

# The Element, Newhaven, Owners Association Committee

Minutes of Meeting on 9<sup>th</sup> April, 2019  
at 33/9 Western Harbour View

## Preliminaries:

- a) **Present:** Rodney Matthews (RM—chairman), Ken Webb (KW—Secretary), Evan Simpson (ES), Simon McIntyre (SMcI) and David Gardner (DG),
- b) **In attendance: – TEF (only for item 3):** Marc Myburgh (MM), Jakub Swidzinski (JS—Baltic Solutions)
- c) **Apologies:**, Pamela Bowman, Simone Myburgh (TEF)

## 1. TEF report

### 1a) Relocation of City Suites (S1 Linen Store)

RM presented a briefing paper giving background to the circumstances which had been reported to him – and supported at the meeting by MM and JS – that City Suites/S1 were in the process of moving their linen store from a flat in Western Harbour to Flat 2, 7 Western Harbour View. This would breach the Title Deeds which do not permit commercial operation in a residential flat as this would be deemed to be; in addition the practice might compromise the Block Insurance Policy in the event of a fire.

RM presented a draft a letter drawn up to send to the property owner, on the assumption that he was probably unaware his flat was being used in this way. The letter, if approved by the Committee, would be sent via TEF, as he was not a TENOA member, but the tone was to invite his co-operation in addressing the issue as his legal responsibility as the property owner.

Discussion of the briefing paper centred around the wider issues involved, summarised as follows:

1. A resolution has been passed at the AGM of Western Harbour Owners' Association (WHOA) banning all holiday letting in that development. Edinburgh City Council have been notified of this and all owners known to be so operating – mostly through CS/S1 – have received notices of complaint. These owners have also had a letter from Ross & Liddell (Factor) instructing them to end short term letting. This appeared to be the reason for S1 to begin moving their operation to The Element, although an attempt to evict them from their Reception Office has been aborted because of the length of time they have been there. They are, however, reconsidering their strategy of operation.
2. Separate from this a complaint has been registered with ECC concerning holiday letting in five flats in Block 10 Western Harbour Midway, prompting the Planning Officer to contact TENOA Chairman to discuss and compare the policies of WHOA and TENOA. The Title Deeds in The Element would not permit such a blanket ban, nor would we wish to impose one, our aim being to encourage good practice in holiday letting as part of our community well-being. In the course of discussion it was revealed that in addition to the need for owners to register for Business Rates rather than Council Tax in such cases, Planning Permission for Change of Use also has to be applied for – this had not happened in the five cases in which complaints were being

investigated. Also refuse from these properties must not be put in the Council bins provided to The Element but must be managed by separate contract. The owners of these properties have received letters from ECC as a result of the above complaint. KW confirmed this from his own knowledge of one such owner.

3. It seems probable that in the cases involving CS/S1 all owners are unaware of ECC requirements, assuming they have been met by S1. *They have not been.* No planning permission has been sought in respect of any flat in question. No Business Rates are being paid. Matters of VAT and TV Licences are also something of a grey area. In all cases the legal onus is upon the property owner and not the agent, whoever that is.
4. The question therefore arises as to what TENOA or TEF should do to ensure that the conditions of the Title Deeds are upheld, as these impact on the whole development – e.g, in terms of fire risk, rubbish disposal etc which have an effect on The Element as a whole – and also to circumvent bad practice only coming to light when a specific complaint is made which investigation reveals breaches ECC Planning Regulations, all things that impact badly on The Element as a good place to live and our sense of the well-being of the community. TEF have particularly expressed concern over the operation of City Suites in causing damage we all have to pay for and security issues when they continue to prop doors open for the convenience of their cleaning staff.

To address these issues the following action was agreed:

- i. The draft of the letter from The Chairman to the owner of Flat 2/7 WHV was approved to be sent out via TEF, alerting him to the breach of the Title Deeds for which he was responsible, whilst acknowledging that he was probably unaware of the situation, and inviting his co-operation. Further action will be necessary as a result of the response in terms of notifying other owners using S1. **ACTION: RM/TEF**
- ii. MM and RM should continue their contact with ECC Planning Officer by arranging further meeting as soon as possible to discuss related matters to ensure compliance with regulations. **ACTION: MM/RM**
- iii. TENOA website should be used to provide relevant information in this field, under a sub-heading of Living in The Element: The Element Code: Letting in The Element, together with some reference in the next Chairman's letter and an amendment of the letter given to new owners. TEF should also advise new owners of this, whether or not signing up as members of TENOA. **ACTION: KW/RM/TEF**

Dependent upon progress on the above matters it may become necessary to engage formal legal advice but for the time being we will proceed by taking informal soundings. **ACTION: TEF/RM**

**a) Finance report and discussion:**

The finance report had been received and circulated prior to the meeting. The careful management of our finances as we come up to the end of the financial year was noted. In the absence of Simone Myburgh, it was suggested that any questions about details should be addressed to her at the office.

There remain a few owners, not members of TENOA, who persist in not paying factoring fees, and this is impacting the red fund. Legal action is being pursued.

### **b) Update on current NBHC related repairs**

JS reported that there had been no further progress since last meeting. He will send KW the link to page on NHBC website where complaints can be lodged and the complaints procedure explained, including how to refer to an ombudsman. KW will include this in the Email he sends TENOA members and TEF will also inform the relevant owners who still have matters that need to be followed up in their own properties.

There remains a question of whether we should accept NHBC's offer of a settlement for work that needs to be done on the basement car park or contest it. The committee were in favour of TEF contesting it. However, they will take legal advice on what the chances of success might be and will advise the committee of costs as well.

### **c) Baltic Solutions update**

**The Fire Call Point button** in each block is now protected with a cover so as to prevent false alarms and call out when it is accidentally knocked.

**Illegal dumping** of large combustible items such as furniture in the basement bin stores and on the slipways, is causing problem. Since these pose a fire risk we have no option other than to clear everything out of car park, or else we will be fined £5,000 if they are found by the fire marshals that inspect, which is done regularly. Hence, another skip has been ordered and will be filled with these items this week.

Various solutions were discussed including placing CCTVs inside bin stores to catch the culprits, and charging them a £100 fine a time for illegal fly tipping. The money would then be ploughed back into the red fund. However, first, the following actions were agreed:

- i) The secretary will highlight this problem in the Email he sends out notifying members of the minutes when they have been posted on the website. KW will also inform members that if they have a large item to dispose of, they can arrange a free pick up from the council. He will add the telephone number and a link to the Council website page where they can make that request. It is important to tell people not to put the item outside on the pavement until the night before or day of the uplift. **ACTION: KW**
- ii) TEF will also highlight the problem. Information as to how to dispose of large bulky items of rubbish is also on the TEF website.
- iii) Add another section under the Element Code: "Things that have a negative impact on us all living together" – asking for any ideas as to how best to tackle it. **ACTION: RM/KW**
- iv) MM suggested another A3 frame in lifts would be one place where important information such as this can be posted (needs changing regularly so that people don't just get used to it.) **ACTION: TEF**

### **Car Parking in Basement:**

- Notices are being left on vehicles that have not been used for a long time stating that they will be removed.
- In order to make sure that vehicles are being parked in the correct spaces JS suggested that flat numbers are painted next to space numbers, and

visitors spaces need to be clearly marked. But they need to wait till after work that NHBC needs to address in the car park is done before doing this.

- He asks owners to check their title deeds to see if there any specific wording for their parking bay, for example, specifying it is for disabled use only, since one or two are marked with that symbol, despite the owner not being disabled in any way.

#### **d) Garage Gates**

New gates ordered from Bolton Gates Services and costing £5,994 will be installed in 2 ½ weeks. Once operational, owners are requested only to use them for vehicle access and not when not for walking in and out on foot. A side door that can be opened with the same key as the garden gate can be used if on foot. But the preferred route for walking is via the courtyard garden.

**2. Minutes of last meeting:** These were approved as accurate

### **3. Matters arising**

#### **a) Resignations (4.b)**

Since Jo King had stuck by her decision to step down from the committee, the committee formerly accepted her resignation and instructed KW to write and thank her for her invaluable contributions, not least in completely redesigning our website and getting up and working properly. **ACTION: KW**

Pamela Bowman has also written to KW stating that she is unable to continue on the committee till the end of her term. The committee were unanimous in appreciating the wise advice she had offered and well thought through contributions she had made in meetings and wished KW to thank her for her valuable contribution to the work of the committee. **ACTION: KW**

#### **b) Update on actions:**

- Neighbourhood watch signs (2.a) SMcl said that he had been in touch with the person on ECC responsible for Neighbourhood watch and that 4 signs will be arriving within a month.
- Recycling posters (2.c.) These have yet to be updated. KW to liaise with TEF admin to get this done.

#### **c) Website update:**

KW reported that he had had a helpful session with Jo King to hand over management of the website. He is still getting familiar with how it operates. JK had sent him links to videos with instructions about how to work with the Word Press platform. Since it was very difficult to find the 'Latest Minutes' category when posting minutes he suggested that it be posted simply on the Minutes of the Committee page and members given the link to find it. RM noted that his Christmas Chairman's letter appeared to be more recent than the Spring letter and KW promised to change the order. For other actions see under 'Living in the Element'.

**d) Membership update:** KW reported that there had been some movement of people selling and purchasing properties, but membership is stable at 248 members, 209 of whom are voting members.

**e) Coordinating with other developments and Heart of Newhaven (2.c)**

RM said there was now a good working relationship and flow of information between the three developments in Western Harbour, They have been coordinating action on issues such as short lets and the Forth Ports plans for the development on their land. There are still some concerns about the use of Western Harbour Drive as the main access to the site's storage during the development. RM is in contact with Ian Kerr, Infrastructure Manager, Scottish Operation, Forth Ports Ltd.

The Heart of Newhaven website is being kept up to date. On the first three Mondays of the summer term there will be teams of people planting shrubs and trees on land owned by Brewers Fare and David Lloyd to brighten the place up.

**f) Letting in the Element (4.b)**

Given what was decided under 1.a above KW proposed we add a page to the website after 'Living in the Element' called 'Letting in the Element'. On it we post information relevant to the two different categories of lets that exist in the Element.

A. The first category are those who use their property for long lets that are primarily residential in nature. Owners of these properties will be encouraged to inform their tenants (via their Estate agents, if necessary) of the nature of the Element as detailed under 'Living in the Element' and to pass on the Element Code, or point them to the website page. **ACTION: KW**

B. The second category are the properties that are used primarily for short lets. Dependent upon the total number of days so occupied in the year these are subject to regulations laid down by Edinburgh City Council. A brief outline of these will be posted under this section together with a link to the relevant Council website. Owners, if appropriate working through their agents, will also be encouraged to let their guests know of *The Element Code* – designed to ensure the well-being of everyone and provide a sense of community. **ACTION: RM/KW**

Those who have purchased property in the Element will be given this information along with the rest of the information they receive in their welcome pack from both TEF and TENOA. **ACTION: TEF/RM/KW**

The option of adding guidelines and examples of good practice as detailed in a paper that DG had circulated at the previous meeting was discussed. There is still an issue with how we word these in a way that will not be misunderstood by owners as directives. So this will be looked at later in the year once we see what difference adding the above to a new page on the website will make.

**c) Date of Summer Garden Party (5.b):** The date set at our last meeting clashes with a major event involving children that will be put on by Heart of Newhaven. So, it was decided to shift our courtyard garden party to Saturday 8th June. We still need someone to organise it and a team of helpers. RM has approached the Link people in each block. KW will advise or coordinate if necessary. **ACTION: RM/KW**

#### 4. Other TENOA matters

##### a) *Co-opting committee members*

It was agreed that, since we have lost two women on committee it would be good if we could invite two other women to join the committee in order to have a better gender balance. Flexible meeting times alternating between evening and day time. would mean those who are still working could join the committee. It was pointed out that it would be helpful to have someone on committee who lets their property for holiday lets, though that would only be possible if they live nearby. All committee members agreed to ask people they know who might consider being coopted till the next AGM, by which time they would know if they wanted to be nominated for election as well.

**ACTION: TENOA COMMITTEE**

**b) Clean up event in waste ground adjacent to WHV:** KW offered to organise another clean up event on Saturday 11th May. The big sheet of sharp metal that we could not remove last year has been dug up with the help of someone living in our neighbouring development and removed by the ECC.

5. **AOCB:** None raised.

6. **Date of next meeting.** Monday 3rd June (in evening in the hope that new members will be able to join us then).