

About the Land Trust

The Land Trust is a national land management charity, specialising in sustainable stewardship solutions, and who own and manage land in perpetuity for community benefit.

Initially piloted in 2004 by English Partnerships as a solution for long term sustainable land management and ownership, the Land Trust's portfolio now comprises of over 80 sites (measuring over 2,800ha) across the country, which we use to deliver social value, including improving health and wellbeing, providing an educational resource and uplifting the local economy, and improving and enhancing the natural environment.

We currently have ■ service charge sites under our management, which when fully built out will total over ■ residential homes (with over ■ units in our immediate pipeline in total), which we operate with these same principles.

Do you agree with the CMA's reasons for suspecting that there may be features of the land and housebuilding markets leading to competition issues in the supply of houses and estate management services?

- 1.1 There are absolutely issues in the private estate management industry which need to be addressed – residents should be able to challenge a service provider should they receive a sub-standard service and have a range of options available to them to seek redress. Additionally, the lack of transparency from some housebuilders and solicitors at the point of sale is causing confusion amongst residents as to why they pay this charge in the first place.
- 1.2 However, the market itself is not a monopoly. There is a suite of different routes for developers to pursue – whether that be keeping the freehold themselves, transferring it to an RMC, or passing the freehold on to an EMC – so in this sense, the market is working, as developers pay for whichever option they want. Each main route then has a number of sub-options and suppliers who can deliver this option.

Are there any reasons why a market investigation reference may not be the most appropriate outcome of the market study?

If so, please elaborate by reference to the criteria set out in paragraph 3.20, and in particular:

- **Suitability of the use of the CMA's order making powers, given the issues that may exist in these markets**
- 2.1 As suggested in the report, a market investigation reference is not appropriate in regard to private estate management for a number of reasons.

- 2.2 Firstly, there is much nuance around this issue which requires further exploration and input. There is a tendency to 'tar all EMCs with the same brush', when in fact there are a number of organisations, such as the Land Trust, who already operate transparently and fairly.
- 2.3 The way in which the Land Trust manage estates is best practice for the industry as it currently stands. We are a charity (and therefore non-profit), and largely follow the principles of the Landlord and Tenant Act 1985, meaning residents are consulted on fees, and are only charged what we pay for services rendered. All suppliers used are properly procured to ensure best value. Our management fee is fixed and rises only in line with inflation to cover our costs; this is laid out to residents in an annual breakdown of all costs, and any overpayments are then credited to service charge payers accounts in the following annual service charge payment.
- 2.4 On all of our sites, following the expiry of the management plan which was agreed as part of the planning consent, we agree a bespoke management plan with residents so that they have input in the extent of the management and maintenance which takes place, and the resulting impact on cost, while still benefitting from our professional expertise and experience.
- 2.5 The Land Trust are one of just two EMCs who are members of the Property Ombudsman Scheme.¹ This scheme lays out a Code of Practice to follow along with membership obligations, and means that our customers have assurance that they can escalate complaints for an impartial, independent ruling should they receive poor service or unfair treatment. We are currently working towards a customer commitment that outlines the details of resident involvement in decision making, which, when complete, will be an example of best practice throughout the industry. We would welcome the opportunity to work with the CMA in establishing a new way of working in this area.
- 2.6 As laid out in the report, some of the issues within private estate management are deep-rooted, deriving from lack of local authority power and absence of a robust framework of standard practice for EMCs to adhere to. This will need legislation to be properly tackled, potentially through the planning process.

Alternative possible solutions, drawing out, if appropriate, long-term solutions and measures to mitigate the issues the CMA has identified in the short-term

- 3.1 While Resident Management Companies (RMCs) may work in some instances, they are not a viable long-term solution to this issue for all cases. Modern large developments [REDACTED] are very different to sites of old, containing a host of complex features which require professional, technical knowledge to maintain, such as SUDS, Green Infrastructure, Biodiversity Net Gain environments, landscaping, possible historic contamination and so on. Biodiversity Net Gain presents a particular concern in this area, as outlined in the market study; it is a complex, new area, and there are currently no measures in place to formalise the process of adoption or the funding for ongoing

¹ [Who We Work With - SLAs \(tpos.co.uk\)](https://www.tpos.co.uk)

maintenance for the required 30 years in a residential service charge situation. This means liability will likely fall to residents, reducing the likely success of BNG schemes. The management and stewardship of these elements are fundamental in creating high-quality, healthy places, and in building a sense of community and place making, but they need to be properly maintained to continue to serve their function – and this falls outside of the capabilities of many RMCs.

- 3.2 There is an oft-repeated notion that EMCs merely cut the grass and empty bins; however, the Land Trust adds value not only in providing specialised knowledge and delivering social value through our experience, but also in taking on the liability and administrative burdens that go hand-in-hand with site maintenance. Passing this on to residents usually means that this burden ends up falling to just a few members of the community who, despite the best of intentions, are unable to tackle details such as contamination risk, underwater tank maintenance, management of sinking funds etc. which are key to proper sustainable stewardship and site maintenance.
- 3.3 There is a middle ground between management companies who leave residents feeling exploited and frustrated with poor site management, expensive fees and lack of accountability, and a wholesale handing over of sites to RMCs. There is obvious need for intervention to give freeholders more rights to challenge unfair fees and poor service; however, the complex infrastructure of modern developments requires professional maintenance to remain fit for purpose. Additionally, local authorities are generally not able, nor equipped, to deliver the standard of maintenance needed on these sites due to lack of funding and resource.
- 3.4 Developers have a duty of care to residents to ensure that they are appointing an EMC that has the residents' best interests at heart and places social value creation at the core of estate management, rather than shareholder profits. At the moment, this is not enshrined in law, and perhaps should be; these estates are not cash cows, but rather have huge potential to deliver £billions in social value for the communities they serve.²
- 3.5 An alternative long-term solution, therefore, would be to ensure maintenance in perpetuity is better embedded into the planning process: developers should have to secure long-term, holistic management for sites early in the process, and EMC partners should have to meet certain criteria, alongside demonstrating how they will deliver social value to that community. Additionally, community engagement from the outset is crucial in delivering these promises made at planning stage.
- 3.6 Thinking about stewardship early in the process and not as a last thought is a key element of good placekeeping. It avoids developments being carved up between different regimes as subsequent phases of the scheme are sold, resulting in multiple costs to residents, confusing structures, and lack of accountability. Alongside this, housebuilders' sales teams and professional advisors need adequate training in order to communicate these costs and the reasoning behind them to buyers as early in the process as possible, so that they are not blindsided further down the line.

² Using figures from our Economic and Social Value Model, the Land Trust conducted analysis based on the goal of 300,000 new homes per year that was laid out in the 2019 Conservative manifesto, finding that lack of guidance is holding back almost £1bn in social value delivery across the residential development sector: [More detailed guidance on social value delivery could unleash almost £1B worth of benefits the Land Trust claims - The Land Trust](#)

3.7 Again, changes to planning can only be achieved through a change in legislation, laying out a robust set of parameters for POS management solutions which incorporate social value in the National Planning Policy Framework.

3.8 All EMCs/RMCs should have to:

- Sign up to The Property Ombudsman scheme or equivalent, so that residents have an alternative dispute resolution service – this is arguably a ‘quick win’ to provide some reassurance to freeholders
- Follow the principles of the Landlord and Tenant Act 1985 as it pertains to service charges (sections 18 to 21)³
- Operate transparently
- Work collaboratively with residents, giving them a say in how the green space and hard infrastructure is managed
- Ensure there is a comprehensive customer service process in place which residents are aware of, including how they may escalate complaints if need be
- Deliver social value to the communities they work with

— Views on likelihood of alternative solutions being implemented and what factors may increase their likely success.

4.1 Currently, there is little incentive for developers to work with social value-driven EMCs, unless they share similar values and have objectives beyond simply making profit. Passing the POS to a third party incurs little cost to the developer compared to setting up their own RMC, highlighting why many choose to rid themselves of the freehold.

4.2 To strengthen competition in this area, there needs to be some sort of incentive for developers to opt to work with more ethical EMCs. This could also potentially be addressed through the planning process, in conjunction with securing a long-term maintenance solution; working with organisations such as the Land Trust will help developers in fulfilling the social value requirements of new developments.

4.3 Recommendations:

- Changes to planning policy requirements to incorporate plans for long-term stewardship early on in the process, engaging with communities from the outset to deliver these promises
- Develop a robust set of criteria for EMCs to meet incorporating the points laid out in section 3.8, alongside a requirement to demonstrate how they will deliver social value to the communities they work in
- Adequate training for housebuilders’ sales teams and professional advisors to communicate service charge fees to buyers early in the sales process

³ [Landlord and Tenant Act 1985 \(legislation.gov.uk\)](https://www.legislation.gov.uk)