



Certificate of the Homeowner Housing Committee issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

HOHP reference: HOHP/PF/15/0088

Re: Strategic areas of landscaping within the Hopefield (Bonnyrigg) Development, Midlothian, EH19 3DH

The Parties:-

Mr Yodi Sprott, residing at 11 Littlewood Grove, Bonnyrigg, Midlothian, EH19 3DH ("the Homeowner")

And

Scottish Woodlands Limited, having a place of business at 2 Roddinglaw Court, Roddinglaw Business Park, Roddinglaw Road, Edinburgh, EH12 9DB ("the Factor")

Decision by a Committee of the Homeowner Housing Panel to issue a Certificate of Compliance with the Proposed Property Factor Enforcement Order dated 24th December 2015 in terms of Section 19(3) of the Property Factors (Scotland) Act 2011.

Committee Members:

Andrew Cowan (Chairperson)

David Hughes Hallet (Housing Member)

Decision of the Committee

The Committee unanimously agree that the Property Factor has now complied with the terms of the Proposed Property Factor Enforcement Order dated 24th December 2015.

1. In terms of a Decision of the Homeowner Housing Committee dated 24th December 2015 the Homeowner Housing Committee determined that the Factor had failed to comply with the Property Factor Code of Conduct in terms of Section 14(5) of the Act. The Committee accordingly advised the parties that they proposed to make a Property Factor Enforcement Order ("PFEO").

2. A proposed PFEO dated 24th December 2015 was issued to the parties. In terms of the Proposed PFEO the Committee proposed to make the following Order:

“By not late than Friday 12 February 2016, the Factor must:-

- (a) provide to the Homeowner a reasonable breakdown of the charge made to the Homeowner, for maintenance of the common spaces at the development in which the Homeowner's property is situated, in relation to the period from 1 April 2014 to 31 March 2015; and
 - (b) a Director of the Factor shall issue a letter of apology to the homeowner in relation to the Factor's failure to respond to the enquiries and complaints issued by the Homeowner, and the failure of the Factors to comply with their own customer care complaints procedure in relation to those complaints.”
3. By letter dated 9th November 2015 the Property Factor wrote to the Homeowner and apologised for:-
- “1) Late arrival of our initial paperwork,
 - 2) Late answering of your various letters.
 - 3) Non escalation of your remaining queries at the appropriate point in time and
 - 4) Our inability to provide a full breakdown of 2014/15 costs and charges without the involvement of some serious back-digging into our records.”
4. By letter dated 5th February 2016 the Property Factor issued to the Homeowner a statement of account for the period from 1st April 2015 to 31st March 2015.
5. By letter dated 3rd March 2016 the Homeowner wrote to the Property Factor and acknowledged receipt of the Property Factor's account which had been issued to the Homeowner by letter dated 5th February 2016. In his letter of 3rd March 2016 the Homeowner sought further clarification of specific charges made in the statement of account issued by the Property Factor for the year to 31st March 2015.
6. By letter dated 26th April 2016 the Property Factor responded to the request for further specification and information made by the Homeowner in his letter of 3rd March 2016.

7. By letters dated 30th June 2016 the Homeowner Housing Committee wrote to the Property Factor and to the Homeowner. At that time the Homeowner Housing Committee specifically requested the Homeowner to confirm whether he agreed that the actions carried out by the Property Factor since the date of the issue of the Proposed PFEO had been complied with.
8. By email dated 29th July 2016 the Homeowner advised that he did not believe the Property Factor had complied with the terms of the Proposed PFEO as he could not agree that the Property Factor had provided "a reasonable breakdown" of the Property Factor's costs for the period to 31st March 2015 or as required by the terms of the Proposed PFEO.
9. The Homeowner Housing Committee thereafter held a further hearing in relation to this matter on 14th October 2016. The purpose of that Committee was to hear evidence from the parties and to determine whether the Property Factor had complied with the terms of the Proposed PFEO.
10. The hearing was held on 14th October 2016 at George House, 126 George Street, Edinburgh. The Homeowner was present and represented himself. The Factor was represented by Mr Duncan Gilchrist, Senior Estates Manager and by Mr Colin Mann, the Deputy Chairman and Utility Director of the Property Factor.

Proposed Order to direct the Factor to issue a letter of apology to the Homeowner

11. At the start of the hearing the Homeowner confirmed to the Committee that he accepted that the Factor had issued a letter of apology in relation to the Factor's failure to respond to the enquiries and complaints issued by the Homeowner. The Homeowner accepted that the Property Factor's letter to him dated 9th February 2015 satisfied the terms of the Proposed PFEO in this respect. The Committee accordingly determined that the Factor had complied with the terms of the Proposed PFEO, in respect of this matter.

Direction to the Factor to provide the Homeowner with a reasonable breakdown of their charges for the period from 1st April 2014 to 31st March 2015

12. The Homeowner accepted that the Property Factor had made available a breakdown of their charges for the period to 31st March 2015. This had first been issued to the Homeowner under cover of the Property Factor's letter of 5th February 2016. The Homeowner did not consider, however that the breakdown of charges issued by the Property Factor in

compliance with the Order contained within the Proposed PFEO was a reasonable breakdown of charges.

13. The principal complaint of the Homeowner was in relation to how the charges for the period to 2015 had been presented by the Property Factor. In particular the Homeowner was concerned that the final annual charge per resident of £154 was not clear on the account. At the hearing the Homeowner himself presented to the Committee, and to the Property Factor, his own method of how the figures could have been presented and calculated.
14. The Homeowner also maintained that he was still unable to fully determine the costs in the account which related to the Factor's "core services", as opposed to initial setup costs which the Factor had also included within their account.
15. The Factor explained to the Committee that they had adapted and changed presentation of their accounts for future years. In this respect the Factor presented to the Homeowner and the Committee, at the hearing, a copy of their breakdown of account and expenditure for the period from 1st April 2015 to 31st March 2016. In that account they had broken down the total account and given specification of the works and shown how an individual's share had been calculated.
16. In recognising that the presentation method used for the account for the year 15-16 was an improvement, the Property Factor nonetheless considered that they had provided a reasonable breakdown of the year to 31st March 2015.
17. Having heard parties and having considered the written evidence which was available, the Committee determined that the Property Factor had complied with the second part of the Proposed PFEO. In particular, the Committee were satisfied that the Factor had provided a reasonable breakdown of the charges made to the Homeowner for maintenance of the common spaces at the development for the period from 1st April 2014 to 31st March 2015. The Committee recognised that the account which had been produced by the Property Factor for the relevant period could, in itself, raise further issues for the Homeowner as to how the Property Factor had charged for core services and for other services. In the event that the Homeowner considered that he continued to have a complaint in relation to those issues then it might be appropriate for the Homeowner to raise a further application to the Homeowner Housing Panel. In this particular matter, however the Property Factor had complied with the

terms of the Order which had been proposed by the Committee. The Committee accordingly and unanimously agreed that the Factor had complied with this part of their Proposed Order.

Proposed Property Factor Enforcement Order

18. The Committee accordingly determined that the Property Factor had complied with the terms of their Proposed Property Factor enforcement Order prior to and by the date of the hearing held on 14th October 2016.

Right of Appeal

19. The parties' attention is drawn to the terms of Section 22 of the Act regarding their right to appeal and the time limit for doing so. It provides:-

- (a) 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 Committee or a Homeowner Housing Committee; and
- (b) an appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

20. More information regarding appeals can be found in the information guide produced by the Homeowner Housing Panel. This can be found on the Panel's website at:

21. <http://ho hp.scotland.gov.uk/prhp/2649.325.346.html>

A Cowan

Andrew Cowan, Chairperson

..... 1/11/16

Date