



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

Case Reference : CHI/19UJ/HTA/2021/0004/AW

Property : Atlantic House, 1 Ayton Drive, Portland,
Dorset DT5 1FB

Applicant : Atlantic House Leaseholders Association

Representative : Timothy Clarke (Secretary)

Respondent : Fulca Limited

Representative : Brady Solicitors

Type of Application : Recognition of a Tenants' Association

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

:

Date of Decision : 15 March 2022

DECISION

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraphs 12,21 &26 of our Decision dated 15 March 2022. Our amendments are made in bold and underlined. We have corrected our original Decision because of typographical errors.

D Banfield FRICS

23 March 2022

The Application is refused.

Background

1. The Applicant seeks recognition of a Tenants' Association.
2. The application letter to the landlord dated 15 September 2021 listed 24 relevant qualifying tenants who are members of the association and stated that the association represented 61.5% of variable service charge paying owners at Atlantic House, 1 Ayton Drive, Portland DT5 1DT.
3. A copy of Atlantic House Leaseholder Association's Constitution has been supplied.
4. In a letter dated 28 January 2022 the landlord's representative states that the Respondent does not oppose the application in principle but does object to the Applicant Association's Constitution as listed in an email dated 3/11/21 from Comer to the Applicant setting out the Respondent's objections.
5. The Tribunal made Directions on 8 February 2022 indicating that it considered that the application was likely to be suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 28 days. No objection has been received and the application is therefore determined on the papers.
6. The Directions indicated that the application and documents attached should stand as the Applicant's case and the objections contained in Comer's email of 3 November 2021 should stand as the Respondent's case.

The Law

7. An association which is a "recognised tenants' association" as defined by section 29(1) of the Act has certain rights concerning the management of the premises concerned: it has the right: –
 - to propose names of contractors for tender in a statutory consultation process carried out by the landlord under section 20 of the Act;
 - to be sent copy estimates obtained for the purposes of such a consultation process;
 - to ask for a summary of costs incurred (section 21);
 - to inspect relevant accounts and receipts (section 22);
 - to ask for a written summary of insurance cover; and
 - to ask to be consulted about appointment or re-appointment of a managing agent (section 30B).
8. An association of qualifying tenants may be recognised for these purposes by notice given by the landlord. Alternatively, it may be

recognised by a certificate given by the Tribunal under section 29(1)(b)(i) of the Act.

9. In deciding whether to grant a certificate of recognition, the Tribunal must apply the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 ("the Regulations").
10. Regulation 3 lists the following matters to which the Tribunal must have regard when deciding whether to give a certificate of recognition:
 - the composition of the membership of the tenants' association;
 - the tenants' association's rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members;
 - the tenants' association's rules regarding decision making;
 - the tenants' association's rules regarding voting;
 - the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members;
 - the extent to which the constitution of the tenants' association takes account of the interests of all members;
 - the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates;
 - whether the tenants' association has a chairperson, secretary and treasurer;
 - whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment;
 - whether the tenants' association's constitution, accounts and list of members are kept up to date; and available for public inspection; and
 - the extent to which the association operates in an open and transparent way.
11. Regulation 4 provides that the Tribunal must not give a certificate of recognition in certain circumstances: where the tenants' association represents fewer than 50% of the qualifying tenants; where a previous certificate is still in force; and where the Tribunal is not satisfied that the constitution and rules of the tenants' association are fair and democratic.

The Parties positions

The Respondent

12. The Respondent's objections referred to at paragraph 6 above:
 - i. Under paragraph 3.1, the constitution provides for a leaseholder to have only one vote, even if the leaseholder owns multiple flats. This can be criticised on the basis that a leaseholder owning more than one flat will pay a

larger proportionate share of the service charges and should be entitled to more say when AHLA is making decisions in relation to particular matters. This is unfair and undemocratic.

- ii. Under clause 5.1, the committee has the power to appoint the chairperson and secretary/treasurer of AHLA. The general membership does not make that appointment. The risk of this is that the committee may appoint a chairperson and secretary/treasurer against the wishes of the general membership of AHLA. This is fundamentally undemocratic and risks allowing a small self-appointed, self-perpetuating cabal to retain control of AHLA to the exclusion of other members.
- iii. Under clause 5.3, AHLA shall appoint 2 members to act as auditors. However, the constitution does not specify what the auditors are required to do. The absence of a properly qualified professional auditor and any statement of what the auditor is required to do leads to a risk of mismanagement of the finances of AHLA and ultimately of the money contributed by the leaseholder members.
- iv. Under clauses 6.2 and 9.3 **(sic)**, notice of an AGM and EGM of AHLA is required to be given to members at their flat. However, if the member does not live at the flat, there is a real risk that the member will not receive the notice of the AGM. This is fundamentally undemocratic and will prevent non owner-occupier lessees any voice or say in the proceedings of AHLA.
- v. Under clause 6.4, at an AGM or EGM of AHLA, 25% of the membership shall constitute a quorum, but if there is no quorum present, the meeting shall be adjourned to another day, when the membership present shall form a quorum. So in the event of a general meeting being adjourned to another day due to the absence of a quorum, at the adjourned meeting the constitution provides that there is effectively no quorum required to pass resolutions. This is fundamentally undemocratic and will allow a small cabal to control the business of AHLA.
- vi. Clause 6.8 provides? All members shall have the right to vote on any resolution before any resolution before any general meeting.? There are 2 problems with this clause:
 - 1. It suggests that members will be entitled to vote on a resolution before the resolution is voted upon at general meeting, which is counter-intuitive. Presumably this is a typographical error.

2. It fails to specify how a resolution can be passed at general meeting? i.e. whether a resolution may be passed by a simple majority or a would require a majority of more than 50% of the votes of members.
- vii. Clause 7.3 provides for notice of failure to pay a subscription to be addressed to and sent by post to members at their flats at Atlantic House. However, if the member does not live at the flat, there is a real risk that the member will not receive the notice. This will mean that non-occupiers of flats at Atlantic House will be at an increased and unfair risk of expulsion from AHLA.
- viii. Clause 9.1 contains a typographical error and requires clarification.
- ix. The provisions in relation to a resolution to dissolve AHLA require clarification: the constitution in clause 12.1 may currently provide for a dissolution on resolution with a simple majority and/or on a two-thirds majority

The Applicants

13. In an email of 22 February 2022, the Applicants stated “Our membership have all agreed to our constitution as it is. We feel that any amendments to our constitution should come from within the association rather than be imposed from an external agency. As a group we have chosen to limit the number of votes to one per member regardless of the number of flats as that as that best represents our current membership.

Our members are free to table a motion to amend our constitution which would be voted on at our next AGM. Should Comer Group UK wish to convert the flats they have retained into leasehold properties they would be welcome to join Atlantic House Leaseholders Association and pursue this route.”

The Tribunal’s Decision

14. In reaching its decision the Tribunal has taken into account the objections listed in paragraph 12 and the considerations referred to in Regulation 3 referred to above.
15. Although not referred to in either parties’ submissions the proposed constitution appears to be closely based on the publicly available ARMA Model Rules/Constitution For Residents’ Associations [ARMA Rules] with some notable exceptions.
16. The Tribunal notes in the introduction to the Constitution the undersigned have “further resolved to **adapt** the rules” which the

Tribunal takes to be a typographical error, the usual form being “**adopt**”.

17. Clause 3.1 again contains a typographical error but it is assumed is meant to read “Only one vote per flat or one vote per Atlantic House if multiple flats are owned” The Respondent objects to this clause on the grounds that owners of more than one flat will contribute a greater proportion of service charges than those with one flat and as such it is undemocratic.
18. In considering this point the Tribunal is conscious that membership of the association is restricted to leaseholders only and that it must be independent of the landlord. What may be an attempt to exclude the landlord from membership seems unnecessarily restrictive and as such is not approved. The Tribunal considers that Clause 3.1 of the ARMA Rules is preferred in that it includes any leaseholder, whether individual or company, on a one vote per flat basis.
19. The Respondent objects to Clause 5.1 on the grounds that it is the committee rather than the full membership that elects the chair. Given that Clause 4.1 requires the committee to resign at each AGM the Tribunal considers that this provides sufficient safeguards to prevent the operation of a “cabal”
20. The Respondent’s objection to 5.3 is that the duties of the appointed auditors is unclear and could lead to mismanagement of funds. The Tribunal disagrees that a more prescriptive description of duties is required. This a members’ organisation where the auditors are not committee members and will no doubt be looking to safeguard the lessees’ joint interests.
21. The Respondent notes that in 6.2 and 6.3 Notices of AGMs and EGMs are to be served at the flat and may not be received by non-residents. The Tribunal agrees and suggests that the provision of an alternative contact address for such service should be permitted.
22. The Respondent’s concerns over 6.4 and the status of meeting is noted but, given that all members will have been given notice of meetings it is beholden upon them to attend to exercise their democratic right and as such may remain as drawn.
23. 6.8 is clearly a typographical error and should read “All members shall have the right to vote on any resolution before any general meeting.” 6.10 allows for votes to be cast in the absence of the member and 6.11 indicates that the voting is on a simple majority with the chair having a casting vote. As such the Tribunal is satisfied.
24. The Tribunal agrees that 7.3 should be amended to allow alternative addresses for service to be provided.

25. The Tribunal agrees that 9.1 contains a typographical error and should read “The members of the Association shall indemnify the officers of the Association and members of the committee against all liability incurred by them in good faith on behalf and in the name of the Association acting within their authority.” Once amended this clause is acceptable to the Tribunal.
26. **The Tribunal does not agree that there is any ambiguity in the voting procedure contained in 12.1.**
27. Given the Tribunal’s findings set out above it is not prepared to grant the requested certificate of recognition on the grounds that the proposed constitution does not satisfy the matters that the Tribunal has to take into account as set out in Rule 3.
28. **The application is refused.**

D Banfield FRICS
15/03/2022

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.



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

CERTIFICATE OF REFUSAL

UNDER SECTION 29 OF THE LANDLORD AND TENANT ACT 1985, AS
AMENDED BY PARAGRAPH 10 OF SCHEDULE 2 TO THE LANDLORD AND
TENANT ACT 1987

After considering an application from the Atlantic House Leaseholders Association for the grant of a Certificate of Recognition under the provisions of the Landlord and Tenant Act 1985 I have decided to refuse to grant a certificate on the grounds referred to in the accompanying Decision dated 15 March 2022.

D Banfield.

*(one of the persons appointed by the
Lord Chancellor as a member of the
First-tier Tribunal.)*