

HomeOwnersRightsNetwork on Privately Managed Estates

I am writing this as a co-ordinator of the Home Owners Rights Network which is campaigning for change to the existing model of new housing 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.

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 9500 on FaceBook. There are no statistics kept by government of the size of the problem, so we are gathering our own, and currently have 772 estates representing over 160,000 households from across the UK. We have learned much from networking and summarise the issues below:-

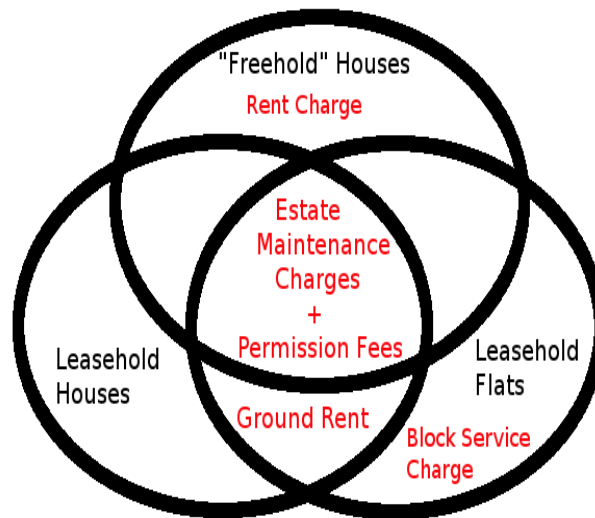
The vast majority of new homes are being delivered by a few large commercial house-builders operating like a cartel. Quality is reduced both for the homes and the estate infrastructure largely because of how section 106 agreements are negotiated with developers by local planning authorities. Local planning 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 (large) profit margins these companies sacrifice build quality, provision of affordable homes, and estate infrastructure quality. If the government wants large numbers of new homes, the major developers will have to be involved as 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.
- More recently there has been a move to allow self management for residents after the estate is finished, however there are no mechanisms to prevent them from inheriting defects which will create a financial liability in the future. We have many reports of obstacles being put in their way long after the builder has moved off.
- 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 either from lack of transparency and/or rapidly escalating costs.
- Estate charges are a different legal entity to leasehold service charges, and we do not think that leaseholders would be able to challenge them in the First Tier Tribunal under leasehold law.

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. If there is a rent charge, lenders often require a deed of variation.
- 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?

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 inefficient housing association. Alternatively 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. Or maybe the CMA??

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.

Much of the above formed the main content of a letter dated August 2018 to the late James Brokenshire, when he was the Secretary of State. The concluding paragraphs below are still relevant and I have simply updated the group size to the current figure.

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. Remedial work to be funded by the developer, as with blocks of flats.

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 9400 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,

Dr Cathy Priestley

Co-ordinator for Home Owners Rights Network:
www.homeownersrights.net

FaceBook Group
<https://www.facebook.com/groups/homeownersrights/>

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