This Order will take effect within 14 days of the date of the decision payable by 4 May 2021 unless there are representations to the contrary which must be received by the Tribunal by no later than 20 April 2021.

Background

3. This is an application to recognise the Applicant as a qualifying residents association (QRA) in relation to a protected site.
4. On 10 February 2021 the Tribunal directed the Application to be heard on the papers unless a party objected within 28 days. No objections were received. The Tribunal invited the Respondent to consent to the application recognising the Applicant as a QRA or provide a statement of case opposing the application. The Respondent objected to the application which meant that the application required a determination by the Tribunal.
5. On 23 March 2021 the Tribunal requested further information from the Applicant which was provided on 29 March 2021.

Consideration

6. A QRA is group of mobile home occupiers who work together to represent the interests of the occupiers on a protected site. The owner of the site must consult with the QRA about matters which relate to the management and operation of the site such as the provision of utilities to the mobile homes or amending the site rules. A site owner must also consult with the QRA about any improvements to the park which will affect (either directly or indirectly) the occupiers.
7. Paragraph 28(1) of chapter 2 of part 1 to schedule 1 of the Mobile Homes Act 1983 states that a residents' association is QRA if
 - a) It is an association representing the occupiers of mobile homes on the site;
 - b) At least 50% of the occupiers of the mobile homes on the 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 the Park;

- 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 for each mobile home; and
 - h) the owner has acknowledged in writing to the secretary that the association is a QRA or in default the FTT can so order.
8. The Applicant in support of its application produced a membership list signed by 32 occupiers of the 46 mobile homes on the site which constituted 69.46 per cent of the occupiers. The Tribunal notes that the site licence permits 46 homes on the site.
9. The Applicant supplied a copy of the Constitution which was signed by the Chair, Secretary and Treasurer. The copy of the Constitution supplied said it was adopted at the AGM held on 24 October 2020. The Secretary of the Association in a letter to the Tribunal admitted that it was a typographical error because COVID 19 restrictions prevented an AGM from taking place.
10. The Applicant said that it had adopted the model Constitution approved by The British Holiday and Home Parks Association (BH & HPA), The Independent Park Home Advisory Service (IPHAS), the National Association of Park Home Residents (NAPHR), and the National Parks Homes Council (NPHC). The Applicant said that a copy of the Constitution had been made available for members to view.
11. Ms Tolchard for the Applicant explained that because it was not possible to hold an AGM letters were sent to Residents instead. The first letter was dated 16 October 2020 and said:

“Thank you so much for getting in touch. we are very pleased to tell you that we have raised a 70% interest in forming an association.

To enable us to take the next step forward, we have to appoint a committee consisting of a: Chairperson, Secretary and Treasurer.

These positions are elected from amongst the members and by the members.

Due to Covid-19 we are unable to gather together to vote with a show of hands. as a great number of residents don't have access to a computer, it has been suggested that we arrange a ballot.

To enable a ballot paper to be compiled, I am asking that anyone who is interested in putting their name forward, for any of the above three positions, contact us by Friday 23rd October”

12. On 24 October 2020 a further letter was sent to the Residents which said:

“This is to advise you that we are unable to carry out a ballot to elect a committee, as only three residents have indicated an interest in the positions of Chairperson, Secretary and Treasurer, namely:-

Francis Tadd-Clark
Carol Tolchard
Stephen Robinson

If it is your wish that we proceed to form a Committee on the basis of the above named, then we will do so with your written agreement, in the form of a signature to a membership list and the paying of a £5.00 membership fee; which is to cover the simple running costs of the Association.

We will be calling upon you over the course of the next few days to carry this out and to answer any questions you may have.

The Committee will endeavour to do its very best to negotiate with the site owner, any issues you feel need addressing.

We look forward to meeting you all personally”.

13. On 26 October 2020 Ms Tolchard wrote to the Respondent requesting recognition of Summerland Court Residents Association as a QRA.
14. The Respondent sent “without prejudice” letters to the Applicant on 10 November 2020, 30 November 2020 and 8 December 2020. The “without prejudice” letters have been disclosed by both parties to the Tribunal. The Respondent stated that he was not refusing to acknowledge the Residents’ Association as a QRA but required further information to make a decision.
15. The Respondent acknowledged in a letter dated 30 November 2020 that he was generally happy that requirements a) to e) of paragraph 28(1) had been met but had concerns about the election of the Officers.
16. Ms Tolchard responded to the Respondent’s concerns in a letter dated 2 December 2020:

“As we have all been aware, for most of this year, what would be normal due process with regards to the method of electing a Committee, by way of a general meeting, could not take place. Requests were therefore made, for candidates to come forward to enable a ballot to be arranged. Only the three named as the Committee came forward. Several other residents stated they would be interested in any other Committee positions in the future, should the need arise and it would be voted upon.

By the signing of a membership list and paying a membership fee, members did so on the understanding that they were voting in agreement to the three named individuals becoming their Committee and thereby electing them. We received no abstentions.

It is felt that, under current circumstances, a Tribunal would consider that we acted in the spirit of Section 28 (1) of Chapter 2 of Part 1 to Schedule 1 of the Mobile Homes Act 1983, to achieve the result the members wanted, which was, namely, a Residents Association. Hopefully next September at the AGM we will be able to carry out the process of election in the pre-described manner.

I trust this is sufficient to clarify the situation for you”.

17. The Respondent did not accept the explanation and opposed the recognition of the Residents’ Association as a QRA. The Respondent said that despite repeated requests the “Committee” had been unable to provide any evidence to support their election either via a ballot or other none contact voting methods. The Respondent expressed concerns about whether the “Committee” members were democratically elected representatives of the members.
18. The Respondent added that under paragraph 28(1)(g), there was no evidence of confirmation of a vote at a general meeting, as no meeting could be held, for the “Committee” to act for and on behalf of the membership.
19. Further the Respondent asserted that he had not been provided with evidence to substantiate the Applicant’s statement that members had agreed to the election of the Committee by signing the membership list and paying the subscription.
20. The Respondent also alleged that he was stopped from making notes, or copying the list of members, to satisfy himself that the 50 per cent minimum membership had been reached.
21. The Respondent concluded that he had always avowed to work with a residents association, and at no point unnecessarily withheld acknowledgment. The Respondent, however, felt strongly that the current application to the Tribunal did not portray a democratic election of Committee members. According to the Respondent, if the correct procedures as laid down in the Association’s own Constitution, could not be followed, due to Covid-19 restrictions, then the formation of the Committee could have been postponed until the restrictions had been lifted, or other none contact voting methods used. The Respondent contended that that the Tribunal should accept that the due process as laid out in the Act, and the Association’s own Constitution had not been followed.
22. The Applicant stated that having made several written requests to the Respondent over the course of the last three months for recognition, he continued not to recognize the Association in writing. The Applicant submitted that it had fulfilled all the criteria: a Committee had been formed, a written Constitution based on the NAPHR standard was in place and the Association had a qualifying membership of 70 per cent. The Applicant, therefore, asked the Tribunal to give a directive to the

Respondent, that he must comply with the legislation and accept the association as a qualifying residents association. The Applicant also requested reimbursement of the application fee of £100.

23. The right of occupiers of mobile homes to form a resident's association which is recognised by the site owner is considered an essential element of the statutory protection afforded to occupiers to redress the imbalance in the contractual relationship with site owners. The Park Homes Working Group (1998) recommended that a procedure should be established for recognising residents' associations which met specified criteria. The July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, contained proposals to amend the terms implied into written statements by the 1983 Act to give occupiers the right to form recognised residents' associations in certain circumstances. The issue of resident consultation and involvement was also raised in the January 2005 consultation document on site licensing. On 1 October 2006 *The Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, enacted legislation which enabled residents' associations to be recognised for specific purposes¹.
24. Paragraph 28(1) sets out the conditions for the recognition of a residents' association as a QRA. The Tribunal is satisfied that the Applicant has been established to represent the occupiers on Summerlands Court, it has no links with the site owner and is open to all residents who live in homes on the site. The Tribunal finds that its membership comprises a substantial proportion of the occupiers well in excess of the 50 per cent threshold laid down in the legislation. This is supported by the membership list included with the Application which was signed by each occupier who is a member against the address of the mobile home. The Tribunal holds that the Association has adopted the model constitution for QRAs approved by the Park Home's representative bodies, and has a Chair, Secretary and Treasurer. On the face of it, the Association meets the necessary requirements to ensure that it is representative of the occupiers of the site and that it is run by the members for the members.
25. The Respondent disagrees with the assessment that the Applicant is a QRA. The Respondent's objection is that he is not convinced that the Officers of the Association will represent the interests of the members because they have not been democratically elected by the membership. The Respondent relies on the fact that the Officers were not voted in at an AGM of the membership, and, therefore, their appointment was not in accordance with the Constitution of the Association.
26. The Applicant has explained that COVID 19 prevented the holding of an AGM in person, and that a virtual AGM was not possible because many of its members have no access to computers. The Applicant put in

¹ House of Commons Library Briefing Paper Number01080, 28 June 2019 Mobile (Park) Homes

place alternative arrangements for the election of Officers which are documented in the two letters dated 16 and 24 October 2020 addressed to all and residents. Essentially the Applicant intended to hold a ballot and requested nominations from the residents. Only one nomination was received for each post so the members were asked to approve the nominations by signing the membership list and paying the subscription fee of £5. The Tribunal is satisfied that the process adopted by the Applicant for the appointment of Officers ensured that they were elected by the members.

27. The question is whether an election of Officers not held in accordance with the Constitution invalidates their appointment. The Tribunal notes that the wording of paragraph 28(1)(f) does not specify that the election must be in accordance with the Constitution. Under normal circumstances the Tribunal would expect the election to conform to the Constitution but this was not possible in the current climate of COVID 19. In this case the Tribunal is dealing with an unincorporated representative body with no substantive fiduciary and decision making powers where all the members live on the one site trying to manage its affairs in the midst of a public health emergency. Given those exceptional circumstances the Tribunal considers it permissible to allow a departure from the Constitution provided the alternative has all the hallmarks of an election. The Tribunal is satisfied that the alternative arrangements put in place for the appointment of Officers as described in paragraph 24 met the requirements of paragraph 28(1)(f).
28. The Respondent said he saw no evidence to substantiate the Applicant's statement that members had agreed to the election of the Committee by signing the membership list and paying the subscription. The Tribunal is reminded of the caution issued by Department for Communities and Local Government – Fact Sheet 2 on QRAs which at paragraph 1.11 states that

“The site owner may reasonably ask to see the constitution and the association's rules and the membership list so they can check that the association meets the conditions for qualifying. However, they are not entitled, for example, to minutes of meetings or to interfere in any way with how the association is run”.
29. The Tribunal disagrees with the Respondent's assertion. The Applicant's claim is supported by the two letters to Residents in October 2020, and Ms Tolchard's letter dated 2 December 2020 to the Respondent.
30. The Tribunal considers the Respondent's objection on the grounds of Paragraph 28(1)(g) is a repetition of the argument that the Officers were not elected in accordance with the Constitution. Paragraph 28(1)(g) is directed at how the Officers discharge their functions. Ms Tolchard in a letter dated 14 November sought to re-assure the Respondent that the Officers understood their obligations under paragraph 28(1)(g) stating that

“The Committee is aware that it can only make administrative decisions and not represent its membership in the manner you describe. It does not, however, preclude it from bringing various aspects to their attention, which may be to their benefit, and obviously leaving them to make their own informed decisions as to what action they feel necessary to take, if any”.

Decision

31. The Tribunal decides for the reasons given above that Summerlands Court Residents Association is a QRA within the meaning of Paragraph 28(1) of chapter 2 of part 1 to schedule 1 of the Mobile Homes Act 1983.
32. The Applicant requested an Order requiring the Respondent to reimburse the Applicant with a hearing fee of £100. The Tribunal is minded to so order in view of the Applicant being successful with the Application. This Order will take effect within 14 days of the date of the decision payable by 4 May 2021 unless there are representations to the contrary which must be received by the Tribunal by no later than 20 April 2021.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.