

Housing and Property Chamber First-tier Tribunal for Scotland



**Decision of the of the First-tier Tribunal for Scotland Housing and Property Chamber
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

By

Charles McDonald, 111 Whitehaugh Park, Peebles EH45 9DB (“the Applicant”)

Greenbelt Group Limited, McCafferty House, 99 Firhill Road, Glasgow G20 7BE (“the Respondent”)

Chamber Ref: HOHP/PF/16/0135

Tribunal Members:

John McHugh (Chairman) and Robert Buchan (Ordinary (Surveyor) Member).

Decision

The Tribunal hereby determines that the Property Factor Enforcement Order has been complied with.

The decision is unanimous.

Reasons for Decision

The Tribunal issued a Property Factor Enforcement Order on 10 April 2018 (“the PFEO”) as follows:

“Within 120 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

- 1 Credit to the Applicant's factoring account the sum of £200.
- 2 Take reasonable steps to invite the views of homeowners of the Development in relation to the future management of the woodland areas.
- 3 Confirm in writing to the office of the Tribunal that steps 1 and 2 above have been carried out.
- 4 Provide to the Applicant and the office of the Tribunal a report confirming that the Development is currently in a state consistent with it currently being managed "in

accordance with good residential land management practice." such report to be written by an independent expert in the maintenance and management of residential estates. The report should explain the author's expertise, confirm that the author is not associated with the Respondent and that the author has been given sight by the Respondent of the Tribunal's Decision, the Deed of Conditions, the Written Statement of Services and any other documents which the author has requested for the purpose of producing his report."

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

The parties have made various representations to the Tribunal. The Applicant does not consider that the requirements of the PFEO have been complied with. The Respondent holds the opposite view.

1 The parties are agreed that the £200 credit has been made.

2 The Respondent has confirmed by its solicitors' letter of 7 August 2018 and via section 5 of the DWA report (mentioned below) that the views of residents on future woodland management have been sought. There appears to be no dispute on this aspect although the Applicant is concerned that the Respondent has not taken into consideration the views expressed by residents.

3 The Respondent's solicitors wrote to the office of the Tribunal with the appropriate confirmation on 7 August 2018.

4 On 7 August 2018 the Respondent provided a report dated July 2018 prepared by DWA Landscape Architects Ltd. The report concludes that the site is being managed in accordance with both the Written Statement of Services and good residential land management practice.

DWA have confirmed in their report their expertise and their independence from the Respondent. DWA have confirmed that they have been given sight of the required documents.

The Applicant has expressed concerns regarding DWA's independence in that he advises that DWA were accompanied on their inspections by the Respondent's representatives and were provided information by the Respondent. Further, the Applicant is concerned that because Greenbelt are paying for DWA's services, DWA could not be completely independent. The Applicant considers that these factors lead to a bias in the report.

We reject the Applicant's argument. It was inevitably the case that the Respondent would be paying for the report and providing information to its author. Attendance with the report author at site visits is consistent with ensuring the author has the correct information and we do not infer from that (or from any other information available to us) any inappropriate interference with DWA's work. DWA make no complaint of this kind and purport to have produced a report fit for the purposes of satisfying the requirements of the PFEO.

The Applicant further criticises the content of the report in that he considers that it omits to deal with certain important matters, including the offer of a qualified resident to assist the Respondent. However, we consider that the report has been the result of detailed work on the part of its author and has reached a conclusion on the matter which it was required to address.

Accordingly, the Tribunal considers the PFEO to have been complied with.

APPEALS

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

J McHugh

Signed

Date 11 October 2018

JOHN M MCHUGH

Chairman