

**Report of the Estate Management  
Fees Working Party  
September 2019**

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## **1. SYNOPSIS**

1 This Working Party Report opens with an account of the purchase journey that all buyers of a new-build housing development will probably go through. It is the very reason for setting up this Working Party as we have two estates of new houses in Duston where many residents have a burning sense of injustice and anger.

2 We have briefly outlined national initiatives as they impinge locally as well as setting out a layperson's understanding of Section 106 of the Town and Country Planning Act 1990. There is a discussion of how Management Companies have come to exist.

3 There are some successes, and we detail two of them here

4 Our Recommendations have been split under three main headings: Parish Council initiatives and Borough, County and proposed West Northants Council, and Central Government.

5 The Appendices to the main body of the Report are essential reading for those who wish to have a clear understanding of the many issues involved for residents, Local Authorities and Government.

## **2. AN ENGLISH PERSON'S HOME IS THEIR CASTLE?**

The bulk of this Section is taken from the convenor of the Home Owners Rights Network, (HORNET) a closed group of 6,300 Facebook members. The paragraphs written in bold are the comments that Duston residents have expressed at various public meetings.

A Freehold house is commonly defined as

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- a stand-alone house which is "free of hold",
- the owner owns the "title absolute", where
- the owner has outright ownership in perpetuity of both the house and the land upon which it stands;
- no other party has substantial control over the property or its owner;
- no other party can legally require the owner to pay an annual charge for the maintenance of adjacent land and/or adjacent facilities;

and

- where no other party can obstruct the owner's wish to sell the property or require that any sum be paid for permission to sell the property.

## **THE PURCHASE PATH**

### **Marketing**

Developers on the two Estates in Duston have used their advertising and other marketing materials, such as the brochures which they hand to

prospective buyers, that the houses on their new-build estates are genuine Freehold properties. Paperwork subsequently provided during the purchase process has also stated that the houses are Freehold. Only long after the traumatic move into the new property does the home-owner discover that the house they have purchased, is, in fact Freehold in name only, that in practice it is a kind of Leasehold home, and that they have been mis-sold their property.

## **Sales**

When a prospective buyer visits a new estate not only do Sales Staff advise that the houses are Freehold, but they usually fail to make any mention of the annual service-charge which will have to be paid. Nor do they mention any of the many other covenants by which the buyer will be bound. Instead, Sales Staff quick show the prospective buyer the site's fully decorated and fully furnished "show-home"; advising the buyer that they can choose which carpets or other kind of flooring they would like to have laid before moving in; which kitchen and bathroom tiles they would prefer; which fabrics they would like to have made up into curtains or blinds; which ceiling light-fittings (lamp-shades) they would like fixed in position; whether they would like the back-garden turfed, slabbed, or barked; which other "extras" (like additional electrical or TV sockets) are desired by the buyer; and so on. So the prospective buyer is lured into forming an emotional personal attachment with "the dream home", and this has the psychological effect of making a commitment which is then difficult to break.

## **Conveyancing**

In addition, Sales Staff will advocate the buyer use the Developer's Sales Package, which includes a "Recommended Solicitor" so that the purchase process will be quicker than otherwise, because, they say the Developer's Solicitor has already provided the local Recommended Solicitor with much

of the estate's documentation. The Recommended Solicitor can, they promise, move much more quickly than any other solicitor. Sales Staff also advise that if the prospective buyer is seriously interested in a house then they must pay a reservation fee to "secure the property". Once this fee has been paid the buyer is then usually informed that they must complete the purchase within eight weeks. I have heard that on some estates, Developers have stated that exchange of contracts must occur within four weeks of placing a deposit on the house.

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***One resident reported that there had been a purchaser before him for his home. Sales staff had told him that, because the buyer did not use the "Recommended Solicitor", the sale had fallen through. Our resident was led to believe that it was a negative fault of the other buyer's solicitor that caused this, rather than the solicitor giving the advice that our resident should have been given.***

Pressure is put on the buyer by the Developer to proceed and complete the purchase by a very short deadline which leaves insufficient time for calm and thorough consideration of all the many details involved in such a huge purchase, and results in the buyer falling into a trap.

Many first time buyers come from families that have not bought their own homes, other than via the "Right to Buy" option, which is a seamless, worry free system operated by Local Authorities. They do not have anyone but

the solicitor who is acting for them in the purchase, to advise them on procedure etc. and if that solicitor is also acting for the Developer, then that advice must be called into question.

## **THE ESTATE RENT CHARGE**

Throughout the purchase process of the so-called Freehold house the prospective buyers have a steady relationship with the Sales Office: calls and emails are exchanged with regard to various visits that need to be made, like viewings, inspections, and "measuring-up", and with regard to the orders for special fittings and so forth. However, if during this entire period the Sales Staff make any mention of the annual payment which will have to be made by the so-called "Freeholder", they do not refer to it by its legal and proper name, the Estate Rent Charge (ERC), but only to "a small service charge", "a little maintenance charge", or "a small estate charge".

If the prospective buyer on these two developments in Duston asked how much the ERC would be, they were advised of a minor sum, (less than £100 per year), and were given the impression that the payment was not likely to rise much above that level. If the prospective buyer asked what the charge was for, they were told things like "it's just to keep things neat and tidy", or "it's just to keep the grass looking good". Naturally, the buyer accepted what the convincing Sales Staff of a large and well-known building company told them, particularly if the buyers were first-time buyers.

***A resident reported that he found out about this "service charge" when he went to his solicitor's office for the final documents to be signed. "When you are buying a house for £250,000, a hundred pounds a year is neither***

***here nor there," he said.***

Even if a prospective buyer asks their own independent solicitor to request the Developer's solicitor to state specifically what the annual "service-charge" is to cover, the answers are much the same as those given by the Sales Staff: nothing more than sweeping, cleaning, and grass-cutting in the common parts are ever referred to. And if a prospective buyer asks such a question of their Recommended Solicitor, the Recommended Solicitor, at the very least, has a conflict of interests and is not inclined to highlight the negatives, or the "catches", which are involved in purchasing a so-called Freehold house.

The so-called Freehold house's Land Registry Transfer Document (TP1) is not seen by the buyer of a "Freehold" house until the process of purchasing that house is well underway; oftentimes that TP1 is often seen only shortly before exchange. Some buyers were told to sign and return the TP1 in haste in order to enable the sale. Consequently, much information about the exact nature of the "product" being purchased is withheld from the buyer until the purchase transaction is actually taking place. A TP1 consists of as many as thirty pages of information detailing covenants made between the Transferor (Developer) and the Transferee (the buyer).

Thus the details which are contained in a TP1, are not made freely available alongside the product (the house) when the product is first viewed, although, in contrast, the Terms and Conditions and any other relevant information regarding all other products available in the marketplace are freely and directly available for consumers to study before purchase, usually being included "in the box", amongst a product's packaging or amongst the marketing materials.



So it has to be asked why the purchase of a new-build house is the exception to this practice; why the customer is not enabled at the outset to examine exactly what the purchase will actually involve in the immediate present and in the future.

It goes without saying that this is wholly unacceptable, house-buyers should be furnished with all the important information contained in a house's TP1 before they decide to proceed with purchasing a property.

***A significant proportion of residents on the Duston developments say they have never seen their "Freehold" house's TP1, or that they do not know what a TP1 is. Some who have reported not having been given a copy of their TP1 have only come by one by using the Land Registry's download service, at a charge of £7.***

## **THE RESIDENTS' EXPERIENCE OF MANAGING AGENTS**

After the buyers settle into their new homes, they receive their first communication from the Managing Agent. Generally, at no point in the purchase process are home-owners advised that an unavoidable legal relationship with a Managing Agent is to be a feature of their lives for as long as they own their "Freehold" house.

The first communication from the Managing Agent, or the first meeting called by the Managing Agent, announces the power of the Agent's role. From the outset, as Agents appointed by and answerable to the Developers, some Agents do little to disguise the extraordinary legal power which they have over the owners of so-called Freehold houses on estates. As soon as some house-owners voice concern about say specific fees they are charged, fines that are applied etc, it becomes clear that all the house-owners, regardless of their homes having been sold to them as being Freehold, are subject to the decisions, the will, and the power of the Managing Agent, who may or may not express the decisions and will of their employer, the Developer, who owns the External Common Parts (the ECPs) of the new estate.

A few years after purchase, the Developer's Agent sends the "Freehold" house-owners a significantly increased service-charge bill, and when shocked home-owners then request a breakdown the Agent replies that the charge has to cover a large number of necessary items of which the house-owner was not made aware prior to purchase, such as:-

- Managing Agent's Fee,
- Company Secretary's Fee,
- Accountancy Fees,
- Accounts Certification Fee,
- Risk Management Fee,
- Insurance Claims,
- Buildings Insurance Valuation,
- Public Liability Insurance,
- Directors and Officers Insurance,

Communal Building Insurance,  
Professional Fees,  
Out of Hours Emergency Service,  
Garden and Grounds Maintenance,  
Gate Maintenance,  
General Minor Repairs,  
Electricity Costs,  
Electrical Repairs,  
Electrical Testing,  
Surface Water Filtration,  
Sundries, and the Reserve Fund.

None of those items were listed in any "small print" at the time of purchase, and neither was the buyer given any indication that the costs would be so numerous and that they would escalate as the years passed.

***A resident on one of Duston's Estates said that she felt that she was still renting her home, as the restrictions put on her by the Managing Agents and the "rent" she had to pay the Agent made her feel as if she had a Landlord!***

Many of these items are can be referred to as the Liabilities of an estate's ECPs, and while such Liabilities could be transparently listed in advance of

the sales of the accommodation on an estate, other unforeseen Liabilities could not be – yet the so-called Freehold house-owner must carry the burden of such unknown Liabilities, the financial costs of those Liabilities quite often being considerable. For example, where a Developer has “cut corners” and left substandard infrastructure in the ECPs, the effects of the poor performance of that infrastructure has eventually to be paid for by the “Freehold” house-owners.

***On one of Duston’s estates, for example, the Developer handed over electric gates of the Courtyard properties. The Managing Agent says it did not “know” of these gates when it accepted the contract with the Developers, and as they no longer meet the required Safety Standards, a dispute is in process regarding the solution of the problem.***

This “service charge” more properly called an ERC, makes the “Freehold” house-owner a kind of Tenant. ERCs are fully allowed by The Rentcharges Act 1977, and permits the owner of the ECPs or the owner’s Managing Agent to employ harsh “remedies” if the Tenant does not pay the ERC. The Property Act 1925 means that if the Tenant hasn’t paid their ERC within 40 days of the due date, and even if a bill hasn’t been sent to the Tenant, then:

(a.) the Tenant’s house can be possessed and income taken from it until the ERC and other expenses have been paid,

and/or

(b.) a long Lease on the Tenant's house can be granted to a Trustee to recover the arrears and all sorts of expenses,

and that when the Tenant offers to pay the outstanding

ERC, the payment can be refused because the house

has already become subject to a Lease!

The "Freeholder" only has to "Google" 'footballer rentcharge 2015' to discover that the threat of possession, or the granting of a Lease on their house, is entirely legal and feasible because it has already occurred to others. The so-called Freeholder discovers that unlike Leasehold house-owners whose houses are actually titled as being Leasehold, the so-called Freeholder has no legal right to

(a) consider accounts prior to receiving demands,

(b) no right to information after charges have been demanded,

and

(c) no specific legal channel by which to challenge their annual charges.

Some owners of "Freehold" houses who fail to pay their charges on time, have been issued with a fine (£90 in the case of one of the Agents in Duston), which, if they refuse to pay, the Managing Agent advises that the fine has to be paid at some point prior to selling the house. If it isn't paid, the Managing Agent will simply refuse to release the required "Certificate of Compliance" to allow the so-called Freehold property to be sold!

All of this is entirely legal, but obviously should not apply to any house which has been marketed and sold by a Developer as a genuine Freehold property.

A Freehold house-owner can try to dispute an ERC by using the standard Small Claims procedure to put their case before a judge at a County Court (assuming that the required charge is under the current £10,000 threshold). Using the County Court procedure means that the house-owner will **not** be entitled to recover legal costs (other than limited fixed fees available under Part 45 of the Civil Procedure Rules), whereas Leaseholders avoid legal fees by having access to a specific Tribunal. The experience of "Freehold" house-owners is that Small Claims courts usually look at a Freehold house's TP1 Transfer Document, which is often vague and biased towards the Rent-Owner, and then decide that the "Freehold" house-owner must simply pay up. So "Freehold" house-owners generally have no choice at the present time but to accept and pay whatever annual "service-charges" are demanded of them by Managing Agents over whom they can exert no control.

Victims of the mis-selling of Leasehold houses as Freehold houses in the UK currently, in Law, have only two routes by which to improve their situation.

(a) They can make representations to their local Council(s) to take over the responsibilities. This can only be done, however, by agreement with the Management Company if it is operating, or with the Developers if the ECPs have not been fully handed over.

(b) Residents may try taking over ownership of the Management Company if the Memorandum and Articles of Association of the Management Company which owns those ECPs, have provision for resident-owners to take a role on the Board.. The house-owners could then

describe their houses as being "Freehold with a Share in the Freehold Ownership of the External Common Parts". It will require a change in the Law to prevent Developers from mis-selling houses on their Estates.

## **A DUSTON RESIDENT COMMENTS - 1**

1 Residents do not have any right to challenge the Managing Agent's expenditure. If they do, or they refuse to pay, the Managing Agent can "fine" the resident as much as £90. One Managing Agent also charges residents £24 per month for paying by Direct Debit. If these charges and/or fines are not paid, the Management Company can place a charge on the home.

2 Invoices are difficult to understand and have not been written with the intention that the home owner can see easily what has been spent, on what items/work etc. It is also difficult to see whether there are different charges according to type of dwelling, or whether everyone pays the same, regardless of number of residents in the dwelling.

3 What was said to be "only about £50 a year," has risen to nearly £200 in some cases – way beyond inflation.

4 Work often is not done and sometimes where it is done, it is not done to an acceptable standard.. Residents are generally not given a Schedule of Works, nor do they know which days the workers will be present on site. Since the Managing Agents on Duston's estates are based in Stevenage, there is no check on times of arrival/departure or of quality of work carried out. In one instance, the contractors travelled from their base in Staffordshire to Northampton to do the work; they were required to do 7 hours a week on site, but there was no reliable system put in place by the Managing Agent to check that these hours were actually worked. Residents often reported that the workers' on-site presence was only around 4-5 hours.

5 A further issue highlighted by residents is that the recruited Contractors do not work out of a local company, nor are they locally based. This means that, as in (4) above, Contractors may not work a full day as required because of travelling time. Furthermore, the benefits of employment are NOT enjoyed by Northampton/Duston residents. It seems self evident that Contractors should be locally based.



## **A DUSTON RESIDENT COMMENTS - 2**

### **A INTRODUCTION**

1. The overriding issue on Timken Site is the fact that David Wilson/Bellway deliberately created a commercial maintenance arrangement that benefits only the organisations that receive a considerable income from the ongoing set up and indeed continue in perpetuity. Nobody understands how the set up or arrangements on the development should work or who is responsible. Too many organisations involved (actual number unknown to residents).
2. Unfortunately planning authorities paid no attention to the proposed maintenance arrangements at the time they gave planning approval.
3. There is no Accountable Body leaving residents with no address when serious issues arise. The organisations involved are accountable to no one.
4. The Borough Council decided at its meeting in September 2018 that "practices as on the Timken Site would not be tolerated and something would be done to help existing residents". A great decision.
5. Duston Parish Council has already decided that for the next phase of the Timken Site Development the maintenance of that area will fall within the purview of the Parish Council.
6. Without one authority/body taking overall responsibility nothing will materially change and residents will remain trapped.
7. Curiously there are a number of businesses on site that do not pay maintenance charges to the managing agents!
8. For a relatively small area the Timken Site has more green areas requiring maintenance than any other developments.

## **B MEADFLEET (Managing Agent)**

1. Appointed by David Wilson to maintain the communal green areas.
2. Their track record on site not good leading to recent removal of sub-contractors and new contract has introduced new sub-contractor from 1st June. Meadfleet admitted they do not monitor their sub-contractors attendance, or lack of attendance on site. It's the residents who do the monitoring.
3. Areas of responsibility still a matter of confusion even after several years on site.
4. Meadfleet website is a library of complaints across the country.
5. I currently pay Meadfleet £140:00 per year and get no direct benefit. My home does not overlook, back or front, the communal green areas.
6. What is very peculiar is that the residents pay Meadfleet which owns the land, to maintain their own property!

## **C CHAMONIX (Managing Agent)**

1. Appointed by British Timken Management Company (who was in turn appointed by David Wilson) to maintain apartments and what are described as courtyards.
2. Services poor. Disagreements with residents over their record of attendance on site.
3. Costs are out of control. They unilaterally make decisions on incurring costs and simply present residents with the invoices under threat.
4. Information on invoices is meaningless to residents, in the way it is written
5. Costs have escalated by over 30% in less than two years.
6. I currently pay Chamonix £270 a year for maintaining a small grass area which none of my neighbours require. It's value is simply a car parking

area. The green area is a source of continuous contention between residents and Chamonix.

7. I also have ten immediate neighbours who pay the £270.

### **Conclusion.**

I, along with everyone on the site pay Council Tax which includes an element for grass cutting (unspecified). On top of that I also pay a total of £410 (Chamonix and Meadfleet) for what are termed managing agents for a simple grass cutting service. When the resident charges are aggregated across the whole site it amounts to a huge sum for a relatively small area.

For anything to work on the development it requires one body to take control and responsibility. If that does not happen it is difficult to see how the Borough Council will deliver its laudatory aim to help existing residents. Furthermore residents will continue to remain without any means of having their issues seriously addressed.

**A DUSTON RESIDENT COMMENTS – 3**

One resident on Timken, very kindly (and efficiently) submitted the following account of Rent Charges. This resident has to pay to two Managing Agents: Meadfleet for landscaping and green space maintenance and Chamonix for hard surface maintenance, including Security Gates that have not worked, nor are scheduled for repair.

**Meadfleet Charges.**

MC paid via solicitors £150 security deposit on signing contract.

28/3/2014 to 31/7/2014	£41.30
1/8/2014 to 31/1/2015	£60.55
1/2/2015 to 31/7/2015	£68.90
1/8/2015. to 31/1/2016	£63.56
1/2/2016. to 31/7/2016	£66.81
1/8/2016. to 31/1/2017	£63.65
1/2/2017 to 31/7/2017	£69.77
1/8/2017. to 31/1/2018	£67.69
1/2/2018. to 31/7/2018	£77.02
1/8/2018. to 31/1/2019	£63.61

**Chamonix Charges.**

On signing my contract in March 2014 my solicitors paid an advance management fee of £95.37

There were no payments made to Chamonix in 2015, 2016 or first part of 2017 as they did not take over responsibility for Courtyards 2 and 3 until July 2017.

First Invoice  
30/9/2017

Period covered 17/7/2017 -

No payment requested as the amount due for the period was deducted from the advance management fee paid. This left a credit of £53.04.

Second Invoice  
31/3/2018. Period covered 1/10/2017 -

Amount requested £105.40 less £53.04 in credit. Paid £52.36

Third Invoice  
30/9/2017. Period covered 1/10/2016 -

Chamonix invoiced residents in Courtyards 2 and 3 for a period for which they were **not responsible** nor did they provide any services. They called the charge a "deficit in the accounts".

Amount requested was £196.57. Paid 105.40.

Refused to pay the £91.17 difference as no justification or evidence produced.

Fourth Invoice  
30/9/2018 Period covered 1/4/2018 -

Amount requested £105.40. Paid 105.40.

Fifth Invoice  
31/3/2019 Period covered 1/10/2018 -

Amount requested £226.17. Paid £135.00.  
Difference is the deficit charge.

Sixth Invoice  
30/9/2019 Period covered 1/4/2019 -

Amount requested £259.83. Paid £135.00.  
Difference is the deficit charge  
& £56.83 for the infamous gates.

### 3. FROM LOCAL TO NATIONAL AND BACK

1. Management Companies were set up in the early 2000s, at a time of relative austerity in Britain, when Central Government reduced financial support for local Government and restricted Local Authorities from raising the precept.
2. Scholar's Grange and the Timken sites were set up under the Government-promoted and now-defunct West Northants Development Corporation.
- 3 Northampton Borough Council passed the following resolution in September 2018:

*This Council recognises the concerns of residents and Parish Councils in areas where management companies are responsible for open space and other amenities. Council resolves to support residents and Parish Councils in resolving their concerns.*

*This Council also resolves to make clear that it, too, has significant concerns regarding the establishment of management companies to manage open space and other facilities on new housing developments in the Borough of Northampton, rather than them being formally adopted.*

*While resisting management companies, this council will encourage developers to consider all the alternatives available for managing the facilities on new developments in the Borough and Northampton growth area, including seeking for developments to be adopted with sufficient resources to ensure that the maintenance of these pieces of land is fully funded.*

- 4 The Rt Hon Helen Goodman, MP for Bishop Auckland sponsored a 10 Minute Rule Bill in (14<sup>th</sup>) November 2018 in the House of Commons to make " provision for the regulation of fees charged by management companies to freeholders of residential properties; to make provision for self-management of shared facilities by such freeholders; to require management companies to ensure shared facilities are of an adequate standard; and for connected purposes." Brexit has taken much of

Parliamentary time and so this Bill has stalled and is still waiting to be allotted time for its passage through the Houses.

5 Association of Residential Managing Agents Ltrd (ARMA) published an Advice Note on Freehold Houses on Private Estates in 2014. This early document gave good basic information for its time.

6 The Law Society in March 2019 launched a Freehold Enquiry Document (FME1) which it commends to solicitors to obtain the information often not declared to home owners. It is not compulsory and it comes quite late in the Purchase Journey – at the time when Searches are generally made, immediately prior to purchase.

7 i The Competition and Markets Authority (CMA), chaired by Lord Andrew Tyrie was, in the Summer of 2019, investigating the possible mis-selling of houses on new estates where Management Companies had been set up. Owners of such properties were invited to send in their submissions.

7 ii The Social Media group, Home Owners Rights Network – known as HorNET – publicised the Inquiry and produced a “model” email to send in to demand Government to:

(a) condemn Developers’ mis-selling of genuine Freehold homes that are essentially leasehold houses on estates, and to condemn all misrepresentations made in Developers’ marketing materials and during interaction conducted by Sales Office staff at the point of sale

(b) require or recommend that Developers, as well as Estate Agents and any other parties connected with the advertising or sale of properties, be penalised heavily when such misrepresentation is shown to have occurred.

(c) enact legislation to ensure that the first action which Developer’s Sales Staff are legally obliged to hand to

prospective customers when they express their first interest in purchasing a property.

(d) to require that TP1s

- be written in plain English (rather than legalese);
- be officially approved by a central authority charged with ensuring that all TP1s are complete, transparent, and easily comprehensible before they can be used;
- must include a list of all of the items and Liabilities which are to be paid for by way of any annual service-charge; and must contain substantial sections setting out whatever legal obligations and ramifications exist under the Rentcharge Act and/or other legislation pertinent to the covenants of the TP1.

(e) make it illegal for Developers to make any recommendation whatsoever concerning firms of solicitors to prospective buyers to use when purchasing Developers' properties.

8 There was hopeful news posted via YouTube (23<sup>rd</sup> July) when James Brokenshire, responding to Helen Goodman, said that he would be willing to see "that inappropriate or unfair practices are properly investigated and properly responded to. And so, if she would be willing to share with me the details of the complaints that she has received from her constituents, I would be very happy to look into this further for her"

9 The new Housing and Local Government Secretary, MP for Newark, Robert Jenrick, had been reported in the Newark Advertiser on 13<sup>th</sup> July to have promised "to make progress in a campaign for housing law reform" after meeting constituents in Fernwood Parish Council.

10 Over the last 18 months one of our Councillors has been working with two sets of residents who have been caught up in the Management Company situation and this has led to Duston Parish Council agreeing to

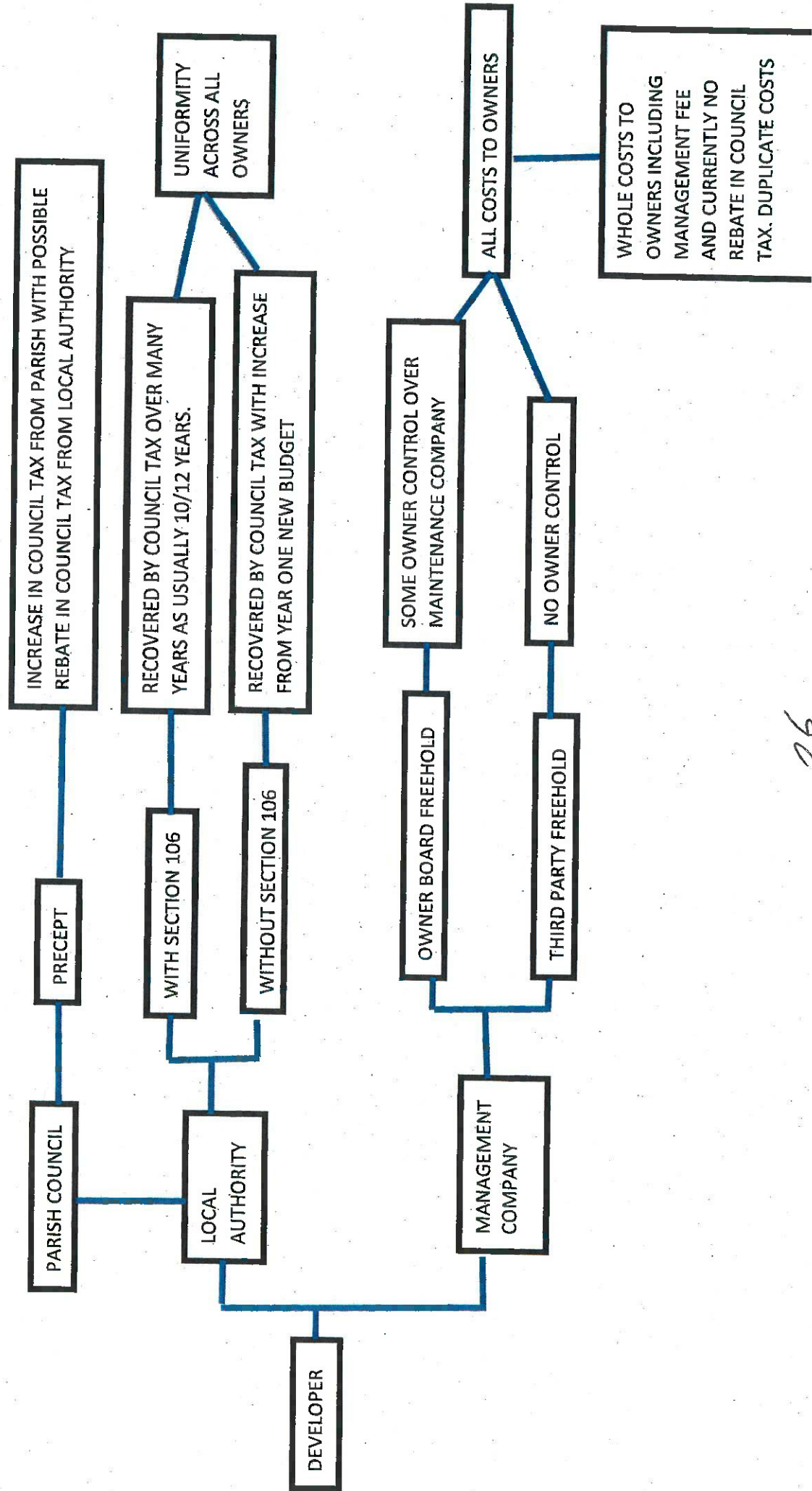


set up a Working Party to investigate possible ways of improving the situation.

and to a growing ability to investigate possible ways of improving the  
position

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### SNAPSHOT OF CURRENT OPTIONS FOR DEVELOPERS.





**EXTRACTS FROM “ADVICE NOTE. FREEHOLD HOUSES ON PRIVATE ESTATES”** produced by the Association of Residential Managing Agents Ltd (ARMA)

When freeholders buy their house the Deed of Transfer will contain a clause requiring them to pay towards the cost of maintaining the communal areas. A well written deed will also set out exactly what items the freeholder must pay for; what proportion of the total costs they should pay; the dates the payments should be made on; and whether annual statements of account will be provided.

A Residents' Management Company is set up to take ownership of the communal areas after the Developers have left the site. Each freeholder becomes a member of that company and has the right to have a say on how the communal areas are kept by becoming company directors of the Residents' Management Company.

It is now common for the Residents' Management Company to employ a Managing Agent to carry out the maintenance and other services. The Managing Agent's contract is with the Residents' Management Company and is therefore accountable to the company's directors; it has no legal contract with the individual freeholders. The Agent will normally prepare a budget to be approved by the directors; send out invoices; organise contracts (gardening for example); deal with repairs; and prepare accounts for the directors at the end of each financial year

Service, Estate and Maintenance Charges are all the same thing. Confusingly, lawyers and managing agents use different names for the charges paid by freeholders. The most common term is “service charge”; the same as payments made by leaseholders of flats. Although freeholders may be paying for exactly the same services as leaseholders, there's an important legal distinction between the two payments. The Government has passed a number of Acts of Parliament giving rights and protection to leasehold flat owners, which unfortunately don't apply to freeholders.

Resident-owners should complain to the managing agent in the first instance, if one's been appointed. If the agent is a member of ARMA then owners have a right to complain to an independent ombudsman — all ARMA members must be signed up to an independent ombudsman

scheme Since the managing agent reports to, and takes instructions from, the directors of the management company, they may not be at fault if the agent is following lawful instructions.

If you're unhappy with what a Management Company is doing, then you should make a complaint to the directors in the first instance. If you're still not happy, you should seek to remove the directors or raise a motion to change matters at the company's annual general meeting, if you're a member. If you're unhappy with a management company that's not made up of the residents, then you and your neighbours can collectively approach the company and ask them to sell you the freehold of the communal areas. This will allow you to take over responsibility, but there's no right in law for freeholders to do this; it's a matter of negotiation between both parties.

# FREEHOLD MANAGEMENT ENQUIRIES

FME1

<b>Property:</b>		[Post Code:
<b>Seller:</b>		

These enquiries are asked on behalf of buyers. The Seller should only respond to these enquiries if they are the Rentcharge Owner, Management Company or the Managing Agent or are the appointed representative for any of them. It is assumed the legal representatives of the parties have read the relevant Transfer.

TERM	DEFINITION
<b>Service Charge</b>	The amount payable either as the result of the operation of enfranchisement through the Leasehold Reform Act 1967 or the Leasehold Reform Housing and Urban Development Act 1993 or by the terms of the Transfer and as is permitted under the Rentcharges Act 1977 which can be summarised as being either (a) a nominal fixed amount required to make the covenants by the Transferee (and their successors in title) in the Transfer enforceable by the Rentcharge Owner or (b) the amount payable by an Owner as a contribution to the costs of services, repairs, maintenance, insurance, improvements or costs of management etc. as set out in the Transfer. This is sometimes known as a variable rentcharge or service charge.
<b>Estimated Service charge</b>	The amount calculated by the Management Company or Rentcharge Owner under the terms of the Transfer as representing a payment on account of the Service charge for the current financial year where the actual Service charge will not be known until publication of the relevant year end Service charge or rentcharge accounts.
<b>Leasehold Owners</b>	The owners of long residential or commercial leases with rights to use the Managed Areas.
<b>Managed Area</b>	The communal areas or facilities managed by or on behalf of the Rentcharge Owner and/or Management Company under the terms of the Transfer. Managed Areas are sometimes also called common parts.
<b>Management Company</b>	A management company referred to in the Transfer, a Right to Manage Company or Residents Management Company, authorised to provide services and administer the terms of the Transfer either directly or through Managing Agents.
<b>Managing Agent</b>	A person or organisation which acts on behalf of the Management Company or Rentcharge Owner [within their terms of reference, subject to any legal restrictions].
<b>Property</b>	The property known by the above address, including any land and outbuildings owned by the Seller.
<b>Owners</b>	The owners of properties entitled to use the Managed Area.
<b>Rentcharge Owner</b>	The person to whom the Service charge is payable under the terms of the Transfer and who may be required to provide services and administer the terms of the Transfer either directly or through a Managing Agent.

**Reserve Fund**

A fund collected from the Owners which allows the build-up of monies to pay for repairs and the replacement of major items (such as electric entrance gates) or to equalise cyclical expenditure (such as external decoration), avoiding excessive peaks in the Service charge. Reference to Reserve Fund includes any sinking fund or replacement fund.

**Transfer**

The deed under which the covenants and restrictions were created for the management and operation of Managed Areas and any Management Company required by the Transfer, in the case of subsequent ownership, the Deed of Covenant binding the Owner as if they were party to the Transfer.



Please complete the information requested. It is important that the incoming Owner is fully aware of their obligations so the information given must be as accurate as possible. If there is insufficient space, continue on a separate sheet.

SECTION 1: CONTACT DETAILS		<i>Complete the details for the relevant parties or cross through if not applicable. If there are more parties involved, provide details on a separate sheet. If applicable, state the redress scheme to which you belong.</i>	
1.1 Rentcharge Owner		1.2	Management Company
Name Address  Telephone Email Redress Scheme		Name Address  Telephone Email Redress Scheme	
1.3 Managing Agent		1.4	Legal Representative of one of the above
Name Address  Telephone Email Redress Scheme		Name Address  Telephone Email Appointed by: <input type="checkbox"/> Management Company <input type="checkbox"/> Rentcharge <input type="checkbox"/> Other Owner	

1.5 Who accepts service of the Notice of Transfer & Charge?

*Tick the box beside each party and state the total fee including VAT for notice of transfer and charge.*

<input type="checkbox"/> Rentcharge Owner	£ _____
<input type="checkbox"/> Management Company	£ _____
<input type="checkbox"/> Managing Agent	£ _____
<input type="checkbox"/> Legal Representative	£ _____
<input type="checkbox"/> Other	£ _____

If other, provide contact details for service:

Name	<input type="text"/>
Address	<input type="text"/>
Telephone	<input type="text"/>
Email	<input type="text"/>
Capacity (e.g. Management Company's lawyer)	<input type="text"/>

- 1.6 Who collects the Service charge?  
 Rentcharge Owner     Management Company     Managing Agent     N/A
- 1.7 Who deals with the day to day maintenance of the Managed Area?  
 Rentcharge Owner     Management Company     Managing Agent     N/A
- 1.8 Who organises and administers the insurance for the Managed Areas?  
 Rentcharge Owner     Management Company     Managing Agent     N/A

## SECTION 2: TRANSFER & REGISTRATION

- 2.1 Is a Deed of Covenant required?     Yes     No     Not Known

2.1.1 If Yes, confirm the costs applicable to the Deed including VAT    £ \_\_\_\_\_

- 2.2 Are you aware of consent having been given to any alterations or additions to the Property?     Yes     No     N/A

2.2.1 If Yes, provide details and copies of any consent:

- 2.3 Is the incoming Owner required to take a share in, or become a member of, the Management Company?     Yes     No

2.3.1 If Yes, provide details of the procedure and fees:

- 2.4 What is the procedure and cost for obtaining a certificate in accordance with a restriction in the Proprietorship Register at the Land Registry, if applicable?

## SECTION 3: SERVICE CHARGE

- 3.1 What is the annual Service charge payable by this Property? *NB This should include payments which you describe as service charges or similar.*    £ \_\_\_\_\_

*If there is also a 'fixed' Rentcharge, please confirm the amount and explain why.*

- 3.2 Is the Service charge paid up-to-date?     Yes     No

3.2.1 If No, supply details of the arrears:

3.3 What period is covered by the last demand?

From: \_\_\_ / \_\_\_ / \_\_\_ To: \_\_\_ / \_\_\_ / \_\_\_

3.4 How many properties contribute toward the maintenance of the Managed Area?  
(Stipulate the number of each applicable type of property)

Residential Freehold:
Residential Leasehold:
Commercial:

3.5 Is any excess payment anticipated from the Property at the end of the financial year?

Yes  No

3.5.1 If Yes, provide details:

3.6 In the last 12 months, has any inability to collect payments, from any party, affected (or is it likely to affect), the maintenance of the Managed Area?

Yes  No

3.6.1 If Yes, provide details:

3.7 Does a Reserve Fund apply to the Managed Area?

Yes  No (If No skip to 3.8)

3.7.1 If Yes, confirm the amount collected held in the Reserve Fund

(a) from Owners of the Property

£ \_\_\_\_\_

(b) for the entirety of the Managed Areas

£ \_\_\_\_\_

3.7.2 Is the amount expected to be sufficient to cover the known expenditure?

Yes  No

3.7.3 If No, supply details:

3.8 If parts of the Managed Areas require regular decoration confirm the date when the Managed Areas were last decorated, internally and externally.

Internally \_\_\_ / \_\_\_ / \_\_\_ or  N/A

Externally \_\_\_ / \_\_\_ / \_\_\_ or  N/A

3.9 Within the next 2 years, are any works proposed to the Managed Areas anticipated to require an additional contribution greater than £250 from the Owner?

- completed but unpaid
- due
- anticipated
- N/A (Skip to 3.10)

3.9.1 If so, provide details of the works and the contribution anticipated from the Owner:

3.10 Is any increase in the Service charge over 10% or £100, whichever is the greater, anticipated in the next 2 years?

Yes  No

3.10.1 If Yes, provide details:

3.11 Where you operate Service charge consultation, are there any outstanding Service charge consultation procedures?

Yes  No  N/A (Skip to 3.12)

3.11.1 If Yes, provide details:

3.12 Are the Managed Areas known to be affected by Japanese knotweed or other invasive species?

Yes  No

3.12.1 If Yes, provide details and a copy of any invasive species management plan in place.

3.13 Are there any transfer fees, deferred charges or similar fees, expressed as a percentage of the Property's value payable on an event such as resale or subletting?

Yes  No

3.13.1 If Yes, provide details:

**SECTION 4: INSURANCE**

4.1 Are the Managed Areas insured?

Yes  No (Skip to 5)

4.1.1 If Yes, are the insurance premium contributions payable by the Owner paid up to date for the Managed Areas?

Yes  No

4.1.1.1 If No, provide details of the arrears:

4.2 What period is covered by the last demand?

From: \_\_\_/\_\_\_/\_\_\_ To: \_\_\_/\_\_\_/\_\_\_

4.3 Have any claims been made against the policy during the last 3 years?

Yes  No

4.3.1 If Yes, provide details:

4.4 Are any claims anticipated?

Yes  No  Not Known

4.4.1 If Yes, provide details:

4.5 Is the insurance premium included in the Service charge?

Yes  No

4.6 If No, confirm the annual amount payable for the Property:

£ \_\_\_\_\_

## SECTION 5: DISPUTES

- 5.1 Are there any documented unresolved disputes with the Owners of any of the properties using the Managed Area?  Yes  No

- 5.1.1 If Yes, to the extent permitted by the Data Protection Regulations, please supply details:

- 5.2 Are you aware of any breach of the terms of the Transfer of this Property?  Yes  No

- 5.2.1 If Yes, provide details:

## SECTION 6: REQUIRED DOCUMENTS

*Please provide the following applicable documents:-*

- |      |  |  |                                    |                              |
|------|--|--|------------------------------------|------------------------------|
| 6.1  | The last 3 years published Service charge Accounts:  | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.2  | Managed Areas insurance policy and schedule:   | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.3  | Estimated Service charge for the current year and details of the anticipated payments on account for the Property:         | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.4  | Estimated Service charge for the previous year for which accounts have not yet been prepared for the Property:             | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.5  | Copies of any notices served on the Owners in respect of any proposed works or any works which have not yet been paid for: | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.6  | Any additional regulations or rules affecting the Property which are not contained in the Transfer:                        | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.7  | Any required Deed of Covenant:   | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
|      |  | <input type="checkbox"/> Buyer's lawyer to draft |                                    |                              |
| 6.8  | Any Certificate of Compliance required by a Restriction on the registered title:   | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
|      |  | <input type="checkbox"/> Buyer's lawyer to draft |                                    |                              |
| 6.9  | Copy of any permission to alter the Property which has been issued:  | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.10 | Copy of any known notices served on the Owner and documentation arising from them:   | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.11 | Asbestos Survey for buildings forming part of the Managed Area built or converted before 2001:                             | <input type="checkbox"/> Enclosed                | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |

- |      |  |                                   |                                    |                              |
|------|--|-----------------------------------|------------------------------------|------------------------------|
| 6.12 | Fire Risk Assessment for communal areas in buildings forming part of the Managed Area: | <input type="checkbox"/> Enclosed | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.13 | Memorandum and Articles of Association of the Management Company:                      | <input type="checkbox"/> Enclosed | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.14 | Minutes of the last AGM for the Management Company:                                    | <input type="checkbox"/> Enclosed | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |
| 6.15 | Menu of fees for your administrative services  | <input type="checkbox"/> Enclosed | <input type="checkbox"/> To follow | <input type="checkbox"/> N/A |

Signed .....	Dated .....
Print Name: .....	<i>Please tick as applicable below, to confirm the capacity in which the answers are given.</i>
Company: .....	<input type="checkbox"/> Rentcharge Owner <input type="checkbox"/> Management Company <input type="checkbox"/> Managing Agent <input type="checkbox"/> Residents' Association

**Note**

Additional enquiries. Raise only those specific additional enquiries required to clarify issues arising out of the documents submitted or which are relevant to Property or the management of the Managed Areas or which the buyer has expressly requested. Resist raising any general additional enquiries that can be established by the buyer's own enquiries, survey or personal inspection.

**Disclaimer**

Whilst care has been taken in the preparation of this form, no legal liability is accepted by the organisations which created the form. This disclaimer does not affect the legal responsibilities of the person, or organisation, completing this form to answer to the best of their knowledge and ability. If you have any queries you should discuss these with your conveyancer or solicitor.



## 4. THE WIDER PICTURE

1 In the past, negotiations between Developers and the Planning Authority, resulted in so-called Section 106 (or S106) Agreements whereby the Developers would pay agreed sums of money to pay for infrastructure needs made necessary by the housing estate – such as roads, schools etc. Planning permission was only granted once this Agreement had been reached. Unless there has been an S106 Agreement for the Developers to hand over open spaces on the estate to any tier of Local Authority, there is no legal way or retrospectively enforcing this.

2 Also, under the same Section 106, Developers were required to provide cash along with the land they handed over to the Local Authority. For a variety of reasons, this has become unpopular with Developers who have found a more lucrative system of passing over responsibility for the maintenance of External Common Areas (ECAs) (ie green spaces). It has become common practice to set up a Management Company to oversee the maintenance of the ECAs on the finished estate and sign over ownership of all the common parts to this Management Company sometime after the last house has been sold. In this way, it does not cost the Developers to hand over the communal land; indeed it can now make a profit from doing so!

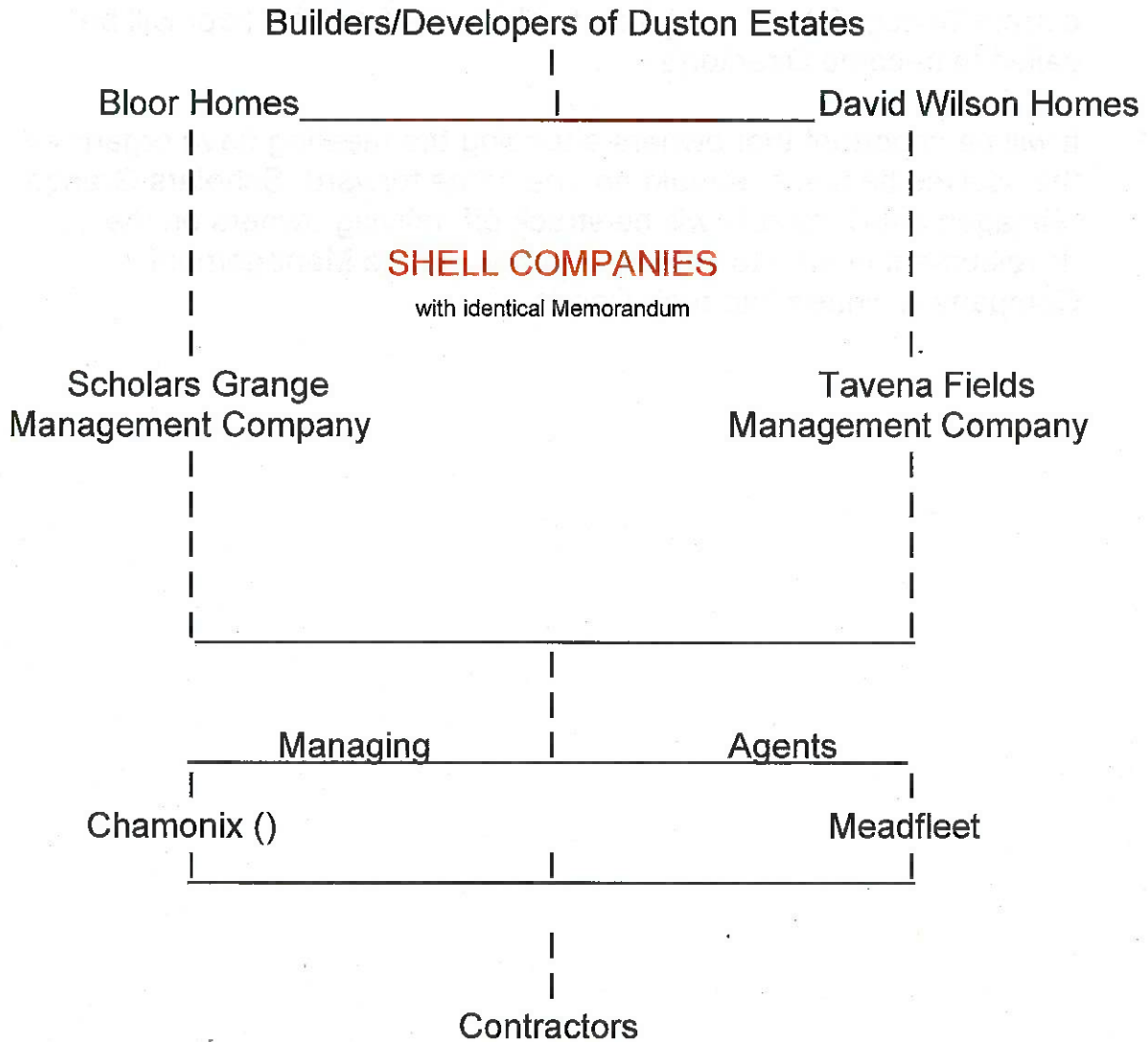
3 Despite Northampton Borough Council's commitment to encouraging developers not to set up Management Companies, if it refuses Planning Permission to a developer because said developer intends setting up a Management Company, the developers can Appeal and would probably win their case, with the costs of the hearing being awarded against Northampton Borough Council.

4 The usual procedure is for the Developers to appoint a Management Company that will ultimately own the open spaces and other facilities. This Management Company may then appoint a second company (Managing Agent) to provide the services needed to maintain the open space and other facilities. The Managing Agent does not actually do the work itself, but engages contractors.

4.1 In Duston, the Management Companies for both sites are Shell Companies: they have no staff, nor premises and do not have an identity distinct from the Managing Agents.

- 4.2 The Tavena Fields (British Timken) Management Company and the Scholars Grange Management Company have identical "Memorandum and Articles of Association" which governs how the Company must operate, when the Developer signs over the land to the relevant Management Company. The Memorandum requires at least two of the resident owners to come forward as Directors when the development is completed because the director(s) of the Management Company will step. It is at this point, that owners have the opportunity to take control of their Estate.
- 5 Just over the border, in the next Parish, the Land Trust manages the open spaces and has opened a good dialogue with both the Residents Association and individual owners, although there is no legal obligation for them to do so.
- 5.1 On the Marina Park site, Greenbelt manages the open spaces; under an agreement with the Developer, once site is complete the land will be transferred freehold to them with no agreement or requirement in place to liaise with owners. This leaves charges to escalate as the management company sees fit.
- 5.2 There are two other areas of Upton where grounds maintenance has been passed directly to a third party with no Local Authority or Owner involvement. These sites incur increased costs as required with very little challenge possible.
- 8 Bloor & David Wilson Homes operate as separate Companies, but are, in fact linked, one being the subsidiary of the other, so it is not surprising to see that the Memorandum for each separate Management Company in Duston is identical. It has been rumoured that David Wilson Homes has a "substantial interest" in both Management Companies, but time has prevented confirming research from being done. It must also be noted, that both Meadfleet and Chamonix are managing agents for (parts of) the Timken Estate.






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A Shell Company is one without active business operations or significant assets.....they are sometimes used to disguise business ownership from ....the public ([Investopedia.com](http://Investopedia.com))

- 9 We have been told that once the land has been transferred to the Shell Management Company, the residents become eligible to serve as Directors of the Company and the present Director(s) will stand down.

- 10 According to the Chamonix Account Holder for Scholars Grange, (7/8/19), Chamonix will call an extraordinary meeting at which the current Director(s) will resign and volunteers from the floor will be called to become Director(s).
  - 11 It will be important that owners attending the meeting have organised themselves because, should no-one come forward, Scholars Grange Management Company will be struck off, leaving owners on the development unable to sell their homes, as the Management Company is written into their Deeds.
-



## **5 WHAT SUCCESS LOOKS LIKE**

1 Amidst all the doom and gloom around Management Companies on new Housing Estates, small beacons of success shine brightly. In this section, there are two such examples.

a Cranbrook Town Council, a small and fairly new Parish Council in East Devon, took a courageous step to release its residents from the ERC. We are indebted to Councillor Ray Bloxham who provided us with the information that follows.

b The second example comes from Duston's neighbouring Parish and is written by a member of this Working Party. It shows how residents worked together to use the opportunities from the Memorandum and Articles of Association of the Management Company to take control of it.

2 One observation that can be made is that in both examples, the prime movers were largely experienced and able people with a working knowledge of how organisations work and undaunted by legalese. Not every home owner has this kind of background.

3 In the Appendix to this Section there is a sheet prepared by a resident who first brought the issue of ERCs to our notice almost two years ago. It lists what he considers to be essential skills and knowledge that are pre-requisite to being successful as a Director of the Management Company. The list is not exhaustive!

4 The major requirement for being able to get actively involved in the Management Company is undoubtedly TIME. It took Cranbrook Town Council about two years to achieve total adoption of the Estate. It has taken that length of time in Duston just to get as far as this Working Party.

## **CRANBROOK TOWN COUNCIL**

How Cranbrook Town Council was able to release its residents from the Estate Rent Charges.

1 Cranbrook Town Council did not take over the Estate Rent Charge but adopted the open space etc. – a subtle difference. If the Council took over the Estate Rent Charge it effectively continues and the Council would need to administer it. However, by adopting the open space, there is no longer a need for an Estate Rent Charge because, by doing this, the Council is meeting the related costs through precept with the administrative process of collection falling within the existing arrangements locally for the collection of council tax – in this case, the District Council in East Devon.

2 By paying for open space maintenance through precept, Cranbrook Town Council saved around £90,000 per year in administration costs that were previously met through the Estate Rent Charge. The Council was able to get the work done more cheaply than the Managing Agent. Because the existing contractor was assured the council would pay regularly, he was able to do the work for less cash risk to his business. The savings compared with the Estate Rent Charge were significant.

3 The result of the change is that all households paying council tax share the costs which previously were met through a smaller number of households paying the Estate Rent Charge. This has an impact, but any open space is usable by all residents and the council tax system is that everyone contributes whether they use or not.

4 Estate Rent Charge is usually flat rate - same charge per household - whereas precept is banded so there is an impact there too - winners and losers. In Cranbrook most were winners and only the very top band paid a small increase overall.

5 The Council went through the process of comparing costs before and after the proposed change, for all council tax bands. It was able to show what the impact would be for individual households. It then went on to

produce a five year business plan to demonstrate that although the precept went up initially it would stabilise in the future.

6 Of course, whilst the precept increased, the payments of Estate Rent Charge ceased. Estate Rent Charge has to be paid by everyone on the development concerned. If there are households who are able to claim council tax discounts these would apply to the new arrangements. There were some low income families that had to pay the Estate Rent Charge (with some consequent debt issues) but they benefitted from the change to precept because they could claim discounts or exemption that they were entitled to.

7 Councillors held a series of surgeries so that to talk through the issues one-to-one with residents. There was also a social media publicity campaign.

8 Obviously there was a need to get agreement with the Management Company and engage with their Managing Agents as well as the community. In Cranbrook it led to a legal agreement to adopt the open space and any future open space delivered. (There was provision in the S106 agreement for the council to adopt the land which is not necessarily the case in Northampton) In exchange the Management Company agreed to cease making Estate Rent Charge charges from a certain date and within a period thereafter to make arrangements to release households from the Estate Rent Charge deed obligations.

9 This meant registering individual release deeds at the Land Registry because the Estate Rent Charge is registered on everyone's Deeds as a legal obligation. In essence at the time of purchase, each household signs a deed which obligates them to pay the ERC and obligates the Management Company to maintain the open space. This obligation needs to be removed once the land is adopted to ensure that in future the Estate Rent Charge cannot be reinstated.

10 Because we knew there was further open space to come the agreement included a provision that the developers had to give the council notice of delivery, notice of completion, then maintain it for 12 months (sort of a guarantee period) and this allowed the council to have sufficient time to precept for any future obligations. In essence, for example, The Council had to know by autumn 2019 about any open space that might need to be

adopted between April 2020 and March 2021 otherwise it would not have the precept to pay for it. The developers understood this and agreed a process to notify the Council accordingly.

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The Town council did not exist when the S106 was written (2010) and the ERC commenced (2012) - the council was formed in 2015 although the s106 recognised that it might be formed in the future.

## **ON BECOMING A DIRECTOR OF THE MANAGEMENT COMPANY.**

This list is not exhaustive but shows some of the skills, knowledge and experience required to become a Director.

### **Preparation:**

- 1 An understanding of the “Memorandum and Association of the Management Company” (Memorandum) under which the Company has been set up.
- 2 A clear idea of what is being transferred to the Company, assets, debts, bank balances etc. These all need to be clearly defined.
- 3 How many Directors are required? The Memorandum says 2 is the minimum, but does not give an upper limit. The Memorandum also provides for
  - (a) Subscribers (no definition is given of what is a Subscriber)\*\*;
  - (b) Alternate Directors (38)
  - (c) First Directors (37)
- 4 How are the Directors chosen? Votes of other residents? Appointed by the exiting Director? Other means?

### **Managing the Company**

New Directors will need to make far-reaching decisions and manage multiple responsibilities:

- 1 Business premises – where, how big, what facilities etc
- 2 Tendering process for engaging contractors



- 3 Scheduling: writing down ALL that the contactors must do, how they will be assessed, what penalties will be incurred and for what (in)actions.
- 4 Appointing Accountant, Auditor, Insurer, etc.
- 5 Will a member of staff be needed to run the Company – part time/full time, qualifications required, job description, person specification, office budget etc
- 6 In addition to the above, residents wanting to influence the company by becoming a Director, will have to be able to understand the Memorandum & Articles of the Company. Having understood these clauses, they will then need an understanding of how to use them to obtain the best outcomes. What Reading Age and Comprehension Age is needed for this? What experience and skills will they need to do a good job?
- 7 Below is a Sketch Chart to show the present set-up on the two housing developments in Duston:

## **UPTON EXPERIENCES by Councillor A Bottwood**

### **1 Nene Riverside Management Company (NRMC)**

a After purchasing a property in 2004 on Southbridge, the Developer pointed out that a Management Company had been set up to look after all the communal areas and outside spaces (ECPs) including the rubbish collection. The cost was around £ 90.00 per month but could rise as costs increased.

b Some directors of the Developer were also Board Directors of the Management Company along with a member of RMG Ltd who performed the role of Managing Agent to handle all the issues of the site from Credit Management to Litter on behalf of the NRMC.

c When site was completed around 2009 all owners were advised that the Developer wanted to remove their Directors from the Board of NRMC and therefore needed owner-residents to step forward to take on the roles. Approximately six owners offered and were registered as Board Directors following the AGM. We then took on the role of being the voice of the residents and did all liaising with RMG Ltd.

d I was elected Chair and remained so until I sold the property in 2016. Throughout that period RMG Ltd had created & maintained a large reserve of funds so that the cost had only increased to around £98.00 per month.

e Before the formal meeting with RGM Ltd, the Owner-Directors would meet to go through any issues that had arisen such as maintenance, litter collections and some minor works to properties over and above the planned maintenance. We also had sight of tenders for contractors with a recommendation of whom RMG Ltd had selected as first choice and why.

f This system worked very well in this instance and I know of other sites that had been based on this model

## **2 St Crispin Folly Management Company**

- a This Management Company was formed by the Developer with RMG Ltd as Managing Agents. Many residents were not happy with this arrangement and organised the owners to take over the Management Company.
- b The new owner-Directors ended the contract with the Managing Agent and took on full control of all management interests including Debt Collection and grounds maintenance.

It is very well in this instance and I know of other cases that had been based on this model

at Chapin Tolly Management Company

This Management Company was formed by the Developer with RMG and as Managing Agents. Many residents were not happy with the management and organised the owners to take over the Management Company

The new owners decided to get the help of the Managing Agent to help them in the process of taking over the Management Company

## **5. RECOMMENDATIONS**

1. Ensure that Duston Parish Council continues to be proactive in asking to adopt the public open space on all new developments in the Parish, during the planning process.
2. Duston Parish Council write to Andrew Lewer, Northampton South's MP asking him to raise these issues with the Secretary of State for Housing, Communities and Local Government and actively pursue ways of bringing about a change in the Law to prevent further housing estates from being subjected to undemocratic housing management companies
3. Duston Parish Council to write to Northants County Council, asking them to adopt all roads and pedestrian footpaths on Timken estate including the smaller side roads.
4. Ask the Borough and County Council representatives for Duston to actively promote this Working Party Report and its recommendations.
5. Duston Parish Council to actively support residents who seek help to
  - (a) become Directors of the Management Company as allowed for in the relevant Company Articles.
  - (b) discharge their duties as Directors in a proper manner (ie offer help in understanding their duties, roles and responsibilities)

The exact way of supporting residents to be discussed in Council and with residents.

6. Duston Parish Council to explore the feasibility of becoming the Agent to deliver the services
7. Ask DPC Clerk to write to the Borough and County Councils to find out if it is possible to give a Council Tax rebate to residents who are paying for a Management Company to provide the services the Borough and County Councils ordinarily provide to other Council Tax payers. The precedent for this is in that the Water Companies give a small rebate to those water users who have septic tanks or SUDS and therefore don't use part of the services.

8. Ask the Planning Authority to include in its initial Agreement with Developers the following clauses, (NB Paragraph numbers in the body of this text refer to the original Planning Agreement from which these have been copied)

*The Owners shall maintain the Open Space in accordance with the Open Space Specification to the satisfaction of **this Council's** for a period of twelve months from the date on which **this Council** certifies that the Open Space has been completed to **this Council's** satisfaction and during that period the Owners shall replace any grass plants shrubs trees (or any structures associated with them) which fail or die (8.6)*

*If the Owners do not maintain the Open Space to **this Council's** satisfaction as required by paragraph (8.4) of this Schedule this Council may, after giving the Owners twenty eight (28) days' written notice of the works it intends to carry out and the Owners failing to carry out the works within that period, enter upon the Land and itself carry out those works and the cost of these works shall be paid by the Owners to **this Council***

*On the expiration of the 12 month maintenance period referred to in paragraph 8.6 of this Schedule and in the event that **this Council** confirms in writing that it wishes to take on responsibility for maintenance of any of the Open Space then the Owners may transfer the said Open Space (or such a part of it as **this Council** has agreed to maintain) to **this Council** provided always that the provisions of paragraphs 8.3 and 8.5 have been complied with prior to such transfer and provided always that if such Transfer occurs prior to the laying out of the Open Space in accordance with paragraph 8.3 the Owners hereby covenant with **this Council** that they shall lay out and maintain the Open Space in accordance with paragraphs 8.3 and 8.4 notwithstanding that the Open Space land is to be or will have already been transferred to **this Council***

9. The Planning Authority to set up and maintain an efficient monitoring process to ensure that the compliance and/or transition is complied with. An Officer should be identified to carry this out.

10. Ask Government to prepare a Fact Sheet that the Developer's Sales Staff will be REQUIRED to give to all potential buyers at the moment of first contact, as has been done for Pensions advice.

