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From: HorNet co-ordinator [redacted]
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To: Housebuilding
Subject: Response to Working Paper from Home Owners Rights Network
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Dear Housebuilding team.

We are responding to your working paper on un adopted privately managed estates on behalf of home buyers who have direct experience of the adverse effects of this relatively new business model. We have networked together for nearly seven years now and feel we can reasonably say we have become expert in this area as consumers. We thank you for sharing your thinking so far in identifying factors which have caused this situation, and more importantly for us, potential solutions.

Our experiences do tally with what you have identified but we have found more is wrong with the model than just issues around the charges. We understand from our own steep learning curve that there are many facets to unearth. We would add the following points:-

1) We understand that estate charges are paid by all estate dwellers, not just freehold home owners so there are commercial and residential leaseholders together with social housing (if any) on mixed estates which all pay estate charges. The collection mechanism may vary and often it is the same managing agent which collects estate charges from leaseholders along with their block service charges. This does not mean that leaseholders can challenge estate charges. Indeed estate charges are not included on the FTT list on their web page. We have written to the northern area tribunal to clarify this but not yet heard back. Maybe they would answer you more promptly. We think it is possible that the development of large mixed estates including commercial premises has been one of the drivers to extend the model of managed external common parts to residential properties.

2) On timescales, our information suggests that the privately managed estate model was first put into place in the late 1990's for new build developments although only has become the norm for the past 5 to 10 years. It is not just new build estates which are subject to estate charges. Council estates were not usually adopted and maintenance was paid from the rents. When the houses were bought under right to buy, many councils implemented an estate charge so that that the buyers contributed to the upkeep of the estate as well as the renters. Similarly ex MOD properties are on un adopted estates and also pay estate charges.

3) Most importantly there is an impact on the quality of the estate infrastructure which in turn affects the estate residents. This is something we have tried to get the government to understand in our letters to each new secretary of state responsible for housing. There are no firm standards for un adopted infrastructure although there are planning agreements, these are not routinely monitored or enforced. A FOI answer https://www.whatdotheyknow.com/request/landscaping_in_newcastle_great_p#incoming-1000056 from Newcastle City council indicated they relied upon the public or a council officer incidentally reporting planning breaches and did not perform inspections or monitoring. When issues were reported to them, enforcement has not taken place. So there is no quality control during construction and equally there are non before handover to protect residents from taking over upkeep of defective structures.

We now turn to your questions and answer on behalf of our campaign supporters.

We have surveyed (attached results from July 2021) and polled our supporters as well as just listening to their views in our social media group, web comments and emails. We supported this petition to parliament asking for mandatory adoption and succeeded in reaching the threshold for a response in spite of a fairly short timescale. The overwhelming majority want full adoption of their estates rather than regulation and self management. We argue that:-

Regulation will not remove the fundamental unfairness of a sub set of people paying for up keep of pubic spaces/amenities. We agree with you when you say

"*Even with additional protections in place for households on housing estates, there is still likely to be a significant imbalance of power and misalignment of incentives between the companies managing those amenities available for wider public use, and the sub-set of households that are required to fund their maintenance."*

This unfair way of managing public spaces divides communities, whereas adoption does not. The biggest everyday issues in this respect appear to be vandalism and litter, primarily in the form of dog excrement.

There is a sub set of the sub set of estate residents who could be described as suffering from at least a triple whammy and that is those who have been beguiled into so called "shared ownership". Not only is it not ownership, at least of a home, as it is more properly described as shared leasehold, but they are charged full estate charges and council tax, even when they only own a small percentage of the lease.

Something you have not really addressed in your working paper, the elephant in the room, is that estates which are un adopted are not built up to adoption standards. Lower construction standards can lead to long term blight as well as higher charges for residents. It is yet another unfairness that residents take on a bigger potential (and real) upkeep cost than is standard for public bodies.

Private management is expensive and cumbersome with up to 50% of costs just going on management rather than service provision. Having a company for each development is unnecessarily complex and inefficient. Councils have established means of keeping track of house moves and collecting council tax as well as economies of scale in delivering services. It is also a form of "back door" privatisation which has no policy support from government (that we know of).

Regulation and redress schemes for leasehold service charges also have a power imbalance which is detrimental to the consumer. We do not see how applying this to estate charges will work any better – quite the reverse since estate charges are of a lower order than block service charges. There will be a substantial cost to the public purse in setting up such schemes which must be balanced against the cost of mandatory adoption.

Estate residents do not have the skills to manage or oversee managing agents in the increasingly complex matter of land and facilities management. If it was just a bit of gardening, as most have been told at the point of sale, then no doubt they could cope, but there is plenty of evidence to demonstrate that it is usually much more complex than that. We have reports of major problems in the event of private companies going bust where residents are then left with no body to manage their estate. We also have reports of "rogue directors" taking control of management companies without agreement/backing of other residents. Most residents find difficulty implementing company law to rectify this. There may also be genuine disagreement over upkeep costs. We do not feel it is necessary or appropriate to put home buyers in this position when adoption is an option.

There are delays and extra expenses when selling a home with estate charges and there is no doubt that property values have been affected adversely. More regulation of managing agents will not in our view cause a recovery in value or sale-ability. The word is out and can't be retrieved.

Our major concern is that residents trapped in this model will suffer an even greater loss of value and sale-ability should mandatory adoption not be applied retrospectively. Whilst we advocate adoption as the only solution which addresses all of the problems it must be universal to avoid further detriment to a sub set of estate dwellers. These people who have already been mis sold their true liability should in our view be compensated and not further disadvantaged.

Is it even legal? We understand that there are planning regulations which require councils to ensure long term sustainable management arrangements for public open spaces. We don't think councils have always exercised due diligence in this respect and have simply accepted the management company/section 106 arrangements without thought of the consequences.

How will it be paid for? Lax government control and forethought at central and local level has lead to the problem, just as lax building control has allowed poor quality building construction. We agree it is hard for local councils to resist national building companies when adoption is voluntary, so it must be made mandatory by central government, probably via planning policy. For existing estates this will cost the taxpayer as has happened with other poor government choices. It would also cost a lot to set up and run a regulatory framework, which in our view would need primary legislation around estate charges. Adoption of existing estates could be funded by unspent Section 106 monies and Community Infrastructure levy. The home owners themselves may contribute if they receive compensation for mis selling. Central funding may be required to top up any deficit.

Councils do gain income when large new build estates are created with more homes paying council tax - cynically known as council tax farms. This could fund ongoing maintenance and there is also the possibility of local green space trusts as some councils have already set up for parks and green spaces. Alternatively local parish precepts could be used. Central government could recognise the value of quality open spaces by providing funding to councils for them under public health.

Many of our supporters have said they are willing to pay more for their houses to be on adopted estates and also in local taxes for upkeep such as a precept for all open spaces in the area. They just don't want to be ripped off by unaccountable private agents. You have identified barriers to adoption in your paper, but non of them seem insurmountable. You have pointed out many advantages of adoption as well and we would argue strongly that private management of public areas is neither necessary nor in residents' (or the wider community) best interests. In our view, it needs to stop before it goes any further and consideration given to some form of compensation for those who have been mis sold their liability. The best compensation for them would lead to adoption.

Kind regards

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Home Owners Rights Network (HorNet)
www.homeownersrights.net