Estate Charges – What's the problem?

It has been a national planning requirement for about 20 years that new build estates have open green spaces.

Over this time developers have almost completely stopped offering these areas up for adoption by local councils in favour of management by private companies, usually of their choice. The presence of a managing agent also allows for tight control of home adaptions by residents. Estate residents are charged for ongoing maintenance enforced by property law with no consumer rights. They may also be charged high administration and "permission" fees.

Who pays estate charges? Residents, whether leaseholders or freehold home owners (also known as "fleecehold" or "fake freehold")*. Social housing tenants pay via their rents and commercial properties via their leases.

Why? We believe there are huge cost saving in constructing to a standard lower than for adoption. Councils can only insist on a plan for management in the future rather than compel adoption. We have petitioned parliament in 2018 for compulsory adoption, but we failed to convince the then Housing Minister.

What are the problems?

It is fundamentally unfair for one group of residents to pay for the upkeep of public open spaces and facilities such as play parks which can be used and abused by anyone. This set up creates division in communities. It may be

suitable for truly private gated estates, but most developments contain public open spaces.

Home buyers are unknowingly signing up for an unlimited liability. This is especially important for brown field sites where there may be contaminated land or old poorly maintained structures. Sales offices gloss over and minimise this liability, commonly saying the charges are for “grass cutting”. There are mis-selling issues similar to the leasehold houses scandal currently under investigation by the CMA.

Estate charges cannot be challenged or queried in the same way as leasehold service charges can. There are no special laws or protections as there are for leasehold service charges.

The managing agents are often a monopoly and unaccountable to the residents who pay the charges. Exploitation of this situation is rife.

If a rent charge is used to enforce payment, then there is a an old law** which allows repossession for non payment (for any reason – even if in dispute). The government has promised to repeal this, but right now it is causing headaches for sellers and those remortgaging. It is making lenders nervous of loosing their freehold interest.

As more of the public and their mortgage lenders become aware of the pitfalls, houses are becoming devalued and harder to sell.

The estates are often poorly managed, especially once the developer has finished selling houses. This, combined with poor construction standards, is leading to blighted estates long term as well as high costs for residents.

There are some parallels with the cladding scandal, although we are grateful the defects we inherit are not usually life threatening. However, poor construction standards and cost cutting for profit without adequate quality control has lead to the burden of huge and unforeseen costs to the home buyers in both cases.

** fleecehold is a term invented by a National Leasehold Campaign member and has been used for a number of exploitative practices, but most commonly for estate charges on freehold homes. “fake freehold” has also been used for this scenario as the presence of a charge on the property does not render it “free of hold”.*

***The Law of Property Act 1925 section 121 gives the rent charge owner powers to enter the property and/or take out a statutory lease on it if the rent charge is not paid (for any reason including not knowing it was due!) within 40 days of of it falling due. This hasn’t been done on any big scale, but managing agents do send out section 121 notices to mortgage lenders as a bullying tactic. They do this rather than explain or justify their excessive charges.*

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