

4th May 2022

Woodilee Residents Association

By email to: eco@bto.co.uk

Our Ref: EM/Factor-Replacement/004

Your Ref: GHU/LMO/RESI/2/237

Direct e-mail: woodileeresidents@gmail.com

Dear Ms Wark

Many thanks for your letter of 3rd May 2022.

We appreciate a final and clear enumeration of the issues remaining and are keen to present the information requested.

Lack Of Evidence of Notice

The WRA provided, as part of the initial response to BTO, a list of when individual parcels within Woodilee Village had forms posted through doors. All of these were complete by 10th October and the list is repeated here:

- Miller 1: distributed NL on 6th October 2021
- Miller 2: distributed GJ on 7th October 2021
- Persimmon: distributed GJ on 7th October 2021
- Fauldhead: distributed GJ on 7th October 2021
- Springfield 1: distributed EM on 7th October 2021
- Spider Bridge / Bothlin Court: distributed MM on 7th October 2021
- Springfield 2: distributed SM/MD on 8th/9th October 2021
- Cala 1: distributed by JH on 9th October 2021
- Cala 2: distributed by SA on 9th October 2021
- Clocktower/ James Salmon: distributed MM on 9th October 2021
- Charles Church: distributed NL/GM on 9th/10th October 2021

Inspection of the voting forms will reveal that initial responses started with a response from Miller 1 on 6th October and proceeded with the first Persimmon form on 7th and so on through the forms providing conclusive proof that the records kept in advance of the meeting were correctly kept.

In addition to the voting forms, a post was placed on Facebook directing people to the website and explaining the situation which reached over 1,200 people:

Woodilee Residents Association
Published by Ewan Miller · 5 October 2021 ·

Following on from our post in January declaring an intent to progress the necessary steps to explore engaging a new factor for the estate, the WRA would now like to progress to the next stage and run a formal vote to seek authority to replace our current factor RMG. In February the WRA created a performance review document, a fact based assessment of RMG's performance against their own Service Level Agreement. This document formed the basis of a formal complaint into RMG senior management. The document can be found here:
<http://www.woodilee.org.uk/.../2021/10/WRArmgprf.docx.pdf>

RMG made commitments to address the concerns and failings but in the 9 months since the WRA has seen no improvement. Particular areas of frustration have been the inability to remediate longstanding drainage issues, the current asbestos situation, the broken stairs around the estate, inertia around remediating fairly urgent health and safety issues highlighted in Dec 2020 within the children's play parks, ongoing problems around the grounds maintenance contractor relating to a dispute between them and RMG resulting in the estate grounds being in a terrible state and finally and not least, poor accounting and management systems which result in inordinately delayed and often inadequate communications in response to enquiries from the WRA or individual owners.

Over the next few days we'll be posting a proxy voting form through every resident's door. We ask you to provide us authority to decide who factors the estate. The papers will also provide further details on the authority provided and what the WRA proposes to do next. We will also be running an EGM on Wednesday 20th October at 7pm to ratify the vote and answer questions from residents.

All you need to do is sign, date, add your address to the voting form when it arrives, then take a photograph and return it to contact@woodilee.org

As per Part 2 of the Deed of Servitudes and Conditions, we require at least 20 % of owners to complete and return the proxy voting form, as described above. The Committee would strongly encourage every owner to take part in this important process.

WOODILEE.ORG.UK
www.woodilee.org.uk

1,221 People reached 623 Engagements — Distribution score [Boost post](#)

Furthermore to this, a post was placed on the WRA website at 12:14pm:



Woodilee EGM October 2021

13th October 2021

(Updated 22:35 on 17th October to revise the date / time of the latest confirmations that have been sent out)

Many thanks to all the owners that have already returned their voting forms and / or requested an invite to the EGM the WRA have scheduled for next Wednesday, 20th October, at 7pm.

We have sent back confirmations of the options we've recorded for each respondent up to 10.30pm this evening (17th October) to confirm that we have received and processed the message. If you submitted a form before this time and do not have a confirmation, please get in touch and we can check you are represented. Please note that some confirmations do seem to have gone to junk mail, so do check it's not ended up in there!

We have had a few questions to the mailbox which largely fall into two camps - "why are we doing this now" and "what happens next".

In response to these questions, we have directed owners to a [recent post](#) on this topic and explained that in order to enter commercial negotiations, we do need to have a clear authority to be able to appoint a replacement factor before getting into details and that the next steps will depend on how negotiations progress. We do expect to draw up a tendering document where we can dispassionately assess the options and owners are, of course, welcome to join the meetings as this takes place - simply email e-mail us for invites to join any of the committee business. Of course, if there are other questions we're happy to take them!

Taking all this into account, an [EGM Proposed Agenda](#) has been prepared and owners are welcome to provide comments or feedback on this, should they wish the committee to provide additional details during the meeting.

As a reminder, for the EGM to be quorate and be in a position to make any resolution, including the motion posted through everyone's door, we need to get at least 20% of owners to either respond on paper or attend. We're making good progress, but there's still work to do! If you have seen the form, but can no longer find it, please let us know and we can either drop off another or provide a PDF copy for you to complete.

And finally, a notice was placed within the Woodilee Village notice board around 03:09 on 13th October:



All of these communications took place well in advance of the minimum 7 day notice period required by the Deed of Conditions and – the whole – amount to reasonable efforts to notify other owners.

We are confident this would be upheld.

The WRA have little doubt that the communications strategy worked – various homeowners within the Oxgang estate, which is not part of the WRA and is not affected by the termination, contacted the WRA for voting papers and were refused on the grounds that they are not members of the association.

As a final check, it's possible to check the turnout for each of the parcels – when undertaken, it's clear that responses came from across Woodilee Village and there is simply no evidence that insufficient notice was given to owners.

Parcel	Return Rate
Cala 1	43.86%
Cala 2	36.00%
Charles Church	32.66%
Fauldhead	25.00%
Miller 1	42.16%
Miller 2	30.12%
Persimmon	12.28%

Parcel	Return Rate
Springfield 1	28.21%
Springfield 2	20.57%

We believe the level of engagement is similar to, if not slightly higher, than the 2020 AGM which indicates that much the same audience responded to the WRA process as the RMG process.

Notice to Owners Not Tenants

We have already covered in the previous section the lengths that the association went to in order to ensure that all owners were aware of the vote. We know that the true owners of at least some of the rented properties were aware of the vote and returned multiple voting forms covering their properties.

The WRA are unable to comment on individual unspecified cases of people on Social Media claiming they did not receive a voting form. As explained above, it is possible that these people are within the Oxbang part of the estate that do not form part of the Woodilee Residents Association and whose relationship with RMG will not be altered by the termination.

If a small number of owners did not receive their form directly from their tenants, or notice the extensive communication provided on other platforms and fail to request a form, that is regrettable, but nor is it an outright reason to discount the meeting. With a maximum of 38 votes, the motion would have carried even if every landlord voted to retain RMG. The WRA reiterate that the wording in the Title Deeds is “other owners” and not “every other owner” or “all other owners”. Should the requirement have been to a higher standard, this should have been included in the last Written Statement of Service as part of the clear information on how to terminate the agreement and distributed to all owners at Woodilee Village (May 2017 edition). It was not.

As an example, RMG customer numbers 600101152502 and 600101187001 both cover the same owner at two different properties and the forms were provided at the same time. RMG will be aware that they have shared their customer lists with the WRA in the past and this information was used to perform a provisional validation of those completing the forms.

It is worth noting at this point that RMG established a process for validation of forms during previous AGM meetings and were happy to undertake checks on the true owners in those cases and perform the validation of names and signatures versus accounts.

The WRA expected this to take place immediately following the notification in January 2022, but no validation information was even requested by BTO until 25 March 2022. The 8 week delay in even requesting this information does not indicate that either RMG nor BTO intended to operate in an “honest, open, transparent and fair” manner with homeowners (OSP2) and neither did they intend to ever provide a “clear statement confirming the property factor's procedure for how it will co-operate with another property factor to assist with a smooth transition process” (PFCoC Section 1.21) as by the time they requested the information it was already too late to assist with a smooth transition.

We note your claim that your 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”. We suggest that RMG could resign the management position at any time and for any reason, such as if the financial risk of continuing is too great for them to bear.

Current State

The WRA have provided further information here outlining additional communications and proof that all stated distributions occurred as already described. We are happy to provide further information, such as email records demonstrating the dates that forms were received but feel that the process being undertaken has not – at any point – been designed to validate the process undertaken against the norms and practices that would be considered appropriate by the First-tier Tribunal for Scotland (Housing and Property Chamber).

Demands for proof that voting forms, that were later returned, were posted through letterboxes is clearly intended to be a request that cannot readily be met. It is akin to the WRA asking RMG to prove that Royal Mail delivered unregistered mail. This latest demand has only come about after the robust destruction of the case you attempted to make in your previous letter based upon a Written Statement of Service that has not been circulated in line with the Property Factor Code of Conduct at Woodilee Village. We note that the May 2017 Written Statement of Service has been removed from the RMG Living but the metadata remains with any attempt to download being met with a “Server Error”

There are striking parallels between this case, including the termination, contested process for termination in the Written Statement of Service and a failure to undertake property factor duties (i.e. to instruct the tree survey in February) with case LM20.0827 (and 17 other PF Cases). The homeowners claimed in that case was a £500 award to each owner and £750 to committee members. Should a similar claim and successful PFEO be made at Woodilee Village, the liability to RMG would exceed £430,000 in awards, in addition to BTO fees, un-chargeable management fees and inability to recharge any works after 30th April 2022. In that case, a PFEO was not made, but purely because James Gibb were no longer the manager. This is not intended as a threat, merely an explanation of the potential liability that RMG expose themselves to in any continuation of this action.

We therefore counter-propose the following resolutions.

Proposals for Resolution

1. RMG and BTO accept that the process has been appropriately carried out as per the Deed of Conditions and the May 2017 Written Statement Service in force to the standards that would be acceptable to the First-tier Tribunal for Scotland (Housing and Property Chamber) and immediately remove themselves from the management of Woodilee Village, ensuring that no charges for any work – including Management fees – are charged beyond 30th April 2022 in line with both the acceptance of termination provided by the Site Manager to the Treasurer of the WRA and the original termination notice. No BTO fees should be recharged to owners as the contribution to the verification process has been muddled, likely by being a third party unaware of established processes agreed between RMG and the WRA and the documentation shared.
2. RMG and BTO respond to this message indicating that they continue to seek notification standards that higher than those met by the WRA or, indeed, RMG; this will trigger a formal complaint process to RMG where Woodilee Village proprietors will initially seek redress via the company and, failing satisfaction, will apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a Decision or Property Factor Enforcement Order confirming that the vote was valid, that RMG will have to cover their own fees and any recharges from after 30th April 2022, any legal fees for the BTO engagement in respect of the

termination, and provide adequate compensation over their handling of the termination process. Should RMG or BTO wish to reply indicating that no further complaint will be considered, the proprietors will move straight to the First-tier Tribunal process.

Conclusion

In line with your own restrictions on communications, this letter is written entirely without prejudice to and under reservation of our 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 instance.

Yours sincerely

Ewan Miller

WRA Chair