

The Element, Newhaven, Owners Association Committee

Minutes of Zoom Meeting 12th August, 2020
7.00pm

Preliminaries:

- a) **Present:** (*in the Zoom room*): Rodney Matthews (RM—Chairman), Ken Webb (KW—Secretary), Martyna Adamowicz (MA), Tony Barry (TB), Jane Brook (JB), Grant Laing (GL), Evan Simpson (ES).
- b) **In attendance:** (*via Zoom*) TEF representatives, Marc Myburgh (MM), Simone Myburgh (SM) and Jakub Swidzinski (JS)
- c) **Apologies:** Alastair Byres (AB) *no internet connection*

1. Minutes of last meeting

KW suggested an amendment to 6b) as follows: **Solar Panels:** ES had suggested that, in view of the UK government setting aside money for owners to apply for a grant to install solar panels, we look at the possibility of installing solar panels on the roof of our development. However, this grant is a devolved matter which has not yet been decided by the Scottish Government. And, given other work that was urgently needing to be done in the next year, this could not be granted priority. The committee agreed that this would be more accurate than the paragraph in the draft document. The amended minutes were passed and will be published.

2. Matters arising (*not dealt with elsewhere*)

a) **Barriers around patios (3a):** *Update and further consideration of issue.*

TEF reported that they had consulted with David Bonar of F3 surveyors on the matter and await his reply. He said that whilst we are not legally required to erect a railing as a barrier around patios, because the drop to the pavement below does not exceed the legal limit, it might be sensible to have them. In which case they should be the same as existing barriers that are of metal and glass. David Bonar also advised against erecting wooden barriers, as they were a fire risk. One such fence has been erected without getting the permission of the factors and since it did not have the correct framework, it might also pose a health and safety issue in strong winds. The owner has been asked to remove it.

The committee understand that owners who have patios where no barrier was put up at the time when the Element was developed have legitimate concerns for privacy and safety. The committee decided that appropriate barriers matching the existing ones should be erected. As this was something fixed to the external walls of the development, the cost would be shared and it would be an item in the Red Fund budget. but that this could be completed in stages, phased over several years.

Meanwhile the committee agreed that a temporary solution would be to allow owners to put up a temporary barrier of planters on a decking laid on the patio such as has been done on a patio bordering Western harbour Breakwater. The fence in this case has been fixed to the decking and not to the main structure of the development, which is permissible.

SM said that they are waiting for David Bonar to send email detailing discussion points together with suggestions for companies who specialise in railing installations, since neither she nor MM have had no replies from the contacts they have made.

ACTION: TEF

b) EWS1 certification and questions regarding cladding (3c):

KW reported that he had had a helpful correspondence with the secretary of the Owners Association at Britannia Quay who have managed to successfully deal with this issue, taking it as one that should be tackled block by block, with costs shared by all. The general EWS1 certificates pertaining to each block are held by the factors. When any individual owner needs to obtain one for their own property they obtain a copy of the general certificate pertaining to the stair in which their property is located and then contact Paul Nelis, of Fire Risk Assessment (Scotland) Ltd., who did the surveying work to obtain a certificate for their property.

The Committee are convinced that this is an issue that must be tackled block by block but, in order to spread the cost this could be done block by block as need arose rather than all at once. The cost of the survey of each block will be shared by all, as required our title deeds, and payment made out of the Red Fund. As at Britannia Quay, our factors, TEF will hold the general EWS1 certificate for each block and when any owner needs an EWS1 certificate they can get a copy and request a certificate for their property. It was noted that certificates have a validity for 5 years only.

The Committee asked TEF to meet with Paul Nelis of Fire Risk Assessment (Scotland) Ltd. to find out details and report back before the next meeting. **ACTION:TEF**

3. TEF report

a) Finance report

As AB was not able to attend RM reminded the committee of the points AB noted in his comment on the Financial Report previously circulated.

- iv) Outstanding owner payments remain high at £19,000. Simone remains confident that the majority of these payments will be made eventually through the debt collection process but it obviously has an adverse effect on the current cashflow.
- v) Green and Red Funds are on budget and at the moment should be so by the end of September when the new rates for the Green and Red Funds are due to be set. No provision has yet been made for any work towards outstanding issues identified by the 2016 F3 Survey. I still have not received TEF's updated recommendations for priority work from the survey. Any additional costs for cladding examination will also need to be addressed.
- vi) A budget for next financial year, commencing 1st October, will need to be agreed at our next meeting.

ACTION: Set up a meeting with SM to discuss budget before end of August. (AB?)

b) Baltic Solutions update:

JS updated the committee on details of work done in the last month. This included:

- The successful repair of the surface of the entry ramp into the basement car park which now prevents water ingress from above into the electricity substation.

- The repair of an electric fault in the basement car park extractor fan.
- Inspection of the roof above WHV blocks 5 & 9, and they are now working on repairing the damaged membrane that is causing water ingress.
- The repair of the basement car park exit door, for which a spare part has yet to arrive.

c) Critical Risk Report: Setting Priorities for the coming year

JS reported that he is waiting for some more estimates to come in and will identify priorities once these have been received, which he hopes will be soon.

MM said that they are getting to the stage when the work required to project manage some of the work needs to be outsourced. But because there are so few companies that are doing the work, and all are already busy, getting quotes from three different companies before putting it to the committee and getting the work done is delaying action. MM requested permission to go with the best of just two quotes to speed matters up. The committee agreed to this. **ACTION: JS MM**

7. Chairman's Update

Clarifying the basis on which TENOA operates vis à vis our constitution and our Title Deeds.

In the light of questions that have been raised about the authority of TENOA to act on behalf of all owners, RM led the committee through the details of what is in both our Title Deeds and the TENOA Constitution. The Committee therefore wishes to put the following on the record.

TENOA is the body which the Title Deeds terms the "Proprietors' Representatives" (11.1) acting (inter alia) on their behalf to liaise with the Property Manager (TEF as is currently the case) regarding all matters relating to common parts of The Element and the upholding of Title Deeds. Every owner has the right to register as a member of TENOA and every new owner is invited to do so. Members must abide by TENOA's Code of Conduct. In any matter of dispute TENOA's Constitution itself makes clear that the authority of the Title Deeds takes precedence over TENOA's Constitution but there is also a clause related to arbitration in the event of dispute.

The current Constitution, replacing the original one (which assumed every owner to be a member without seeking that owner's consent), was adopted at the AGM in 2017 by UNANIMOUS VOTE of those present or represented by proxy under the original Constitution. Ewan Regan of Anderson Strathern, who had drawn up this Constitution at the request of TENOA's Committee, was present as legal observer.

As noted in paragraph 6 (d) of the Minutes of 25/1/20 a 75% voting threshold is required to **amend this Constitution** (NB not to change the Property Manager).

Since more than 75% percent of the current owners are members of TENOA there is no prospect of any owner or group of owners being able to challenge its authority regarding the contractual appointment of the Property Manager.

The current factors (TEF) were already in place in 2015 before the current Constitution was drawn up and agreed. According to each owner's Title Deeds subject to Forth Ports Authority, the only body originally with authority to appoint a factor was FM, the company that took over and completed the development of the Element (14.2), until two years after the last property has been sold. However, FM had ceded to **TENOA** in 2015 the authority to appoint TEF before the new Constitution replaced the old in 2017.

The current Constitution thus simply acknowledges that a contract already exists between TENOA and the current factors TEF at the time when the new Constitution was adopted. This is not time limited but an open contract that can be terminated with a three month notice from either party: but by no one else. No individual member can terminate that contract. It will be in place for as long as, collectively, TENOA or TEF wish it to be.

If any owner who is a member of TENOA is dissatisfied with the work the Factors are doing, he or she can ask the Secretary to raise the matter of a vote of no confidence on the agenda of the AGM or to call an EGM. It would be up to TENOA's Committee to judge whether or not there were sufficient grounds on which to include this in the agenda or to hold an EGM.

According to the Title Deeds (15.1) the only other course of action any owner (whether or not a TENOA member) can take regarding an issue of dispute is to obtain the signatures of at least 15% of all owners (i.e. at least 42 owners) in a letter written to the Property Manager (i.e. TEF) requesting that they call a meeting of all proprietors. The Title Deeds go on to state that the Factors MAY call a meeting. This is at their discretion, as the Title Deeds does not indicate that they MUST call such a meeting. If a meeting is so called, a majority of over 50% of those present or represented by proxy and qualified to vote at the meeting called in accordance with conditions set out in the Title Deeds is required for a vote of no confidence to be passed.

On a further point that had been raised in correspondence addressed to and reported by the Secretary, the Chairman reported that to comply with the GDPR regulations the Chairman's letters addressed to ALL owners are circulated by TEF and not by TENOA, since TENOA only has access to details of owners who are TENOA members. This is always made clear in the covering email. The prudence of circulating certain information to ALL owners is to uphold the interests of all and as a matter of courtesy. There is no breach of GDPR regulations.

8. Secretary's Update

Since time was running out the KW highlighted problems he has been having with posting items on the website which he cannot get to appear on the website. He has also had problems deleting past posts. A member has complained that two of the chairman's letters are not there, nor is the promised complaints procedure, though a search does unearth it. However, members have all received the letters that are missing from the website when they were first circulated.

KW said a website designer he knows had examined our site and said that it too difficult to change the way it works and recommended starting afresh. However that would involve costs of setting up a new domain etc.

The committee simply encouraged the secretary to do the best he could with what we have and asks members to be forbearing until such time as we have a member with the skills to manage it volunteer for the role. KW will copying and posting the content of these letters in a fresh post.

9. TENOA activities / planning

Having run out of time planning for the AGM, which we have already decided will have to wait till we are allowed to meet again in sufficient numbers, has been put on hold.

10. AOCB

There being no other business and no time left, the date of the next meeting that appears below was agreed after the meeting.

11. Date of next meeting. 9th September 2020 at 7pm.