



Property Factor Enforcement Order

Hohp Ref: HOHP/PF/14/0129

Re: Property at 25 the Village, Archerfield, Dirleton, EH39 5HT (“the Property”)

The Parties:-

Mr and Mrs van der Linde, 25 the Village, Archerfield, Dirleton, EH39 5HT (“the Homeowners”)

Archerfield House Hotel Management Limited, Archerfield House, Golf Green, Dirleton, EH39 5HU (“the Factors”)

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

Committee Members:

Maurice O'Carroll (Chairman)
Andrew Taylor (Surveyor Member)

This Notice should be read in conjunction with the Decision and proposed Property Factor Enforcement Order dated 19 March 2015 under reference HOHP/PF/14/0129

1. By decision of 19 March 2015, the Committee determined that the Factors had breached their duties in terms of s 19(1) of the 2011 Act in that they failed to comply with sections 1, 3, 6 and 7 of the Code of Conduct for Property Factors as required by s 14(5) of that Act, all as further specified in that decision. It also determined that the Factors had failed to carry out the property factors' duties.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factors had failed to carry out the property factor duties, the Committee required to make a Property Factor Enforcement Order (“PFEO”). Before making the Order, to comply with section 19(2) of the Act, the Committee gave notice of the proposal to the Factors and allowed the parties an opportunity to make representations to the Committee.
3. The Homeowner did not make any representations in response to the proposed PFEO circulated to the parties. By email dated 2 April 2015, the Factors made detailed representations in respect of each of the heads of the proposed PFEO. It also supplied a suggested revised WSoS and other documents in support of its

representations. The Committee noted the representations made and the various undertakings contained therein. As noted above, having done so, the Committee is obliged in terms of s 19(3) of the Act to issue a PFEO notwithstanding the representations made or any undertakings given.

4. The Committee notes that the Factor's representative has stated that at present there is no money held in a reserve account to provide for foreseeable contingencies. This is at odds with the evidence before the Committee in the form of minutes of a residents' meeting held on 30 June 2013. At that meeting, it is recorded that Ian Everard on behalf of the Factors confirmed that a proportion of management fees was accruing to cover one-off expenses such as the [internal estate] road. The PFEO was proposed on the basis of the evidence present before the Committee at its hearing held on 2 March 2015. No contrary evidence was presented on this point. Accordingly, the Committee has amended the present PFEO on the basis of the evidence before it at the hearing, taking into account that submission on behalf of the Factors.
5. The revised WSoS provided by the Factors' representative may require to be further amended in light of the foregoing. The Committee notes the position regarding the Ranger charges and the position of RD Anderson Haulage Ltd. It also accepts the position as stated that it would not be practicable for the Factors to validate all historic cross-charges that have been made between the companies referred to in the decision. It welcomes the undertaking that all such cross-charges will be fully and transparently justified from the date of this PFEO and in all time coming. It should be borne in mind that at the end of the compliance period of 28 days, HOHP will be sending a compliance response enquiry to the parties. If the Homeowners consider that the PFEO has not been fully complied with, they will be entitled to make representations to that effect or to lodge a fresh complaint, if so advised.
6. Therefore, the Committee proposes to make the following Property Factor Enforcement Order:

Within 28 days of the communication to the Factors of the Property Factor Enforcement Order, the Factors must:

1. Provide a Written Statement of Services to the Homeowners which is compliant with the Code of Conduct in all respects and which incorporates a complaints procedure.
2. Open a separate bank account in the name of the Factors into which the following sums are separately paid and identifiable: Management charges payable by homeowners within the development known as the Archerfield Village Development.

3. Provide an explanation to the HOHP and the Homeowners as to why there is no reserve fund for sums accrued for major items of expenditure such as the roads within the said development, despite the assurances provided to residents at a meeting held on 30 June 2013 that such a fund in fact exists. Such an explanation should also include a statement as to the measures being put in place in order to produce such a fund with effect from the date of compliance with this PFEO, together with a statement as to what was done with the funds that the residents were told were accruing within the said reserve fund.
4. If applicable, open a separate bank account in the name of the Factors into which any floating funds paid by residents of the said development to the Factors upon purchase of a property are held in terms of the Deed of Conditions.
5. Provide the Homeowners with full and transparent detailed accounts as described by Section 3 of the Code of Conduct and as narrated in the said decision showing all expenditure and receipts further to the Factors' maintenance of the Property at the said Archerfield Estate alone in respect of the present financial year and in all years thereafter.
6. Said detailed accounts are to be shown as separate and distinct from any other funds held by the Factors in respect of any other businesses which they operate. Said detailed accounts are to include validation of all cross-charges from whatever source (including, but not limited to the Estate Manager, administrative and invoicing services, insurance provision, security, vehicle costs, Flow Vac charges, repairs and landscaping) with such cross charges as occur to be made explicit, clear and transparent, and supported by time sheets, logs, diaries, invoice charges and any other relevant vouching of sums expended.
7. Make payment to each of the Homeowners the sum of £250 in recognition of the inconvenience and distress that the Factors' failures to comply with the terms of the Code of Practice and breaches of the Factor's duties have caused to the Homeowners.
8. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.

6. Appeals

The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made...”

Signed

M O'Carroll
Chairperson

Date 14 April 2015