



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

Case Reference : CAM/12UE/HTA/2021/0003

Property : Lodges at Buckden Marina, Buckden PE19
5QS

Applicant : Buckden Lodge Owners Group

Respondents : 1.Aquatime Limited
2.Buckden Marina Residents Association

Type of Application : Recognition of a Tenants Association

**Tribunal
Member(s)** : Judge Ruth Wayte
Regional Surveyor Mary Hardman

Date of Decision : 14 April 2022

DECISION

The tribunal has determined that a certificate of recognition will be granted to Buckden Lodge Owners Group for 10 years under section 29 of the Landlord and Tenant Act 1985. The certificate will be sent to the parties with the decision.

Background

1. By an application dated 29 July 2021 the Applicant applied to the Tribunal for a certificate of recognition as a recognised tenants' association under section 29 of the Landlord and Tenant Act 1985 ("the 1985 Act").
2. Section 29(1) of the 1985 Act provides that a recognised tenants association is
"An association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of this Act relating to service charges".
3. Recognition as a tenants' association under the Act confers certain benefits. They are:-
 - (a) the association has a right to ask for a summary of costs incurred by a landlord (section 22 of the 1985 Act)
 - (b) a right to inspect relevant accounts and receipts for expenditure (section 22 of the 1985 Act again)
 - (c) a right to be sent estimates and to nominate contractors for tender under the section 20 consultation procedure of the 1985 Act
 - (d) a right to ask for a written summary of insurance cover (the Schedule to the 1985 Act)
 - (e) The right to be consulted about the appointment or re-appointment of managing agents (section 30B of the 1985 Act).
4. There are two routes to the obtaining of recognition: the first is for the tenants' association to approach the landlord direct and request to be recognised. The landlord can, if it agrees, give Notice in writing to the secretary that it recognises the association (section 29(1)(a) of the 1985 Act). Alternatively, the association can apply to the Tribunal for a Certificate of Recognition (section 29(1)(b) of the 1985 Act). It is not mandatory for the association to have first asked the landlord for recognition.
5. In this case, it was accepted that Buckden Marina Residents Association (BMRA) was recognised by the landlord in 2014. However, in recent years their membership has fallen well below 50% of the qualifying tenants while Buckden Lodge Owners Group (BLOG) represents 65% and rising. BLOG therefore sought a certificate from the tribunal so that they could in effect "trump" BMRA as the residents' association for Buckden Marina.
6. Given the competing residents' associations, BMRA were joined as second respondent and the directions dated 25 November 2021 provided for both respondents to respond to the application. Aquatime Limited took no active part in the proceedings on their own account, although a number of witness statements were provided to BMRA for

use in their response. In view of the dispute, the application was set down for a face to face hearing at Cambridge County Court which took place on 30 March 2022. Mr Geoff Ashwell and his wife Sue represented BLOG, with BMRA represented by Mr Stevenson of Stevenson's Solicitors. A number of lodge owners attended, with Vicky Browning and Robert Cleaver giving evidence on behalf of BLOG, in addition to Mr and Mrs Ashwell. Collette Lloyd, the current Chair, gave evidence on behalf of BMRA.

7. A copy of BLOG's constitution and a list of members had been filed with the Tribunal, as had BMRA's.

The Property

8. Buckden Marina is a large rural site some 30 minutes from Cambridge, mainly dedicated to the berthing of cruisers and narrowboats for use on the River Ouse and beyond. This application is in relation to the 80 lodges which are situated on three roads on the Buckden Marina estate: Watersmead, Ouse Valley Way and Marina View. Although they are separate detached buildings, the lodges are owned on a leasehold basis.
9. The first respondent, Aquatime Limited, purchased a head lease of the lodges on 11 April 2006. The marina is run by Castle Marinas and the freehold of the wider site is now owned by a company called Buckden Properties Limited. The freeholder is responsible for the maintenance of the roads and sewage system on site, as they are in private rather than public ownership. The head lease provides for the freeholder to demand the appropriate costs from Aquatime Limited who in turn seek those costs from the lodge owners as part of their service charge. That said, the leases of the lodges were granted before the head lease and therefore only assume a relationship directly between the leaseholder and freeholder.

The statutory framework

10. By section 29 of the 1985 Act a "recognised tenants' association is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of this Act relating to service charges either-
 - (a) by notice in writing given by the landlord to the secretary of the association, or
 - (b) by a certificate –
 - (i) in relation to dwellings in England, of the First-tier Tribunal, and
 - (ii) [not relevant]"
11. By section 29(4) of the 1985 Act, "a number of tenants are qualifying tenants if each of them may be required under the terms of his lease to contribute to the same costs by payment of a service charge".

12. By section 29(5) of the 1985 Act it is provided that the Secretary of State may by regulations specify-
- (a) the procedure which is to be followed in connection with an application for....a certificate....
 - (b) the matters to which regard is to be had in giving or cancelling a certificate....
 - (c) the duration of such a certificate, and
 - (d) the circumstances in which a certificate is not to be given....”
13. No such regulations were made until 2018 when, on 3 October 2018 the Tenants Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 SI 2018/1043 came into force.
14. Regulation 3 of those regulations sets out the matters to which regard must be had by the Tribunal in giving a certificate. They are:-
- the composition of 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’ associations rules regarding decision making
 - the tenant association’s rules regarding voting
 - the extent to which any fees or charges payable in connection with membership apply equally to all members
 - the extent to which the constitution takes into account the interest of all members
 - the extent to which the tenants’ association is independent of the landlord
 - whether the association has a chairperson, secretary and treasurer
 - whether the constitution may be amended by resolution of the members and rules regarding amendment
 - whether the association, accounts and list of members are kept up to date and available for public inspection
 - the extent to which the association operates in an open and transparent way.
15. Regulation 4 sets out the circumstances in which a certificate is not to be given by the tribunal, including where fewer than 50% of the qualifying tenants are members or where a certificate has already been given to a tenants’ association and the certificate is in force. A certificate must also be refused if the tribunal is not satisfied that the constitution and rules of the association are fair and democratic.

The applicant’s case

16. The applicant's statement of case provided a table setting out BLOG's compliance with Regulation 3. In particular:
- the membership includes qualifying tenants of all the lodges except corporate leaseholders linked to the immediate landlord or freehold and/or their agents. One of the lodges is owned by Avon Estates (London) Limited, who are linked to Aquatime Limited
 - if lodges are sublet, tenants cannot be members but are welcome to attend social events
 - decision making is by consensus but cannot override the contractual rights of the individual members
 - voting at AGMs and EGMs is determined by a simple majority (one vote per lodge), members who are unable to attend may vote by proxy, authorising another member in writing
 - the membership fee is £10 with exemption for one member resident in a care home
 - the constitution takes account of matters of common interest e.g. site amenities and service charges but prohibits the leadership team from entering into any legally binding agreement with the landlord(s) without the prior written agreement of all affected lodge owners
 - BLOG has demonstrated its independence by challenging Aquatime at the tribunal and assisting lodge owners to challenge Avon Estates' demands for payment where erroneous
 - The chair is Bob Cleaver, Treasurer Ian Hayes and secretary Geoff Ashwell
 - The constitution allows the rules to be amended by resolution at an AGM or EGM, with changes made in 2021
 - The constitution, accounts, meeting notes and list of members are kept up to date
 - The association operates in a transparent manner, with all 52 members updated on site issues.
17. Mr Ashwell confirmed that he had been resident at the marina for 9 years. For the first 7 years BMRA was a strong association, with almost all lodge owners as members and the Ashwells played a leading role in its management and liaison with the freeholder. BMRA's membership fell dramatically from 2019/20 and Mr Ashwell was asked to set up an alternative association. Originally focussing on Watersmead, with all 24 lodge owners joining as members, the renamed BLOG now has 52 out of all 80 qualifying tenants, or 65%.
18. Service charges were the main concern in respect of Aquatime. There was also an issue two freeholders back with one Mark Williams of MW Leisure Estates Limited, who was convicted of fraud, having collected large sums of monies based on false accounting and without using the money to keep the site in repair. Since he was reported to the police in 2016, Aquatime had not passed the service charge to the freeholder and

the residential parts of the marina outside the individual lodge owner's control had fallen into disrepair. In 2019, following a meeting with Mr Gurvitz, the managing agent for Aquatime and Mr Edwards, the remaining director of MW Leisure Estates Limited, it was agreed that the freeholder would demand a contribution towards the cost of maintaining the site directly from the lodge owners, with both the freeholder and Castle Marina picking up 30% of the costs of the necessary works. A separate company, MSS Ltd, was set up by Mr Edwards to collect the contributions. Mr Ashwell considered that this arrangement, while outside the leases, had led to much better maintenance of the marina at a lower cost to the lodge owners, who had previously been charged for all the maintenance costs.

19. Unfortunately, a few of the lodge owners had a poor relationship with Mr Edwards due to alleged breaches of their lease or did not trust him as a result of the issues with Mr Williams, who had been his business partner. As a result, insufficient payments were made in 2021 and the agreement had now been brought to an end, with the contributions paid in respect of 2021 returned to the lodge owners and the new freeholder confirming that in future service charges would be demanded through Aquatime Limited. New demands had just been received which were £184 more expensive per lodge due in part to the additional collection fee charged by the agents for the immediate landlord.
20. Mr Ashwell considered that BMRA's relationship with Aquatime was too cosy, citing a failure to challenge excessive service charges which were subsequently conceded when the Ashwells issued proceedings in the tribunal. That had led to a refund of some £60,000 to all lodge owners.
21. He also alleged that BMRA had breached their constitution by failing to hold AGMs in 2020 and 2021, giving proxy votes to the Chair by default and refusing to consider properly tabled resolutions. He stated that none of the committee had been properly elected, including the Chair who was not actually the owner of her lodge (which was in her husband's name) and therefore was not eligible for membership under the terms of BMRA's constitution. He was also concerned that advice from Stevenson's Solicitors had been incorporated into newsletters in a misleading way, with partial quotes and an attempt to pass off BMRA opinions as legal advice.
22. However, the main reason people had left BMRA was due to unpleasant emails and allegations against MW Leisure Estates, the previous freeholder and the Ashwells personally.
23. Mr Ashwell's application was supported by Sue Ashwell, Vikki Browning and Robert Cleaver. They had all provided witness statements for the applicant and were cross-examined by Mr Stevenson, with further details in the section of this decision dealing with BMRA's case.

24. Ms Browning gave evidence that BLOG has achieved a lot for the lodge owners at Buckden Marina. The proceedings brought against Aquatime had recovered £60,000 of service charges that had not been passed to the former freeholder and BLOG also organised social events for the marina as a whole. By way of contrast, certain members of BMRA had behaved badly, both in respect of their occupation of their lodges and by publishing unpleasant comments about Mr Edwards and the Ashwells. She felt BMRA had not acted in the residents' best interests and the result of their refusal to honour the agreement reached in 2019 had led to far higher service charges.
25. Mr Cleaver also confirmed that he and others decided to set up BLOG as they felt their interests were not being protected by BMRA. A few of the BMRA members who were in dispute with Mr Edwards due to historic breaches of their lease had caused a bad atmosphere and focussed on their own interests to the detriment of all lodge owners.
26. Mr Ashwell was given the opportunity to cross-examine Mrs Lloyd, the witness for BMRA. He asked her about the breaches of constitution and she replied that the Committee had taken advice and acted on it in good faith. She also explained that the newsletters had tried to reproduce the legal advice obtained from Stevenson's for the benefit of everybody but obviously had to redact private information, there was no intent to mislead or pass BMRA's advice as legal advice.
27. In closing, Mrs Ashwell confirmed that there was now a new freeholder and any allegations about her and her alleged professional closeness to Mr Edwards were irrelevant. In any event, she encouraged members to make their own minds up. She admitted she was not comfortable with Aquatime due to their behaviour in the past but accepted that BLOG would need to work with them going forward and challenge where necessary. Mr Ashwell pointed out that 52 members had moved from BMRA to BLOG in the last 18 months and there must be a reason.

BMRA's case

28. Mr Stevenson had provided a skeleton argument setting out BMRA's case. He confirmed that BMRA did not have a certificate from the tribunal and in those circumstances submitted that any allegations against them were irrelevant as the tribunal had nothing to cancel. His focus was the conduct of the applicant and its officers, arguing that a certificate should not be issued due to an alleged conflict of interest between the Ashwells and other lodge owners and the risk that they have acted and will continue to act against the lodge owners' best interests.
29. In particular, he argued that the monies paid to MSS Limited from 2019 to 2021 were not collected with lawful authority and that the Ashwells' conduct in encouraging or facilitating those payments had led to "*potentially disastrous consequences*" for the leaseholders which the

Ashwells either failed to understand or were “*prepared to turn a blind eye*” towards for their own reasons.

30. The demands issued in 2019 purported to be service charge demands but no particulars of the landlord were given in breach of section 47 of the Landlord and Tenant Act 1987 and in any event, Aquatime have denied that MSS Limited were acting as their agents in issuing those demands. As the monies were not service charges, none of the protections available to the leaseholders applied and they had no right to challenge them before the tribunal. Proceedings had been issued in the County Court for recovery of the monies by one leaseholder as a test case. That said, Mr Stevenson stated that he was not asking the tribunal to decide the issue, other than how it reflected on the applicant’s suitability for a certificate of recognition. He submitted that “*no leaseholder can remotely be adversely affected by the application being refused because all members of the applicant can join or rejoin [BMRA] where each one will be very welcome*”.
31. His cross examination of the Ashwells therefore focussed on their role in the agreement with Mr Edwards and Aquatime in 2019 and their involvement in encouraging the payment of the “service charges” to MSS Limited.
32. Mrs Ashwell explained that she and her husband first met Mr Edwards in 2018. After a lengthy meeting they were delighted to come out with 18 concessions for the lodge owners and she subsequently worked with Mr Edwards on behalf of BMRA and then BLOG to get the site put back into a good state of repair. She had also been at the meeting with Mr Gurvitz and Mr Edwards in 2019 where she acted as note taker. She had subsequently assisted Mr Edwards to demand the first year’s charges but resigned from MSS Ltd in December 2019. She said she was happier to pay the monies to MSS Ltd than Aquatime as Aquatime had previously failed to pass the money on whereas MSS Ltd had actually got things done. The site looked better now than it had done for years.
33. When pressed as to her understanding of protection for the monies paid, she said that she had seen the service accounted for and was comfortable that MSS Ltd was a solid company. She confirmed that the committee had not taken legal advice but that the leadership team held liability insurance. When Mr Stevenson put it to her that there was a conflict of interest in respect of the monies paid for 2019 and 2020, she confirmed that services had been delivered and that the contributions paid for 2021 had now been returned. She denied advising anyone else to pay the contributions.
34. Mr Stevenson also asked Mr Ashwell about his role in encouraging or facilitating the payments to MSS Limited, in particular focussing on an email sent by him to the BMRA Committee dated 5 June 2020. Mr Ashwell accepted that the email was designed to persuade BMRA to stop advising their members not to pay the money directly to MSS

Limited, mainly due to his concern that if the agreement fell apart, Castle Marinas would stop paying a third of all communal costs. When pressed as to his understanding of the agreement with Aquatime in 2019, Mr Ashwell stated that he considered it to be a valid handover of the service charge, confirming that after the meeting BMRA and Mr Edwards had paid a disputed invoice to get Aquatime to honour the agreement. Mr Ashwell was also pressed as to evidence of the agreement and pointed to various emails from the PA for Mr Gurvitz, he also thought there would be other evidence held by Aquatime.

35. As to his concerns about the use of Stevenson's correspondence, Mr Ashwell conceded that the issues with the letterhead could be due to a lack of computer skills as opposed to any other more sinister reason.
36. Mr Stevenson also quizzed both Ms Browning and Mr Cleaver about their understanding of the risks of paying MSS Limited directly. Both indicated that they thought the arrangement was lawful but in any event were happy to pay lower charges for a much better service.
37. The tribunal had some questions for BMRA's witness, Mrs Lloyd, which are convenient to record in this part of the decision. In particular, we wanted to understand the concern about the payments to MSS Limited. Mrs Lloyd confirmed that services had been delivered in 2019 but in 2020 she heard rumours that monies were being used to investigate breaches of leases as opposed to work on the site. That was when BMRA took legal advice which said that as the monies were not paid through the lease, the lodge owners had lost their protection. The committee approached Aquatime who she considered were there "*to guide and advise*" them, she believed they were also keen to get the lodge owners "*back on a legal footing*". As a result, BMRA decided to advise their members to withhold payment to MSS, although she agreed that they also wanted to keep Aquatime's costs to a minimum.
38. In closing, Mr Stevenson confirmed that BMRA's challenge was based on Regulation 3(f), (g) and (k): the extent to which the constitution takes account of the interests of all the members, independence from the landlord of the dwellings and the operation of the association in an open and transparent way – all in relation to the monies paid to MSS Ltd. He accepted that MSS Ltd's demands were issued in good faith but submitted by stepping outside the protection of the law there was a conflict of interest between the Ashwells and other lodge owners.

The tribunal's decision

39. As stated above, there was no challenge in respect of most of the matters set out in Regulation 3, other than the central argument by Mr Stevenson that the monies paid by the lodge owners to MSS Ltd had been a disastrous mistake and as a result, the Ashwells had a conflict of interest with the other lodge owners as in facilitating and encouraging the agreement they had failed to act in their best interests.

40. The tribunal had some difficulty in understanding why the agreement could be characterised in this way, as there was no dispute that services had been delivered and the payment by each lodge owner was just over £1,000 for two years, including payment for utilities. Any contributions paid for the third year had now been returned. There was also agreement that charges had now increased, which lends some support for the amount sought previously.
41. Mr Stevenson argued that the monies were not demanded as service charges and therefore none of the statutory protection for leaseholders applied. However, somewhat illogically, he was still relying on the protection under section 47 of the Landlord and Tenant Act 1987 as his primary argument that no charges were payable due to the failure to provide the landlord's name and address. In any event a subsequent notice can retrospectively remedy that defect, for example the letter from Aquatime to BMRA dated 11 February 2021, which may well have been sent to the lodge owners as well as the association. It is not clear whether Mr Stevenson was alleging that Aquatime Ltd would try and seek further costs from the lodge owners for the years in dispute, although of course that could only be in relation to monies sought from them by the freeholder, which seems unlikely.
42. In the circumstances and on the evidence before the tribunal, the risks appear minimal and greatly overstated. Mr and Mrs Ashwell were both compelling witnesses and it was clear to the tribunal that they were attempting to act in the best interest of the lodge owners, given the failure of both Aquatime and Mr Williams of MW Leisure Estates Ltd to do so in the past. For the avoidance of doubt, the tribunal does not consider that there is a conflict of interest between the Ashwells and other lodge owners. Whereas they are clearly influential, they are not in a position of authority to owe a duty of care to other lodges owners and it is also clear in all of BLOG's documentation that each lodge owner takes responsibility for their own property. The tribunal accepts that there must have been some risk that MSS Ltd could have dissipated the monies (as with any agent) but no evidence was provided that monies have been wrongfully retained or used for purposes other than provision of utilities or maintenance of the site. It is not unusual for leaseholders to act outside the lease where there have been issues with their landlord(s) but it only works where agreement is unanimous. In any event, there are now new freeholders who have stated they will only deal through Aquatime.
43. The Ashwells' involvement in negotiating the agreement is not obviously relevant to the matters in Regulation 3, although the tribunal accept that wider circumstances must also be relevant – for example the existence of BMRA. With all due respect to Mrs Lloyd, the tribunal felt that the Ashwells and BLOG's committee had a far better grip on the role of a residents' association and its relationship with the landlord than BMRA, who appear to have been overly influenced by some lodge owners against the wider interests of all of them and somewhat

hamstrung by the advice they had received. Importantly, that opinion is shared by the majority of the lodge owners who have voted with their feet to leave BMRA and join BLOG.

44. For these reasons, together with our satisfaction that BLOG have demonstrated compliance to our satisfaction with all the matters in Regulation 3, we have decided to issue a certificate of recognition to them for 10 years to provide the lodge owners with some stability. A certificate may be cancelled if the tribunal considers that for some reason the association no longer merits recognition and an application may also be made for renewal.

Dated the 14 day of April 2022

Judge Wayte

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).