



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

Case Reference : **CHI/00HE/2023/0002**

Property : **Atlantic Bay Holiday Park
St Merryn, Padstow,
PL28 8PY**

Applicant : **Point Curlew Tenants
Association**

Respondent : **Atlantic Bays Holiday Park Ltd**

Type of Application : **s.29 LTA'85**

Tribunal Members : **Judge D Dovar**

Date of Decision : **7th June 2024**

DECISION

© CROWN COPYRIGHT

1. This an application for the recognition of a Tenants' Association under s.29 of the Landlord and Tenant Act 1985 by the Applicant Association.
2. That provides for two routes by which recognition can be given, either by notice from the landlord or by a certificate from this Tribunal. The Tribunal will give such a certificate having regard to the matters set out in The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 (2018/1043).
3. The particular matters I must have regard to under regulation 3 are
 - (a) the composition of the membership of the tenants' association;
 - (b) the tenants' association's rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members;
 - (c) the tenants' association's rules regarding decision making;
 - (d) the tenants' association's rules regarding voting;
 - (e) the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members;
 - (f) the extent to which the constitution of the tenants' association takes account of the interests of all members;
 - (g) the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates;

(h) whether the tenants' association has a chairperson, secretary and treasurer;

(i) whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment;

(j) whether the tenants' association's constitution, accounts and list of members are—

(i) kept up to date; and

(ii) available for public inspection;

(k) the extent to which the association operates in an open and transparent way.

4. Further, regulation 4 sets out circumstances in which I cannot give a certificate, which include: where the association represents fewer than 50% of the qualifying tenants; or if it has a constitution or rules that are not fair and democratic. Qualifying tenants are defined by s.29A (8) as a tenant under a lease who is required to contribute to the same costs as another tenant by the payment of a service charge.
5. The property comprises 177 residential leasehold units. It follows that at least 89 leaseholders need to be members. I have been provided with the signature of 101 of the leaseholders indicating their membership of the Applicant Association. I am also informed that each of them pays a variable service charge.
6. I have read the Rules and Constitution of the association which provides objects and membership rights to all persons who hold a

long lease at the property and whose officers are elected annually from the membership and whose accounts are audited annually. In my view they satisfy the requirements of being fair and democratic. I also consider that they meet the criteria suggested in regulation 3.

7. On 23rd February 2023 the association wrote to the Respondent Landlord requesting recognition under s.29. After providing their rules and constitution, the Landlord responded on 22nd March 2023 saying that they were reserving their position pending investigations.
8. Whatever investigations the Landlord carried out, and it seems they may not have done much if anything, no response was received and so this application was made on 4th July 2023.
9. Directions were given by this Tribunal on 20th February 2024, which prompted a response from the Landlord on 25th March 2024, in which they said they had no objection to the application; nonetheless they raised a number of queries regarding ownership and transfer of ownership by those said to be members of the Association. They have not provided any numbers in that respect.
10. On the evidence before me, I consider that the application is made out.
11. Whilst the landlord has queried whether all of the 101 members remain members, given that they may have transferred their ownership, I do not have concerns in that regard. The Association only needs 89 members to qualify. I have not been provided with the numbers of those who may have transferred ownership, but I consider it highly

unlikely that the number would fall below 89. Further, it is also likely that if ownership of a lease is transferred, the new owner would become a member. I also have to take the application as it is presented to me and in all cases that would run the risk that between the time of application and the time of consideration that there may be a fluctuation in membership. It is not possible to ensure a completely up to date snapshot of ownership and membership in any case. In any event, should the number fall below 50%, there is also power for the Tribunal to cancel a certificate under regulation 5.

12. I am also satisfied that the rules and constitution meet the necessary requirements.
13. Accordingly, I certify under s.29(1)(b)(i) of the Landlord and Tenant Act 1985, that the Point Curlew Tenants Association is a recognised tenants association for the purposes of that section and therefore for the purposes of the provisions of the 1985 Act relating to service charges.

JUDGE DOVAR

Appeals

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 .

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.

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.

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.