

The Element Newhaven Owners' Association (TENOA)

Minutes of the Annual General Meeting

Wednesday 1st November 2017 7pm held in the Forth Suite at David Lloyds Newhaven Club, Western Harbour Drive EH6 4LX

Present: Rodney Matthews (Chairman) and 45 other owners, 5 staff of the Element Factors Team (see item 5 below), David Bonar (F3 Surveyor) and Ewan Regan (Senior Associate, Anderson Strathern Solicitors)

Introductory matters: The Chairman welcomed all who attended and introduced Ewan Regan, senior associate of Anderson Strathern Solicitors, who had drawn up the new constitution. Ewan then explained the process of drawing up the new constitution to the meeting.

1. Motion: "To adopt the new Constitution of TENOA as published on 21st August and amended on 19th September 2017"¹

The Chairman introduced the motion and explained the voting procedure. He pointed out that, given that the number of voting papers issued to owners or their representatives attending the meeting was 173, all that was required for this motion to pass was a 'yes' vote of 130 or more. Jane Brook and Alistair Byres (former committee members) were nominated as scrutineers and the meeting endorsed their nomination. He went on to point out that each property of a registered owner was entitled to one vote. Joint owners still only had one vote between them. Owners of several properties had one vote per property.

The result: 173 voted for the motion with no against and no abstentions. The Chairman announced that the Constitution was thereby adopted with immediate effect and would be signed at the meeting accordingly.

The Chairman then pointed out that, unlike the old constitution, where all owners were, by default, members of TENOA, the new constitution required owners to register for membership. Many had done so prior to the meeting, but he invited any in attendance who wanted a right to vote under the new constitution and had not yet registered to come forward to receive an application form, or use the one that was printed at the back of the constitution papers in their folders.

2. Appointment of Chairman, Secretary and Committee of TENOA as notified

The Chairman pointed out that under the new constitution the TENOA committee would consist of a chairman and secretary (ex officio) and six others. The Chairman and secretary would be elected annually at the AGM rather than, as before, appointed by the committee, and the six elected members be elected for a term of three years, renewable for up to a maximum of six². He explained that, as there were exactly the right number of nominees for positions on the committee under the new constitution, the previous committee had proposed to vote for all en block, rather than one by one. He put this to the meeting and it was proposed, seconded by two of the members and passed unanimously.

The Chairman thanked members of the old committee for their work and introduced nominees for the new committee briefly, saying that profiles had been included in the papers that had been sent out prior to the meeting and included in each folder. The nominations were as follows:

¹ Voting was by ballot including votes cast as mandated by proxy in the terms notified to all members and advertised on the TENOA website at the time of the publication of the constitution and the timetable for its proposed adoption. Each member of TENOA was entitled to one vote per property owned. For the constitution to be adopted the motion had to be carried by 75% of the votes cast)

² See Appendix 2 of Constitution.

Chairman: Rodney Matthews

Secretary: Ken Webb

Members: Pamela Bowman, David Gardener, Alan Henderson, Jo King, Simon McIntyre, and Evan Simpson

These nominations were proposed and seconded by members of TENOA and the meeting was unanimously in favour of electing the said people.

3. Minutes of the AGM held on 7th September 2016 as published on TENOA website

These were passed as an accurate record by those who had attended last year.

4. Chairman's Annual Report³

The Chairman's report (full text appended), covered serious issues, but was lightened by an allegorical introduction and visual presentation (put together with the help of Jo King) illustrating his talk. The main points of his report are as follows:

- Over the past year we have gained confidence in our new Factor (TEF) who have begun to turn around what was a legacy of poor management by past factors. They have a vested interest in doing so as they also manage and let 50 of the flats in the Element. They have been in frequent touch with the TENOA committee as issues arise.
- TEF exists under Scottish Law, obliged and empowered to charge **every** proprietor: each required by the burdens of their Deeds to pay all levies imposed.
- TENOA has been hampered in the past by a weak constitution and today, by adopting the new one with a sound legal basis, we are in a much stronger position to move forward.
- Thus far of the 278 owners, 197 have registered as members of TENOA, as required for by the new constitution, and more have added their names this night. By registering they have indicated a commitment to abide by the new constitution and the code of conduct appended to the constitution. This means that though we are smaller, we are in a stronger position to move forward effectively.
- TENOA's stated aim is now not just to monitor the work of TEF, but also to "...to foster co-operation and a sense of wellbeing in the interests of everyone within The Element.... Members, Owners, Tenants... families and visitors." Fulfilling this aim will add to the capital value of this property – which is good news for all investors.
- Irresponsible owners, some of whom let their properties and some who are occupants, cause problems that are not only a nuisance to all, but that may also devalue the development as a whole because it will be a less attractive place in which to live. He illustrated this point by citing the fact that smoking in public corridors in some blocks have set off annoying fire alarms that incur costs which we all have to bear.
- TEF are dealing with issues raised by the Grenfall Tower tragedy which they will enumerate later. But it is vital for us to obey the law in order to make this place as safe as possible in the event of a genuine fire. This question will be dealt with later in the meeting.
- As an example of the partnership between the TENOA committee and TEF the chairman cited what they have done within an agreed budget to tackle the long list of items that were highlighted by the Critical Risk Assessment undertaken by surveyor David Bonar's Critical Risk Assessment presented last year.
- TENOA put on a couple of social events aimed at fostering a sense of community and belonging, the Open Evening in March and the Summer Garden Party in August.

He concluded by saying he was happy for owners to share concerns with him, saying that his aim was to ensure fairness, with no issue ignored but put into context. He applauded the TEF

³ Full text available on TENOA website

staff, who have often helped him solve problems, for their singular dedication and good humour.

he invited questions that were of a factual nature but there were none.

5. Presentation of the work of The Element Factors (TEF) 2016-17 with a forecast of work to be carried out in 2017-18⁴

(Note: two representatives of the Fire and Rescue Service arrived during their presentation and the Chairman requested permission for their presentation to be taken at the time, as they were also on call. For simplicity I have added a minute of their presentation at the end of the TEF presentation.)

Christine Fourie (Director of Marketing and Insurance Claims) introduced the Factor's team: Jakub Swidzinski (Operations Manager), Marc Myburgh, (Director of operations), Simone Myburgh (Director of finance) and Joanne Weir (Administrator).

Christine said that there were 60 new owners and extended an open invitation to come and meet team.

5.1 Overview

Simone gave an overview of the story so far and emphasised the fact that when they took over in 2015 they inherited a very bad situation and there was a complete lack of information about what had happened before. She said they had worked closely with the committee to address the issues and outlined some of the highlights of work done so far. All of these can be found in their appended report. Significantly, they have managed to pay off more of the inherited debt than anticipated in the first year. And they have cut the electricity bill and reduced electricity debt to £0 by installing more efficient lighting and negotiating better deals with British Gas.

5.2 Finances

Barry Shanks' independent report recommends we work towards an Emergency Fund of £30-£50k. To achieve this the accounts would need to achieve a 'profit'. But they are trying to keep a balance of affordable fees. At this stage, for the remaining 9 months of the financial year, they only ask for £150 per month/ property for the 'Green' and 'Red' fund. The 'Green' fund pays for regular maintenance expenditure, and a 'Red' fund pays for urgent major repairs and emergencies.

In the financial year ending 14th July 2017:

- **The Green fund** income amounted to £432,134. Green fund expenditure in the same period amounted to £399,638 leaving a balance of £32,496. However, this was swallowed up with a large expenditure in the first month of the new financial year.
- **The 'Red' fund** started with a transfer from TENOA of £1,509, received an additional £92,033 in the financial year and the balance due for 2016/17 is a further £8,047. The total spent on Red fund items to date is £105,129.

The overall current position is a balance of £15,973

Details of all the expenditure month by month are in the full report.

5.3 Work undertaken

Jakub highlighted some of the more obvious work. E.g.

- The removal of all FM signs
- Garage entrance painting, repairs and improvements (e.g. door mechanism now internal)

⁴ Full report available on the TENOA website

- The Courtyard is now looking much better with woodwork repainted. The water feature is still to be restored.
- Planting outside block 5 Western Harbour View
- Replacement of fire alarms

5.4 Surveyor's report on issues with NHBC

David Bonar (F3 Surveyor) reported that there had been a positive meeting between NHBC and the new team. The TEF has just received an Excel spreadsheet with details of matters that are being investigated. Outstanding major claims included issues in the basement car park, the Element roofs and water ingress.

David went on to address the issue of **fire stopping**. Detail has come from NHBC on specifications of the different kinds of material to be used in the design. But as it is not uncommon for buildings to be constructed not quite according to the plans there is a detailed investigation being undertaken as to what degree of fire stopping and thermal insulation exists in the Element. They don't know all the answers yet, but will keep us updated.

As we are on cusp of 10 year warranty expiring he is trying to find out if any individual has made claim. **Please inform the Factors of any you know about.**

Jakub concluded the report by saying that the list of what needs to be done next year" can be seen in the report. Christine said reports are always sent out so we can access that. **Please read them.**

5.6 Fire Alarms and Fire Officers input

The Chairman introduced Two Fire Officers who joined the meeting for a short while, Watch Manager Steven McCurry and Crew Manager Scott from Macdonald Fire Station. He had invited them to attend the meeting because fire alarms had been going off at odd, inconvenient moments. These had been set off by people smoking in the communal corridors. These events mostly occurred in Block 8 on Western Harbour Midway, but since the alarms on WHM blocks 8 & 10 and WHB 10 & 11 are all linked it affects all three blocks. The problem was that the fire panels had been tampered with, which hampered the Fire Service's ability to know where the fire had started. Marc said he was making enquiries with both the Council Buildings Officer and Chubb as to what is possible and what is not. One solution being tested in the block would be to have CCTV set to view these panels.

Steven McCurry stressed that, despite the Grenfell Tower tragedy, in the event of the fire alarm sounding or a fire occurring in a high rise building not in your apartment the advice remains to stay put in your apartment, put a damp cloth against the closed front door and open windows to allow fresh air in. This is because each unit is enclosed in concrete so fire should not spread between units providing the cladding is also fire stopping.

Fire alarm panel shows information they need. If reset before they arrive at the site, it limits the information about where the fire is breaking out. So he stressed that on no account should any unauthorised person tamper with the panels. In fact, it is illegal to do so.

Questions:

- Alan Henderson asked how many residential properties in Scotland had been discovered to have the kind of cladding that was in the Grenfell Tower. McCurry said there were none.
- There were some who raised concerns about the advice given. The reasons for the advice were clarified as follows. The primary danger of exiting was that you would be exposed to toxic fumes rising up the stairwell, only a few breaths of which would render you unconscious. But he also stressed that the stairwells were the main escape route for those in whose apartment there was a fire, and that if all descended at once it would

not only clog the escape route for those who needed it most, but also hamper the fire service in dealing with the fire.

- Someone questioned why Stairwell windows open automatically when the fire alarm goes. We were told that the windows open means of escape.
- Mike Scott (10 WHB) stated that there was always a way to access the history of the panel and questioned why the fire officers did not do so. We were told that, because there are many different models of fire panel, each with a different way to access the history, they were not trained to recover that information in an emergency. There was a discussion as to whether or not someone in each block could be trained to access in the event that someone had reset the alarm without authorisation. ***It was agreed that the committee and TEF find a solution for the problem.***
- Marc (TEF) said that Chub had been called in to lock the panels so that no one could reset them other than an authorised Fire Officer.

The chairman thanked the Fire Officers for coming and they left leaving leaflets for distribution.

6. Presentation of Accounts for the Year ended 21st July 2017 (published) together with the report of the Independent Examiner

Proposed and seconded and passed

7. Appointment of Independent Examiner of the Accounts 2017-18

The Chairman asked that we appoint Barry Shanks to act as our independent Examiner for another year. This was put to the meeting, proposed, seconded and passed unanimously.

8. Questions and discussion arising from reports, with suggestions for the coming year

Linda Gilroy proposed a vote of thanks to the TEF team in acknowledgement of the good work that all the staff do. The meeting responded by clapping.

There were a number of issues raised in the discussion (mail being stolen from mailboxes, mail boxes of locks being tampered with, and the question of what to do about fire panels being tampered with). **All of these concerned the issue of security.** Though the discussion focussed on these, and they affected a number of people, it was clear that only a minority of us were directly affected.

To address these (and any potential issues of security) two main points were made.

- First, security is the collective responsibility of us all, TENOA members and the TEF, a point stressed by Marc (TEF). Hence it was essential not to leave any entrance door open (e.g. by means of a stone), not to allow any one access into the building without knowing their identity and business, emptying mail boxes regularly (or arranging for them to be emptied when away for long periods).
- Second, a discussion occurred about installing CCTV cameras. Some are for this others feel it an invasion of privacy. The meeting was reassured that any installation of CCTV would comply with the latest legislation covering privacy and other issues related to the increasing use of recorded surveillance in the interests of public safety. The Chairman requested our understanding and cooperation on this matter.
- Thirdly, the meeting proposed a procedure for dealing with any such issues (raised to either the Chairman and Committee members of the TEF team) in future. TEF investigates and makes recommendations to the committee who then explore the options and decides on which action to take for the Factors to follow through. This procedure was accepted by the meeting and will be adopted by TEF and TENOA committee. There was a request for regular updated on communications between TENOA committee and TEF on these matters. How best to communicate with members will be a matter taken up by the committee in consultation with TEF.

9. Fire alarms and fire panels

The Chairman announced that the Factors are subject to a formal complaint about their response to fire alarms. The problem has been compounded by the fact that the fire alarm panel in the block concerned (Block 8) was reset. We do not yet know who is responsible for setting them off (by smoking in the communal areas).

After the latest incident, late on a Friday evening, the Chairman, who had been notified by Email that the alarm had gone off again, after discussion with the attending fire officers and with Marc, decided to put up notices at each fire panel warning people not to tamper with them. The legality of these notices was challenged. He consulted our solicitor who assured him he was entitled to put the notice up, as tampering with the panel was illegal. However, he suggested a formal and correctly worded notice should replace the ones put up after the latest incident with the following wording.

WARNING

NO ONE MAY RE-SET ANY FIRE PANEL WITHOUT EXPRESS AUTHORISATION

The Practice Is Dangerous and impedes the work of the Fire Brigade in investigating the course of a suspected fire.

This notice has been authorised by TENOA at its AGM on 1st November 2017

Rodney Matthews

TENOA Chairman

Resolution: To endorse the Chairman's action in signing a warning notice on the Fire Panel in each block entrance that no unauthorised person should attempt to re-set the alarm as this impedes the work of the Fire Brigade in investigation the source of a suspected fire.

Proposer: David Gardner, Seconder: Simon McIntyre. The motion was passed unanimously.

10. Any other competent business

As there were no other matters the meeting was concluded at 9pm.