

## **Statement from Home Owners Rights Network and Edwin Coe, Solicitors**

HorNet (Home Owners Rights Network) have learned from their members that it is common for home owners living on privately owned managed estates (usually built during the last 15 years or so) to have issues over the way that estate charges are being levied by estate management companies or their agents.

These include:

- Poor quality and value for money.
- A monopoly provider for the majority of estates. Residents Management Companies, where they exist, have a hard time gaining control from the developers. There is currently no Right to Manage to assist the owners of “fake freehold” houses.
- No practical redress. Individual legal challenges are financially out of reach for most.
- No accountability. Companies will not justify their costs and instead pursue disputed and with-held charges as a debt in the courts .
- Local Authorities are not enforcing the planning conditions agreed within 106 agreements. The result is poor quality preparation and “un-remedied liability” for the home-owners into the future.
- Covenants or lease clauses written by the developers are heavily imbalanced in favour of the management company. Most often there is no cap on the charges.
- Unjustifiable additional fees for permission to alter, re-mortgage, or move home.
- Delays in moving home as the management company has to participate in the transaction.
- Difficulties in getting a mortgage - banks are increasingly requiring more evidence to show that there is a robust mechanism in place for estate maintenance in the absence of adoption.
- Unadopted estate home-owners may find they have to pay indemnity insurance if they want to sell.
- A high proportion of charges is spent on management rather than service delivery - our members’ experience is that it is usually about 50%.
- The majority of home-owners are not fully informed at point of purchase, either by the developer or their recommended solicitors.
- As soon as the builders leave the site, maintenance charges rise steeply, but the services provided by their successors deteriorate.

- The common green spaces which homeowner charges are ostensibly paid to maintain are open to the public at large, who do not pay those charges. It would be more appropriate therefore to maintain those spaces out of council tax.
- There are practical difficulties in enforcement of public order on privately owned land. Police require permission from the landowner to act and Local Authorities are unable to enforce traffic regulations even when there are safety concerns. We can provide many examples of this problem.
- Potential major expenses in the future due to inadequate land preparation such as the containment of contamination on brown-field sites.
- We believe there will be long-term reduction in saleability and value as home-buyers and conveyancers become more aware of the issues.

When home owners feel they have been overcharged or incorrectly charged and they want to challenge the charge, they find that the companies will not justify or explain in detail the charges. If charges are with-held in dispute, the company pursue claims to the charges as a debt in the small claims courts.

Even if an individual home owner were able to successfully challenge the estate charge in court, the management company can recover its legal costs for that case from all the home owners via an estate charge. There is therefore no financial risk to the owners of the company in running it unfairly.

Edwin Coe have a track record of successfully running group actions for people who would not otherwise be able to afford legal action, frequently when the matter is of public interest or around a social injustice.

At present, they are investigating whether home owners may have a potential group action for the recovery of service charge amounts that have been wrongfully paid.

If such a claim were to proceed, the group action would be on a true “no win no fee” basis with an insurance policy in place to pay costs should the case be lost. This would be a fixed amount and crowd funded.

**The advantages of a group action include:**

The only risk to the individual home owner is any money they choose to put in towards the crowd funding, to the extent that potential liability in costs would be covered by insurance.

There is potential to recover charges already paid if they are found to be illegal.

It should put pressure on government to change the law.

There is already agreement between the developers and the council that estates are maintained to section 106 standards. If home owners are no longer forced to pay for maintenance, the land owner will still have to continue to maintain or offer the estate up for adoption.