The new housing crisis: unfair freeholder estate charges

Since 2010 Local Authorities have seen their budgets reduced by about 36 per cent, mostly because of a reduction in central government funding of nearly 40 per cent. Councils have cut services and struggled to meet their housebuilding targets because of the cost of 'adopting' the roads and other public spaces needed. To avoid these costs, they have often required developers to maintain new unadopted public spaces as a condition of granting planning permission. This is normally formalised in a "Section 106 agreement" between council and developer. Unfortunately, developers have found unregulated ways to pass on to freehold house buyers the ongoing financial burden of maintaining public areas. They are treating S106 public space maintenance agreements as if they give developers the right to collect taxes and to extort as much as they can.

How privatised tax-gathering works

One 'conveyancing device' for passing on the S106 burden of public maintenance on large estates to house buyers is the rentcharge, originally invented to allow landowners to transfer land in exchange for an income rather than cash. Developers often describe the maintenance rentcharges as 'service charges' reminiscent of the charges leasehold flat owners pay to maintain the common parts of their block. There is a big difference: freeholders do not have the legal protections that leaseholders have against underperforming or overcharging landlords and monopoly maintenance companies. The receiver of the rentcharge can in many cases repossess the freeholder's property for non-payment. It is estimated that thousands of freeholders may be in this situation, many being first-time buyers unable to sell on their properties now that the unfairness of their deeds has become widely known.

In a typical example, freeholders on one estate in Newcastle Great Park are required to pay for collection of rubbish from public bins and to pay for planting and for grass cutting in "Strategic Open Spaces" open to the public. These services were the price that the developer agreed to provide in return for planning permission. Under the S106 agreement with the council the developer promises that, on publicly accessible Strategic Open Spaces:

> All litter bins will be emptied on a weekly basis and rubbish removed to an approved waste disposal site. Both internal and external surfaces of the litterbins will be washed before liners are replaced.
> All grass and herbaceous growth in prominent areas shall be cut by approved
> mechanical means to a maximum height of l00mm and arisings removed to an
> approved disposal site.

The developers have simply passed these obligations on to freeholders to whom they have sold homes, instead of funding them out of development profits as intended.

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Why are councils outsourcing maintenance of public spaces?
The national government forces councils to build new homes on greenfield sites but restricts their ability to finance the maintenance of the new public spaces created. This seems to conflict with the 1985 Charter of Local Self Government of the Council of Europe. Article 9 of that treaty declares that local authorities should be given the freedom to determine expenditure priorities and to raise adequate resources. The UK government which first introduced limits on local government spending in 1984 refused to ratify this treaty and was, according to Vernon Bogdanor (Professor of Government at Oxford), "highly unsympathetic to the whole project". A new government did ratify it in 1998. Subsequently the Localism Act relaxed some of the restrictions on local authority financing but has not gone as far as the EU treaty requires.

A previous version of this paper incorrectly stated that the Localism and Welfare Reform Acts of 2011 and 2012 allowed local authorities to raise the necessary finance.

What to do about existing cases?
The Secretary of State for Communities and Local Government stated last year that he would resolve the rentcharge problem by introducing measures "making sure freeholders have equivalent rights to leaseholders to challenge unfair service charges". It is not clear whether he has the power or commitment from the national government to fulfil this pledge, how quickly it can be done, and how it may apply retrospectively. It can be assumed that the powerful developers will not be silent on the matter.

Local authorities have the power to adopt the existing problematic public spaces. The fairest way to fund this would be to increase council tax for those properties that increase in value as a result. That is the system used in all other countries in the developed world, and in Britain until 1984. Until the government permits this in the spirit of the European treaty, the only solution is to increase council tax across the whole of the area.

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