



3 May 2022

Woodilee Residents Association  
FAO: Ewan Miller, The Chair

By email to: [woodileeresidents@gmail.com](mailto:woodileeresidents@gmail.com)

Our Ref: RMW/ECO/RESI/2/237

Your Ref:

Direct e-mail: [eco@bto.co.uk](mailto:eco@bto.co.uk)

Dear Sirs

**Residential Management Group Limited (our client)  
Woodilee Village Proprietors Association (Association)  
Termination of Appointment of Factor**

We refer to the above matter and your letter of 7 April 2022.

**Non-acceptance of termination**

Our client is adamant that they are unable to accept the termination of their appointment as Factor as the requirements in the Title Deeds have simply not been obtempered. We have set out the following to illustrate the continuing concerns in terms of compliance with the deeds below:

1. Lack of evidence of notice

As previously stated in earlier correspondence, Burden 7 of the Title Deeds states: "*at least seven days' notice in writing shall be given by or on behalf of the convener of the said meeting to the other Plot Proprietors, and at any meeting so convened any of the Plot Proprietors may be represented by a mandatory; the quorum of a meeting shall be twenty per cent of the total number of Plot Proprietors*".

Despite the evidence of 250 voting slips, the issue that remains is that our client is yet to receive evidence supporting your assertion that all owners were given the required notice of the meeting. Until this precursory condition is satisfied, the issue of the quorum of the meeting remains irrelevant.

2. Notice to owners not tenants

We note the Association's position that notice of the meeting was provided by delivering voting slips to all of the properties in the Association. Firstly, there is no evidence to satisfy our client that this in fact took place. Secondly, even if evidence were to be provided showing that voting slips were delivered to each property, given that around 38 properties are tenanted, this does not ensure notice was given to the owners who do not reside at the property. Our client is not yet satisfied that this notice requirement has been complied with due to correspondence received from owners advising that they were unaware of the vote and social media comments from owners stating they did not receive voting slips.

48 St. Vincent Street Glasgow G2 5HS

T: +44 (0)141 221 8012

DX GW96

One Edinburgh Quay 133 Fountainbridge Edinburgh EH3 9QG

T: +44 (0)131 222 2939

DX ED77

77-81 Sinclair Street Helensburgh G84 8TG

T: +44 (0)1436 671 221

DX 500751

BTO is an independent Scottish law firm regulated by the Law Society of Scotland. A full list of members is open to inspection at the registered office.

BTO is the trading name of BTO Solicitors LLP, a limited liability partnership registered in Scotland (registered number SO305583) whose registered office is at 48 St Vincent Street, Glasgow G2 5HS.

Our client is bound to act in accordance with the Title Deeds and therefore cannot accept termination of their appointment as Factor unless they are satisfied that all owners within the development have been provided with the opportunity to participate in the vote. Acceptance of termination without receiving adequate evidence of due process being followed to ensure compliance with the Title Deeds would breach our client's duties as factor and data controller given acceptance would require the transfer of funds and data to the newly appointed factor.

Therefore, our client's services continue until evidence is provided which allows them to be satisfied the process has been properly and effectively followed.

We would expect that an Association of a development of this scale would have a record of the email addresses of all owners and could have simply solved this dispute by providing evidence of an email which was sent to every owner to provide notice of the meeting. The Association has failed to provide evidence of the alternative method said to have been used to provide notice.

### **Tree survey**

The Association's threats to hold our client responsible for damage to property or persons in relation to the trees in the development are wholly inappropriate in the whole circumstances. As previously stated, our client previously contacted the tree inspector required to complete the survey and were advised that if the survey was carried out, the report would not be available until after the proposed termination date (30 April 2022). Our client maintains the position that responsibility for the tree survey will fall to the proposed new factor. Given the tree inspector has advised that the report from such a survey cannot be obtained prior to 30 April 2022, the Tree Survey will not pending receipt of evidence required to confirm compliance with the process set out within the terms and conditions to appoint the new Factor be carried out.

### **Proposals for resolution**

Whilst our client must ensure compliance with the Title Deeds, they equally do not wish to prolong matters for the owners and has therefore suggested the following proposals for the Association's consideration in an effort to reach resolution on this matter:

1. If the Association provides evidence that the vote has been completed in accordance with the Title Deeds, addressing all of the concerns as set out above, our client will accept the termination in accordance with the requirements within the Factors Code and the Title Deeds;
2. The members of the Association driving the termination accept their failure to conduct the vote in accordance with the Title Deeds and resign their positions within the committee; or
3. The Association accepts the failure to conduct the termination in accordance with the Title Deeds and the parties agree to enter into a consultation regarding an appropriate financial penalty to be paid to our client, thereafter allowing the parties to mutually part ways.

We look forward to hearing from you.

This letter is written entirely without prejudice to and under reservation of our clients' rights and pleas and neither the letter (nor any copy of it) nor its contents may be produced, exhibited, referred to or founded upon in any court action or in any other proceedings except (a) with our express written consent or (b) at our clients' instance.

Yours sincerely,



Rhona M. Wark  
Consultant

For and on behalf of BTO Solicitors LLP