

# **A Guide to Taking Control of the External Common Parts** **of New-Build Estates**

## **Key Terminology Used in This Guide**

- **External Common Parts (ECPs):** Shared areas and other physical elements of the estate
- **Management Company:** Initial legal owner of the ECPs
- **Managing Agent:** Company hired by the Management Company to manage the estate
- **Residents Management Company (RMC):** Management Company consisting of home-owners
- **Shadow Board (SB):** the group of 5 to 6 home-owners who will lead the campaign

This guide may help those home-owners on new-build estates who wish to set about acquiring communal ownership of their estates' External Common Parts. (Other home-owners may wish to hold out for, and to campaign for, mandatory adoption of their External Common Parts by local authorities.)

Those home-owners who wish to acquire communal ownership of their ECPs seek the autonomy which such ownership confers upon them. If they govern themselves, they will no longer be subject to a Residential Managing Agent company (which is unaccountable to them). Future buyers of homes on such estates may be reassured to learn that the home-owners effectively and communally control the level of their annual "service charge" (if such is required), as well as communally controlling all of the other administrative affairs of the estate (including control of covenants). Such control can increase the security of an estate, as unadopted roads and footpaths can be reserved for the use of residents only (by way of signage and/or gating). However, if an estate achieves autonomy, the perpetual commitment and cooperation of all or most of its home-owners is required (owners usually share and spread this responsibility by agreeing to rotate as directors of the RMC. Before embarking on the autonomous route, home-owners should consider that as directors they are likely now and then to encounter significant difficulties, such as, for example, home-owners who refuse to cooperate and who may be prepared to threaten, or even take, legal action against the estate's resident directors.

This guide is divided into two parts.

- **Part One** consists of a structured list, a plan of operation.  
Some home-owners may feel that this plan is all that they need to proceed.
- **Part Two** provides details and background of the plan given in Part One.

Please note that this guide provides only general advice. Each estate's situation is unique: some estates have been very simply set up by their Developers, while other estates are physically complex or have complex legal arrangements. Some estates may appear to have been simply set-up but in reality they may be underpinned by complex legal and physical arrangements. So whether you are in doubt or not, it may be prudent to seek professional legal consultation during your campaign to acquire control of your ECPs.

## **PART ONE**

### **A Plan by Which to Own the External Common Parts**

**This plan consists of 10 sections:**

#### **1. Understand Your Estate's Legal Structure**

Most estates of new-build homes marketed as “freehold” or “leasehold” are actually private estates involving legal complexities. In general, such estates are characterised by the following features:

- The houses are legally subject to an “estate rent-charge” (often downplayed as a “service charge”) and/or to a schedule of restrictive covenants
- A Management Company owns the External Common Parts (ECPs)
- A Residential Managing Agent administers the estate on behalf of the Management Company

#### **2. Initial Investigation: Understanding Your Legal Position**

##### **Document Review**

1. Carefully examine your key documents:
  - Land Registry Transfer Document
  - Contract of Sale
  - Companies House registration of the Management Company
  - Companies House registration of the Residential Managing Agent
2. In your home's documents, look for specific clauses regarding:
  - Potential transfer of ECPs to home-owners
  - Management company details
  - Transfer possibilities

## Warning Signs

Be cautious if documentation suggests:

- A Residential Managing Agent will have perpetual control
- Unclear ownership-transfer mechanisms
- Restrictive management arrangements
- Home-owners are not to engage in “activist activities” (seek legal advice)

## 3. Building a Home-owners' Network

### Creating an Owners Group

1. Develop an informative leaflet explaining:
  - Current estate management structure
  - Potential for home-owner control
  - Importance of collective action
2. Communication strategies:
  - Use a dedicated contact email (or, possibly, a chatting app)
  - Create a database of interested home-owners
  - Protect privacy using BCC or email distribution lists (hiding email addresses)

### Forming a Shadow Board

1. Recruit 5 to 6 volunteers committed to:
  - Investigating estate documentation
  - Negotiating with the Developer
  - Representing home-owners' interests
2. Seek volunteers who are:
  - Proactive
  - Detail-oriented
  - Community-minded

## **4. Engaging with the Developer**

### **Initial Communication**

1. Draft a formal letter to the Developer's CEO:
  - Requesting information about ECP transfer
  - Signed by members of the SB (and perhaps multiple home-owners)
  - Send via registered mail
  
2. Potential Developer Responses:
  - Willing to transfer ECPs
  - Reluctant to transfer
  - Ignoring the request

### **Important Negotiation Principles**

- Understand “The Transfer” terminology
- Distinguish between transfer of responsibility and ownership
- Ensure all “Unremedied Liabilities” are addressed before takeover

## **5. Preparing for Takeover**

### **Critical Preparatory Steps**

1. Documentation Review
  - Obtain and scrutinize all estate documentation
  - Verify land assignments
  - Check infrastructure details (sewers, boundaries, etc.)
  
2. Liability Assessment
  - Obtain comprehensive documentation
  - Identify and resolve all physical defects, etc.
  - Ensure the developer addresses all outstanding issues

### **Managing Agent Considerations**

1. Review the existing management contract between Developer and Residential Managing Agent
2. Ensure the new contract (or the contract which is to be transferred to home-owners) provides:
  - Clear home-owner control
  - Ability to terminate the contract in an acceptable manner (“hire & fire”)
  - Democratic decision-making mechanisms

## 6. Voting and Governance

### Establishing Fair Representation

- Ideally one household = one vote (may involve rewriting Articles of Association, etc.)
- Prevent external parties from manipulating voting
- Ensure absolute democratic process in management decisions

## 7. Transfer Process Timeline

- Preparation typically takes 12 to 36 months
- Depends on estate complexity and developer cooperation

## 8. Ongoing Management

### After Successful Transfer

- Regular Monthly Directors' Meetings
- Annual General Meetings (AGMs) vital to ensure a good relationship with all home-owners
- Encourage community participation

### Key Principles

- Transparent communication
- Shared responsibility
- Active community involvement

## 9. Final Advice

- Stay patient and persistent
- Focus on collaborative solutions
- Remain committed to community welfare

## 10. Documentation Checklist

A list of the kind of documents to examine before transfer is included at the end of Part Two of this guide. The list covers:

- Asset transfer documents
  - Warranties and guarantees
  - Infrastructure plans
  - Legal agreements
  - Insurance documents
  - Voting distribution mechanisms
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## PART TWO

### Details and Background

#### Initial Document Investigation and Management Company Search

Study your Land Registry Documentation and your Contract of Sale and see what references there may be in both documents regarding home-owners taking responsibility for the ECPs of your estate. Some documents state or imply that the Developer will give the ECPs to home-owners; while some documents say the Developer may do so. Also search the Companies House website for the name of your estate, to see whether your Developer has set up a Management Company as being the legal owner of the ECPs of your estate. (Most Management Companies are given names which reference the marketed names of new estates, but this is not always the case, so if you cannot find a Management Company for your estate it doesn't necessarily mean that one doesn't exist. It could be that the Developer hasn't set the company up yet, or that it has been given a name of which you are not yet aware. Hunt for alternative names.) If a Management Company exists, then check its Memorandum or Articles of Association, as these may say whether the Developer will give you the ECPs or whether they may do so. Note, if you find wording to the effect that the Developer “may” give you ownership of the Management Company and its ECPs, your challenge is to try to ensure that the Developer will do so.

#### Challenging Perpetual Management Agent Control

Unfortunately, documents occasionally state that a particular Managing Agent is to have ownership and managerial control of the ECPs of an estate in perpetuity, in which case you may object, despite the arrangement being legal. This kind of residential managing agent can be referred to as being embedded. You may wish to highlight your situation in the media, asking the question, “*Is it fair that home-owners on some estates have absolutely no chance of ever being self-governing?*” You may need to enlist the help of your MP at a more difficult point further down the line, so at this point try to resolve any difficulties yourselves.

#### Creating an Informal Owners Group

If you see from your documents that there is a possibility of home-owners taking control of the ECPs, then you need to create an informal network, an Owners Group, of concerned residents on your estate. Find a few other concerned people, and together carefully prepare a leaflet to alert everybody to the dangers of being run by a Managing Agent forevermore, with you never having any authority over the Agent's decisions or demands – decisions like how much your “service-charge” will be each year and/or whether certain covenants will be enforced. Use this first communication to make sure the home-owners on your estate know how Developers generally arrange for the management of private estates. Make sure that you spell out the necessity of everyone understanding and using the right terms: that your estate's ECPs are owned by a Management Company which is owned by the Developer; that the Management Company employs a Managing Agent (a separate company) to manage your estate; how the entities and terms “Management Company” and “Managing Agent” are different; that if you succeed in taking control



of the Management Company it will then become a Residents Management Company (an RMC); and that your RMC will have the power to hire and fire Managing Agents in perpetuity.

## **Distributing Information and Building Support**

Make the leaflet informative, persuasive, and welcoming. Include a contact email address, and then distribute the leaflet to all properties. As people email you, get a database together. Later, every time you email the members of your Owners Group to update them on your progress, always protect recipients' names and email addresses by using BCC (blind copying) or by using a Distribution List (which uses a blind copying process, hiding all recipients' names and email addresses). Some chatting apps may be suitable. Observe data-protection regulations.

## **Forming a Shadow Board**

When you have received positive responses from a significant number of people in your network (preferably at least 50%, but not necessarily), and if most of them agree that together you should pursue taking control of the ECPs, then call for 5 or 6 volunteers to form a steering group, a Shadow Board (SB), to negotiate with your Developer. Don't expect every home-owner on your estate to join: some people are apathetic, others prefer to put their heads in the sand, and a small number will prefer to take the lazy route of just being critical of your efforts. Unfortunately, there are often one or two home-owners on an estate who seem to take it upon themselves to try to vex things which others seek to achieve. You will discover from the responses you receive which home-owners on your estate are positive, cooperative, and concerned for the welfare of your community.

## **Drafting a Formal Letter to the Developer**

Once you feel everyone has had ample time to respond, your Shadow Board (SB) should then carefully, firmly, and politely write a letter to the Developer's CEO saying that you have a group of X (number) concerned owners on your estate who support the owners taking responsibility for the ECPs, by way of receiving ownership of the Management Company, and so you would like to know of the plans which the Developer has set aside to enable this to happen. After having this letter physically signed by SB members, and perhaps as many members of your Owners Group as possible, send it by registered "signed-for" mail, so that you will be sure that it has been delivered to the Developer's CEO, and so that you will have evidence of this.

## **Understanding Potential Developer Responses**

It will be good news for you if the Developer replies to say that they are prepared to give you the ECPs, and to allow you to take over the ownership of the Management Company which currently owns them. It will most probably not be good news for you if you observe that your Developer is eager to transfer the ownership of the ECPs to you at the earliest possible opportunity! It will be bad news for you if your Developer says they will not give you the ECPs (ever), or if your Developer ignores your letter - then you may need to campaign, and possibly tactfully engage your MP, doing all you can to change your Developer's attitude. After the requests of home-owners has been rejected, some MPs have been known

to immediately issue a strong letter of enquiry directly to the Developer's CEO, bringing about a positive response from the CEO within hours! You may be able to inspire your MP by telling them of this.

## Clarifying the Meaning of "Transfer"

Developers have been known to use the term "The Transfer" to their advantage. Do not confuse The Transfer of responsibility of an estate's ECPs with The Transfer of ownership of the ECPs. Some Developers have been known to have told home-owners that unfortunately the ECPs *"have already been Transferred to the Managing Agent"*, and home-owners naturally take this as meaning that they have "missed the boat" and will never be able to take control of their ECPs. But Developers usually set a date whereby the first Managing Agent to look after an estate becomes responsible for administration from that date: this date is called The Transfer Date, but it only refers to the Transfer of responsibility for administering the ECPs, not ownership. The Developer is still the owner of your ECPs, and is still responsible for them and any defects in them, although the Developer may advise you that because the ECPs have become the responsibility of the Agent you must take any concerns you have about defects in the ECPs to the Agent. However, if the Agent does not attend to such matters as such defects, do not accept that you cannot then report the Agent's lack of care to the Developer. The Developer remains the owner. The Agent is only being paid to manage your ECPs. The Agent doesn't own them. The Agent is only an employee of the Developer. (But keep in mind that unfortunately a small number of Developers have made legal arrangements whereby an Agent will own and manage an estate's ECPs in perpetuity.)

## Ensuring a Safe Transfer of External Common Parts

Much preparation needs to be done before you take responsibility for the ECPs and ownership of the Management Company which owns them. You don't just want to take control: you need to take control safely.

## Addressing Unremedied Liabilities Before Transfer

You must be certain that the Developer deals with whatever "Unremedied Liabilities" there are on your estate before you take over. Unremedied Liabilities is the legal term used to describe, amongst other things, physical defects on an estate, which if unremedied by the Developer may become expensive liabilities for your RMC to have to deal with when your RMC owns the ECPs. Once the Developer has signed over the ECPs to you, the Developer is no longer responsible for them. They're yours. It's a bit like buying an old house: you need to have a full structural survey done first, so that you know exactly what you're taking responsibility for, and if you find serious flaws in that old house you may not proceed. Adopt the same strategy with regard to the ECPs on your estate. All of the ECPs should be in tip-top condition before you take them over, even if that means delaying the date on which you take control. You have to be firm about this because some Developers don't like having to return to an estate to remedy problems of their own making, particularly once they have started work on other new estates. Resist any or all attempts on the part of the Developer to compel you to take control of the Management Company and its ECPs before you are satisfied that it is safe to do so. Do all you can to maintain open and transparent dialogue with the Developer. Prefer written correspondence, even if only by email, to telephone conversations, but also utilise the power of formal face-to-face to meetings.

## Comprehensive Documentation Review

Your SB also needs to receive all of the estate's documentation before you take control, so that the SB may inspect it carefully to ensure that it is all in order. This is particularly important for estates which are complex or large. Remember, if an AGM is held at which home-owners elect owner-directors, then the very next morning after that meeting the Developer's Directors of the Management Company (the company which you are taking over), will quickly inform Companies House that the Developers' Directors have resigned and that your elected owners are now the new Directors of that company. That means that from that moment you home-owners are fully, entirely, and legally responsible for everything on your estate - physical and documentary. So the documentation must be studied carefully long before, and all liabilities must be remedied. You may find, for example, that fences or gates are in the wrong place, not correlating to boundaries on plans; that certain pieces of land have been wrongly assigned in terms of who owns them; that the Developer has trouble providing you with plans showing where an underground tank is located; that the sewers were supposed to be adopted by the local Water Authority but the Developer hasn't yet attended to this, or perhaps the Developer has attended to this but your Water Authority is refusing to adopt them because they were not built to the required standards; and so on, and so on. Scour everything. Question everything.

A list of the kind of documentation which you need to review is included at the end of this guide.

## Negotiating with the Developer

If your Developer seems willing to allow you to take control, bear in mind that the Developer most likely wants “shot” of your estate. Developers have new estates to be getting on with, so they want your estate out of their “hair”. So your challenge is to reason with your Developer, to ensure that they agree that it is only reasonable that a volunteer Shadow Board of 5 or 6 people from your network are allowed to fully investigate all the documentation and legalities of the estate, as well as ensure that the estate will be handed over with all physical defects having been satisfactorily attended to beforehand. A Developer whose legal department and other employees have put the necessary time and trouble into setting up a new-build estate well should have no problem with your SB taking as long as it needs to inspect all of the estate's documentation and background. If your Developer's lawyer(s) muddled or even botched the paperwork, they may try to gloss over their errors and tell you not to worry about them, but you must straighten them out, so that the documentation which you then take ownership of cannot be challenged in future – by buyers' solicitors, or by any studious (or troublesome) home-owners or other parties.

## Reviewing and Negotiating the Management Contract

One of the many important things you must be sure of is that from the moment you are elected, and you home-owners are “in the driving seat”, you will have full and complete power over the Managing Agent. So you need to inspect the present Management Contract between the Developer and the current Managing Agent. Will it be acceptable to your SB to inherit that same contract? If not, you must have a new one written to come into effect the moment you take over. Your relationship with the Managing Agent must be as your SB wants it, from the start. Be prepared for objections from the Managing Agent. Managing Agents don't like handing over power to residents. Life is so much easier for Managing Agents when they can do as they wish and do not have to accept instructions from the elected representatives of people who live on an estate. Life is also easier for Managing Agents who can appear to listen but then do as they wish. Your goal must be to make certain that your Managing Agent will have to do as your Board of Directors requires or the Agent's contract may be terminated and a new Agent appointed.

## **Ensuring Democratic Voting Procedures**

Another matter to be looked at carefully is the matter of votes needed by whichever parties must vote before decisions can be made at meetings which your RMC will hold. You cannot afford for a clause in any documentation to allow the Managing Agent or any other parties to overrule the democratic power of the home-owners on your estate. You cannot allow, for example, the representative of a group of flats on your estate to be able to cast more than one vote. (There have been reports of shared-ownership landlords who have bought a large number of properties on an estate having determined the outcome of voting procedures by way of that landlord casting a vote for each of the properties owned by that landlord, partly on account of none of the residents of the shared-ownership properties being in attendance at the meeting). So you must do all you can to ensure democracy: that ideally each household will count as one member with one vote, and that only one person from each household is able to cast a vote whenever a democratic voting procedure is required. You may also have to do this to ensure that your elected Directors will have full and complete power of the Management Company, and over the Managing Agent, otherwise autonomy will not be achieved, and the whole exercise will not have been worth undertaking. Remember that although negotiating and creating new agreements may take a lot more time, so as to delay the transfer perhaps even by another year, and it may require further payment of your lawyer, at the end of the day it will have been worth it.

## **Caution Against Hasty Developer-Initiated AGM and Director Elections**

Be very wary of a Developer who pushes speedily ahead with plans to call an AGM at which an election of Directors will be held. That Developer may be railroading you into holding an election so that the next morning the Developer can wash their hands of your estate before you are as certain as you can be that all is in order. So, ensure that a meeting of residents for the election of Directors does not occur until your Shadow Board is fully satisfied that all is in order: that the documentation has been sorted out where needed, and that the Unremedied Liabilities have all been dealt with by the Developer to your SB's satisfaction. (It helps if a resident who is a professional surveyor is on your SB, or at least that one SB member has a very good eye for noticing physical defects in the ECPs – usually someone who has owned a large and genuinely freehold home with surrounding garden or land and who is therefore used to the long-term responsibilities of home- and garden-maintenance.)

## **Benefits of In-Person Community Meetings**

Keep in mind that it can be helpful to hold your preparatory meetings, your first AGM, and all subsequent meetings for residents in some local community centre or church hall, particularly if there are tea- and coffee-making facilities available. Meetings enable people in your Owners Group to actually see, hear, and meet each other, and be less likely to misunderstand what is happening. Sometimes agreements about how best to proceed can be reached more quickly at a meeting than by discussing matters by email. Meetings also encourage community spirit.

## **Seeking Legal Counsel and Addressing Potential Documentation Issues**

If your Developer is reasonable you may be able to have them agree to cover the cost of a solicitor whom your SB will appoint to work for the SB during the preparation period. Hopefully your solicitor will not find too many faults, omissions, and discrepancies in the documentation and nor have too much remedial work to do on your behalf, but keep in mind that some Developers' documentation has been found to be in poor shape, such that it has taken several years for an SB to sort it all out with the help of a specialist contracts lawyer, so as to ensure that they will not inherit legal difficulties or physical defects (both coming under the classification of “Unremedied Liabilities”).

## **Shadow Board Commitment and Personal Qualities**

Your Shadow Board should be prepared to meet once a month for however long it takes to complete the transfer process. So you need optimistic, determined, cooperative, and pro-active people on the SB who will be willing to diligently attend to checking things, drafting responses, and promptly sending and answering letters, etc. in-between monthly meetings.

## **Expected Timeline for Estate Transfer Process**

The preparation process is likely to take between 12 months and 3 years, depending on the simplicity or the complexity of your estate, the number of Unremedied Liabilities which there are, and how efficiently the SB and the Developer work together. Worst-case scenarios may involve a preparation process of 10 years or more, as in a case in which a Developer failed to lay ground-drainage in an area to be accessible by the public and then to be adopted by the Local Council, and another case where the Developer installed a sewer system which did not meet the standards of the local Water Authority. In these cases the Transfer could not occur until the Local Council and the Water Authority were satisfied that the Developer had undertaken acceptable remedial works enabling adoption.

## **Post-Transfer Estate Management and Director Responsibilities**

Once the transfer occurs, the process will become much easier. Your estate will own your ECPs, your Managing Agent will be obliged to do as instructed by your elected Directors, and all that your elected Directors will then generally have to do is meet once a month to discuss current matters and make whatever decisions may be necessary. You will have the Managing Agent whom you will employ doing all the administrative work for you. At first it is important to encourage very grounded people to become Directors, but make it known that all home-owners should contribute by occasionally doing a 2- or 3-year stint as a Director. Assure owners who may be nervous about being Directors that all they will really have to do is meet once a month and offer intelligent opinions during discussions.

## **Importance of Home-owner Participation**

Generally encourage participation. Encourage all home-owners to attend the Annual General Meetings. Keep reminding home-owners that the quality of their ECPs and the life of their estate depends upon their contributions and their engagement.

## **Dealing with Negativity and Potential Criticism**

Bear in mind that in any large group of people there is usually at least one nay-sayer, one person who is not a team-player, one negative individual who will only criticise your RMC's Board of Directors and not offer support. Ignore them as much as you can, and focus on encouraging the participation and support of the majority. However, such nay-sayers may pounce on any process, document, or point you may not have paid sufficient attention to, so there is value in always imagining that the nay-sayer is constantly at your elbow, picking at what you are proposing to do. Deal every problem in such a way that they should be unable to criticise you. Openness and transparency also deter nay-sayers.

## **The Ultimate Goal: Estate Autonomy and Democratic Participation**

If you are patient and see this process through, you will have acquired autonomy for your estate, and from then on it will be up to every house-hold to positively participate and contribute, to ensure continuation of the autonomy.

## **Documentation to be Examined Before Transfer of Ownership**

Regarding the documentation which the SB needs to examine before the Transfer is permitted to occur, the list below presents some examples. Following this list should lead to discovering which other items of documentation need to be examined as well. The items below are in no particular order and please note that this list should not be regarded as a full and comprehensive list of everything that ought to be examined by your particular estate prior to the transfer.

1. The document which proposes to transfer the assets on the site owned by Developer to the ownership of a Residents Management Company (the RMC).
2. All warranties or guarantees connected with certain parts of the ECPs that are to be transferred to residents - covering, for example, electrical security gates, intercom systems, communal satellite dish systems, special lighting systems, CCTV, and so on.
3. All plans regarding the routes of on-site drains (rainwater and sewers), external electrical conduits, etc.
4. All agreements made by the Developer and the previous owner of the land with the Local Authority, the local Water Authority, and any other bodies.
5. All documentation regarding any Section 106s, or other similar covenants. What do these covenants concern, and how do they inform, or impinge, on the development?
6. All documentation relating to neighbours or others who may have a legal or historical right of way through the development.
7. Check the “legal” planning requirements pertaining to areas such as the “No Parking” bays and parts of roads where there are no marked car-parking spaces but where (dangerous) parking is physically possible. All such requirements need to be identified (and eventually communicated to all owners to avoid confusion and possible conflict).
8. A copy of the new Articles of Association if the Developer says they are to be rewritten.
9. A copy of the most recent management contract that the Developer has made with the Managing Agent whom they have appointed and who is likely to become the inherited managing agent employed by the RMC.
10. Copies of any or all insurance policies and indemnity policies.