



FINE SYSTEM

RIVER CLUB HOMEOWNERS ASSOCIATION

Introduction of Fines System

Background

- In the main we purchased property in the Riverclub as an investment, a holiday home or for permanent residence as we perceived this to be a stable environment offering pleasant living conditions coupled with the potential for long term income/capital gain.
- Commensurate with our purchase we recognised that one of the main reasons that any of the above was achievable was that the Riverclub was well run & had a constitution & rules which would support our initial objectives.
- Each of us as owners acknowledged that fact by agreeing to abide by that constitution & the rules by becoming a member of the Homeowners Association & accepting that the various regulations applied to us.
- The constitution & rules allow for reasonable freedom to exercise personal choice in terms of building & alteration to our properties & our lifestyle within the Riverclub. At the same time, they acknowledge that we live in close proximity to one another & this imposes a duty of care & concern on us all with regard to the impact which our own desires & behaviour have on those around us.
- In considering the application of the constitution & rules the Trustees look to accommodate individual owners as much as possible subject to the specifics of the rules & their duty as Trustees to implement those rules. Where there is discretion in respect of their application the Trustees seek to exercise that discretion in a way that assists individual applicant owners with the overriding requirement that there is no adverse effect on others.

Breaches of the Constitution & Rules

- Notwithstanding the above & that the fact that we have all signified our agreement to the constitution & rules there are those occasions where an individual owner appears unwilling to abide by the rules &/or the interpretation of them.
- In the normal course of events the Trustees seek to deal with any given issue by bringing it to the attention of the owner & seeking their agreement to act in accordance with the rules that they have accepted. Occasionally such issues can lead to lengthy exchanges of correspondence, a degree of acrimony &, infrequently a refusal on the part of an owner to accept the decision of the Trustees.
- Within the constitution (Paragraph 19.1 on page 4) there is a power to fine individual owners for a breach, a laid down procedure for the way in which such a fine may be levied & the rights of an owner to respond to the matter at a meeting of the Trustees.

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- Historically it has not been deemed necessary to exercise the powers provided to the Trustees however as the Riverclub has become almost fully developed & with the turnover of ownership some circumstances have arisen where this may prove to be the only way forward.

Nature of the “Breach”

Breaches can result from a whole range of matters for example: -

- Failure to comply with the design manual either on construction or in terms of alterations
- Not maintaining the property
- Breaching the ‘behavioural rules’ e.g. in relation to noise, pets etc. etc.

To mention the more obvious & common issues but not excluding any others.

Level of Fine

- The appropriate level will have to be decided by the Trustees.
- Where the breach is of a one-off nature then a single fine will most likely be appropriate. If, however the breach is more significant or ongoing then the fine could also be ongoing, based on a percentage of the levy & charged monthly with the levy.

Tenancies

- Where a property is let, on either a short- or long-term basis, the rules of the Riverclub apply equally to the tenants.
- It is the responsibility of the owner to ensure that the tenant is aware of the rules & that the tenancy agreement includes clauses to ensure that compliance is achieved.
- Should a tenant not comply with the rules then the only practical way forward after attempting to achieve an amicable resolution, firstly with the tenant & then through the owner, will be to fine the owner.

Existing Breaches

- Where the Trustees have given permission for a breach or it has been ratified at an AGM, then clearly it would not be appropriate to review that permission & seek to make a retrospective fine.
- Any other existing breach regardless of how long it has existed could be subject to the fine system. Failure of previous Trustees to note &/or advise the owner of the breach or to seek rectification does not convey permission &/or acceptance of that breach.

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Setting Precedents

- In some circumstances it may be that a breach has existed for some time in respect of a specific property. Such a scenario does not give any other owner an implied right to create a similar breach on his/her/their property, nor to argue 'he/she/they has/ve been 'allowed' to do it so I/we can'.

Way Forward

- The Trustees will always seek to achieve an amicable solution to any dispute however where this is not achievable consideration will be given to imposing a fine. Such imposition will be subject to a majority (minimum 3) of the Trustees concurring.
- Should the facts of the issue be in dispute then the owner will be entitled to seek further discussion with the Trustees in accordance with clause 19.2 of the Constitution.
- Should the decision be made to continue with the fine then this will be by way of a multiple of the monthly levy as decided by the Trustees & invoiced with the monthly levy statement.