

Dear Mr. Brokenshire,

I am writing to you as an individual owner of a “fake freehold” house and as a co-ordinator of the Home Owners Rights Network which is campaigning for change to the existing model of estate management where home owners regardless of tenure are being forced to pay for the upkeep of public open space and amenities such as play parks on their developments. In many cases, other structures such as unadopted roads and private pumping stations are also included. By “fake freehold” I mean that my freehold home is subject to a rentcharge on the estate land. I was unaware that there was a charge on the property at the point of purchase, and do not now consider it to be truly “free of hold”.

There is a huge unaddressed problem for home-owners on these managed estates as witnessed by the growth of our network from just 3 ordinary home-owners to over 3500 in a couple of years. There are no statistics kept by government of the size of the problem, so we are gathering our own, and currently have 325 estates representing over 64,000 households from across the UK.

In your Policy Exchange housing speech of 2 July 2018 you said “*But I’m mindful – this isn’t just about getting the numbers up. We don’t have to make a false choice between quality and quantity.*”

As you are clearly aware, this false choice is exactly what has been happening with new-build estates for the last 15 years or so. The quantity is being delivered by a few large commercial house-builders operating like a cartel. Quality is reduced both for the homes and the estate infrastructure largely because of how section 106 agreements are negotiated with developers by local planning authorities. Local planning authorities are using Section 106 to screw as much from the developers as possible, without regard for the effect on home-buyers or the quality of the estates. The building companies, like all modern plcs, are focused on shareholder value, so to maintain their profit margins these companies sacrifice build quality, provision of affordable homes, and estate infrastructure. We applaud your move to create an environment for more SME builders, but if the government also wants large numbers of new homes, the major developers will still have to be involved. One reason for their continued involvement is that they already own vast areas of potential building land.

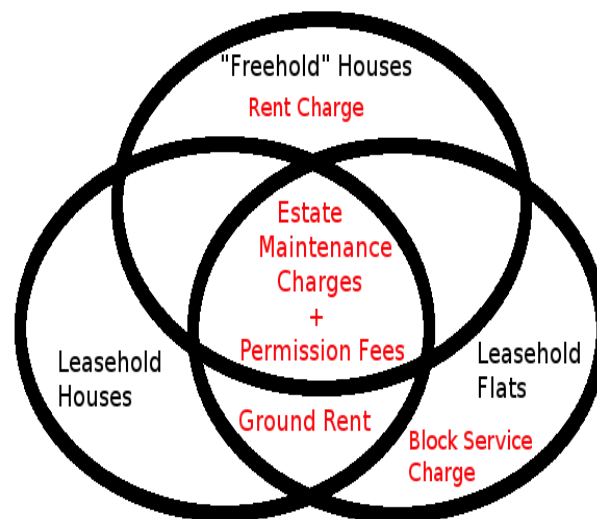
Briefly, New-Build Private Estate Management can be summarised thus:

- Developers are not putting the estate land and amenities up for adoption, and are saving money by skimping on preparation, avoiding inspection fees and the payment of a commuted sum for the Local Authority to adopt.
- A large proportion of the estates are public open spaces, to which the residents do not have exclusive access and benefit.
- Developers retain ownership of the land, and create shell companies with directors from their own company.
- When the development is complete, this company and usually the land as well are sold on to land-owning management companies/agents.

- There is no regulation of this market.
- Home-owners are tied by property law to pay estate management charges when they buy, and are usually unaware of the implications for them until they almost inevitably hit a problem.

Three things are clear from this graphic:

The Charging Structure of New-Build Managed Private Estates



- 1) Home buyers with the least capital end up with the most charges.
- 2) Home-owners of all tenures pay estate maintenance fees. If there are commercial and social housing properties, they may also pay these charges.
- 3) When the government enables leaseholders to buy their freehold more easily, those on new-build estates will still have a problem in the form of estate and permission charges.

Problems this model creates for the home-owner include:

- Poor quality and value for money.
- A monopoly provider for the majority of estates. Residents Management Companies, where they exist, have a hard time gaining control from the developers. There is currently no Right to Manage to assist the owners of “fake freehold” houses.
- No practical redress. Legal challenges are financially out of reach for most.
- No accountability. Companies will not justify their costs and treat disputed with-held charges as bad debt.
- Local Authorities are not enforcing the planning conditions agreed within 106 agreements. The result is poor quality preparation and “un-remedied liability” for the home-owners into the future.
- Covenants or lease clauses written by the developers are heavily imbalanced in favour of the management company. Most often there is no cap on the charges.
- Unjustifiable additional fees for permission to alter, re-mortgage, or move home.
- Delays in moving home as the management company has to participate in the transaction.
- Difficulties in getting a mortgage - banks are increasingly requiring more evidence to show that there is a robust mechanism in place for estate maintenance in the absence of adoption.
- Unadopted estate home-owners may find they have to pay indemnity insurance if they want to sell.
- A high proportion of charges is spent on management rather than service delivery - our members’ experience is that it is usually about 50%.
- The majority of home-owners are not fully informed at point of purchase, either by the developer or their recommended solicitors.
- Home-owners also pay full council tax and feel this is unfair as they are also having to pay for the maintenance of roads, play parks and green spaces open for the use of the general public who do not contribute towards their maintenance.
- As soon as the builders leave the site, maintenance charges rise steeply, but the services provided by their successors deteriorate.
- There are practical difficulties in enforcement of public order on privately owned land. Police require permission from the landowner to act and Local Authorities are unable to enforce traffic regulations even when there are safety concerns. We can provide many examples of this problem.
- Potential major expenses in the future due to inadequate land preparation such as the containment of contamination on brown-field sites.

- We believe there will be long-term reduction in saleability and value as home-buyers and conveyancers become more aware of the issues.

Problems for the Estate Infrastructure Include:

- Long term physical deterioration or “blight”, due to poor standards of preparation and subsequent maintenance.
- Retention of the asset of land in a leasehold-like fashion where ultimately financial institutions form a land bank. We have found that land-owning management companies which take over estate management often borrow money with the land as security.
- Increased density of housing as developers continue to successfully apply for more houses than on original master plans. The green spaces and sometimes parking provision for guests, visitors and trades people are consequently diminished. Local authorities are not empowered by central government to say “No!”
- Back door privatisation of public open space. Does the government really want to see thousands of acres of public open space being privately owned and badly managed in years to come?

You refer in your Policy Exchange speech to social justice, but where amongst the characteristics of the current model is any justice for the ordinary home-owner?

Potential Solutions/Actions

Compulsory adoption would wipe out all of the difficulties home-owners face and prevent long term physical deterioration or “blight”. It would ensure that the estate infrastructure is developed to a good standard, and that public open space is owned and managed by public authorities. It will almost certainly be more cost-effective, both for the delivery of services due to economies of scale and probably overall if you count the cost of providing ombudsman and court services for the deluge of disputes waiting to be resolved.

Obviously maintenance of these new open areas needs to be funded. Most of our members would prefer to pay a precept on their council tax rather than to a private company or to an inept housing association. Central government could enable Local Authorities to raise funding in novel ways to cater for new developments with public amenities. A simple way might be to allow flexibility in council tax banding.

Commonhold would be a perfect solution for truly private gated communities with external common parts, and could also be applied where Residents Management Companies have been successfully managing their development and wish to continue to do so rather than be compulsorily adopted.

A rebalancing of 106 agreements so that more money being made available to spend on quality homes and estates would prevent home-buyers effectively subsidising what is being spent on infrastructure across their wider area. The priority for planning should be the quality of the development under consideration. Resources needed to deliver quality developments

ought to be identified first and ring-fenced. Local Authorities should be encouraged to fund infrastructure development from sources other than residential house builders.

Government to investigate by select committee how new-build estates are being delivered and managed before any more substandard developments are built.

Implement the findings of the APPG on Excellence in the Built Environment to improve the quality of new homes, and give more consumer rights to home-buyers.

Strengthen and support local authority planning departments and return building control function to them for better quality homes.

In conclusion, I urge you and your colleagues in the government to bring an end to the inappropriate use of the private estate model for public open spaces, which I have summarised above. I urge you to return housing throughout the UK to the traditional model whereby all new homes are truly Freehold (or in some circumstances Commonhold), where the only charges and responsibilities the new home-owners have are to their Local Authorities. Please consider that if the above model is permitted to continue, then in a century from now Britain will be country in which housing is mostly packaged into thousands of privately-run estates, the majority of which will have been poorly constructed and badly maintained.

With regard to all of those homes which have already been trapped in the managed private estate model, I urge you to require Local Authorities to fully adopt all such estates by a specific date within the near future. Where residents wish to run their own estates, they could be exempted from compulsory adoption but please enable them to govern and administer themselves with complete autonomy.

I hope you will give serious consideration to the above points and if you would like clarification of any of them, please do not hesitate to ask. Our group of just over 3500 members has a considerable body of evidence on the effects of managed private estates both on home-owners and on the lack of quality on their estates. We would welcome the opportunity to present this to any consultations by government.

I look forward to hearing from you.

Kind regards,

Cathy Priestley

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