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To: [Housebuilding](#)
Cc: [REDACTED]
Subject: Housebuilding market study - Private management of public amenities on housing estates.
Date: 24 November 2023 16:43:29

Good afternoon

Thank you for the opportunity to respond to the consultation above on the private management of public amenities on housing estates. Unfortunately, given the short consultation timeframe we are unable to submit a formal response. What follows are some initial thoughts, rather than a settled Law Society position, but that we hope they will nevertheless be helpful. We would be happy to discuss any matters raised below while you develop proposals for the end of February 2024.

In principle, we believe that both of the expressed options, 1 and 2 below, should be implemented particularly as it is not clear that implementing only one of the proposed options will be suitable for all developments. However, some flexibility may need to be retained to suit the requirements of local authorities (LAs), developers and most importantly the ultimate home-owners.

We are aware that the immediate past Housing Minister, Rachel Maclean MP confirmed to Helen Morgan MP at an APPG on Leasehold and Commonhold on 7 November that the Leasehold and Freehold Bill will address this issue. However, we would like to see the content of the draft Bill to see what is proposed by way of legislation to remedy the harms identified before finalising our position on the two options below.

1. Strengthen consumer protections

- We agree that consumer protections for households paying estate management charges should be strengthened - including giving people the power to challenge poor work and unreasonable charges. The home-owners should receive information about how the charges are set and should have similar rights to challenge service charges as long leaseholders.
- The paper states that "*Issues raised with us, and with others, include homeowners not knowing that their home was subject to estate management arrangements and charges at an early enough stage in the house buying process, or not knowing/understanding the full implications of those arrangements*" - Consumers should be given realistic and reliable information about the level of charges that will be imposed.
- This information may also be required by lenders to help establish whether buyers meet their affordability criteria; so correct information at this early stage is important.

National Trading Standards

- This information should be part of the 'material information' that National Trading Standards Estate and Lettings Agents (NTSELAT) are proposing to release. This

information could be set out Part A – unavoidable charges and Part B in terms of utilities.

- We have raised this issue with NTSELAT. Too often the sales information on new build sites provides information about a contribution but, as the paper indicates, this is often glossed over with reference only to modest charges for limited services such as mowing lawns, rather than explaining that there may be substantial charges for infrastructure items.

Other steps that could be taken

- The paper acknowledges the problem caused by the inappropriate use of s121 of the Law of Property Act 1925 and we hope that this will be addressed in the forthcoming Leasehold and Freehold Bill.
- If incorrect information is supplied at this stage, there should be some appropriate relief in terms of the consumers contribution.
- Consumer buyers should have the right to retain an appropriate part of the purchase price until infrastructure is constructed to an adoptable standard. Either the services will be adopted or designated as private with perhaps a fund from the developer put up as a contribution to future maintenance.
- If developers sell property and they are offering an amenity to those particular dwellings, it seems reasonable for developers and those who benefit from the amenity to continue to be responsible for its maintenance. When it works well this seems to be satisfactory. It is where the quality of the work is poor and charges are unreasonable it is not acceptable.
- The Property Ombudsman's Codes of Practice for residential estate agents and for residential buying agents, the Consumer Code for Homebuilders and the New Homes Quality Code could all set out requirements for transparency and full disclosure of these matters.

Certificates of Compliance

- Tangentially there is the issue of restrictions being entered on the title so that any buyer cannot be registered without a Certificate of Compliance from the managing agent. This gives another hold over these property owners. The charges for obtaining the Certificate of Compliance and for entering into any Deeds of Covenant to continue to pay these charges can be comparatively high. Sometimes the charges for complying with post completion formalities can be over £1,000 which can far outweigh the annual maintenance charge.
- We have anecdotal evidence to suggest that it can take management companies so long to deal with the Certificates of Compliance that another statement / invoice for service charges can be issued and the management company won't deal with the matter until these are paid. This is notwithstanding that the account was clear on the completion date and the new account is payable by the buyer.

2. Local Authorities

- We agree that there should be an increase in the extent to which amenities on new build estates are adopted by councils, which would remove the requirement for households to pay estate management charges on that infrastructure provided

- LA's are funded by central government or the developer to be able to do this.
- If a proposed residential development is going to place demands on existing infrastructure in excess of its current capacity, then the developer should either:
 - provide that additional capacity to agreed standards or
 - fund the LA's costs of provision and additional running costs to the extent that these are not covered within the additional Council tax that the development will generate. This would be dealt with by planning conditions and planning agreements.
 - This often doesn't work because the developer underplays the extent of the additional demand, and the LA tries to extract the maximum contribution that it can.
 - We appreciate that local authorities in the main do not have the funds to meet the ongoing maintenance costs of adopting amenities provided on new estates. If government is serious about supporting new residential development they need to provide local authorities with ring-fenced funding for this purpose.
 - This means the developer needs to make a substantial financial contribution either by fully constructing amenities to adoptable standards or to provide an agreed contribution to the local authority. This might provide some of the initial capital requirements. The developers are likely to argue that they make other contributions.
 - Given a number of the cases reported in parliament have involved developers going into liquidation, the local authorities need to make it clear in agreements with the developer that these monetary contributions need to be paid upfront. This is a longstanding issue and it is appreciated that the desire to encourage the development militates against this.

As stated above, while this is only a provisional view, and would like to see the content of the draft Bill before finalising our position, we would be happy to discuss any matters raised above as you develop your proposals.

Kind regards



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