



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference	:	CAM/34UD/PHK/2019/0001
Site	:	Yarwell Country Park, Mill Road, Yarwell, Peterborough, PE8 6PS
Applicant	:	Yarwell Mill Country Park Residents' Association
Respondent	:	Leisure Parks Luxury Living Ltd.
Date of Application	:	18th February 2019 (rec'd 7th March)
Type of application	:	to determine whether the Applicant is a Qualifying Residents' Association

DECISION

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1. The decision of this Tribunal, as the appropriate judicial body, is that the Applicant is not recognised as a qualifying residents' association.

Reasons

Introduction

2. This is an application by the Applicant for its recognition as a Qualifying residents' association ("QRA") pursuant to Part I, Chapter 2, paragraph 28(1)(h) of the **Mobile Homes Act 1983** as amended ("the 1983 Act").
3. The application was accompanied by a letter asking for a determination 'on the information enclosed'. Of necessity, the Tribunal asked the Respondent for any comments and its letter of the 20th March and attached documents have also been considered.
4. It should be noted that this is the 2nd application made by this association. The earlier one included a letter from the site owner dated 19th March 2018 confirming that it recognised the Applicant as a QRA. Unfortunately, such recognition was withdrawn by a further letter dated 23rd November 2018. Hence this application.

The law

5. As has been mentioned in the papers, the law is set out in the 1983 Act as an implied term of the occupation agreements between a park home site owner and each pitch occupier. The relevant statutory requirements of a QRA which can be recognised as such either by the site owner or, absent such recognition, this Tribunal can provide a certificate of recognition. The minimum requirements are:

“(a) it is an association representing the occupiers of mobile homes on that site;
(b) at least 50 per cent of the occupiers of the mobile homes on that 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 for each mobile home;”

6. There is an additional requirement that for the purpose of calculating the 50%, each mobile home shall be taken to have only one occupier.

Discussion

7. It appears that the Applicant was formed shortly before 10th April 2018 and its first general meeting was held on that day when a constitution was shown to those present and appears to have been adopted. There is no indication from the minutes of that meeting as to who was present. Named individuals were ‘agreed’ for a chairman, secretary, treasurer and ‘website’ person with an additional committee of 5 more people.
8. A membership fee of £10 was agreed and agreement had also apparently been obtained from the Independent Park Home Advisory Service for a reduced fee of £5 and the total fee was therefore said to be £15 per member. People have subsequently said that this was an annual figure.
9. There was then a general meeting held on the 29th November 2018 and the minutes of that meeting have been produced. The names of those attending are set out, being 8 in number. However, the first comment in the minutes says that no apologies were given and 21 homes were represented. If other members had given proxies, then that should have been recorded.

10. That meeting purported to adopt a new constitution and the certificate at the end says that it was adopted “*at the AGM held on 29/11/2018*”. The new constitution confirms that membership is for “*a twelve month term*”. Membership is said to be ‘indicated’ by a signature on a list, although this was also in the original constitution. No list of members with signatures has been produced.
11. In essence, the concern is that this Applicant may not have the support of a majority of park home occupiers. The Respondent accepts, somewhat reluctantly, that the potential membership is 48. The Applicant has produced a list showing a membership of 37. However, a further list has been supplied with 13 individual members saying that they resign from the association. They have signed against their names and the dates of signature range from 28th August to 7th September 2018. In fact one of those, in respect of 21 Mill Lane (Di Keys and Jo Romer), does not appear on the list of members anyway.
12. In addition, further notifications are in the papers signed by an extra 3 members saying that they are resigning. Thus, as at this time, the number of park home owners – at one per park home – who support the Applicant appears to be 22 i.e. the 37 claimed less the 12 on the signed sheet less the additional 3. This is clearly less than 50% of the park homes.
13. The reason why recognition was withdrawn by the site owner is because it said that it had been contacted by members of the Applicant saying that they no longer wanted to be members and withdrew their support. The precise reason for this is not clear from any of the papers save for a suggestion that people do not agree with or respect one or more officers of the Association.

The Positions of the Parties

14. The Applicant simply says that the membership following the first general meeting in April 2018 was 37 which is more than 50%. They all paid a membership fee for a year and they remain as members until the next Annual General Meeting. It also complains that the Respondent has not given it the names of the occupiers of some of the pitches.
15. The Respondent simply stands by its comments i.e. that the members of the Applicant now consist of less than 50% of the park homes and it therefore cannot be recognised as a QRA. It also complains that it is not allowed to see the list of members on a regular basis. Its park manager, Howard Jones, also makes the rather odd comment that “*if at any time membership falls below 50% the association cannot be qualifying*”.

Conclusions

16. This has not been an easy case to resolve as both parties have not exactly covered themselves with glory. The Applicant should not have

attempted to change its constitution at anything other than an annual general meeting or a general meeting where the members were given clear notice of any proposal for change. It should acknowledge that its support on the site is now less than 50%.

17. The site owner should not have withdrawn its recognition because the Applicant clearly had over 50% park home membership when recognition was given and it is self evident that an association such as this cannot just go in and out of recognition when its membership goes above or below 50%. That is not how a democratic system works. If it were a correct interpretation of the situation, it would cause chaos and leave a QRA very vulnerable to interference from a manipulating site owner.
18. The membership fee seems to have been for a year, whether expressly stated in the original constitution or not. A dissatisfied member should use the constitution to achieve change or just let their membership lapse at the end of the year.
19. The problem with this situation is that as at the present time, i.e. March 2019, the Tribunal cannot be satisfied that the Applicant does actually represent the park home owners because more than half do not actively support it. The determination is that as the next annual general meeting is so close, recognition should not be given now. Should membership for 2019/2020 be 50% or more, then application can be made again.

The Future

20. The Applicant should ensure that the terms of its constitution are determined at the annual general meeting and members should be notified in advance of any proposed changes. The month of such agm should be set out. The list of members open to the public should be just that i.e. a list of members. There are data protection issues about putting their addresses or any other personal details on that list.
21. The list which is open to the public does not have to have members' signatures on it and once recognition has been given or declared by this Tribunal, there is no need for the site owner or anyone else to keep pestering the Applicant to see the list until after the annual general meeting when the members for the next year will be known. The site owner should be co-operative about offering new occupiers the chance to join the QRA.



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Bruce Edgington
Regional Judge
26th March 2019

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.