**Written evidence submitted by HorNet, Home Owners Rights Network (LFRB33)**

**From HorNet, Home Owners Rights Network , on Estate Maintenance Charges only.**

**Summary**


1. Although we welcome the modification of section 121 of the Law of Property Act 1925 and provision of a proper channel for challenging the charges, we do not feel that this Bill even begins to address the underlying unfairness of the model as applied to publicly accessible estates.

2. We are concerned that regulation, however ineffective, brings a risk of legitimising a model which should be scrapped.

3. The CMA have identified lack of adoption as being the underlying problem and we agree. Any efforts to achieve fairness for estate residents must address this. We do not want parity with leaseholders but rather with the rest of our local community who do not pay estate charges as well as council tax.

4. In our extensive experience over eight years we have found that the privately managed estate model benefits developers and property management companies at the expense of the estate residents and their wider community.

5. A new two tier system of home tenure is being created – estate charged homes vs non non estate charged. The secret is out and more buyers are becoming aware of the pitfalls and walking away.


**Background**

1. We represent over 12,000 estate dwellers subject to estate charges and have data on over 850 developments with at least 184,000 homes.
2. It has been national planning policy for about 20 years that new build estates have open green spaces. This is laudable, but it appears the cost of maintenance was not considered.
3. Over this time developers have almost completely stopped offering these areas up for adoption by local councils in favour of management by private companies, usually of their choice. The presence of a managing agent also allows for tight control of home adaptions by residents. Estate residents are charged for ongoing maintenance enforced by property law with no consumer rights. They may also be charged high administration and “permission” fees.
4. Who pays estate charges? Residents, whether leaseholders or freehold home owners (also known as “fleecehold” or “fake freehold”)*. Social housing tenants pay via their rents and commercial properties via their leases.
5. Why? We believe there are huge cost saving in constructing to a standard lower than for adoption. Councils can only insist on a plan for management in the future rather than compel adoption. We have petitioned parliament in 2018 for compulsory adoption, but we failed to convince the then Housing Minister.

**The Issues**

1. It is fundamentally unfair for one group of residents to pay for the upkeep of public open spaces and facilities such as play parks which can be used and abused by anyone. This set up creates division in communities. It may be suitable for truly private gated estates, but most developments contain public open spaces.
2. Home buyers are unknowingly signing up for an unlimited liability. This is especially important for brown field sites where there may be contaminated land or old poorly maintained structures. Sales offices gloss over and minimise this liability, commonly saying the charges are for "grass cutting". There are mis-selling issues similar to the leasehold houses scandal revealed by the CMA investigation into new build leasehold houses.
3. There is no standardisation in how estates are set up. Most have a management company set up by the developer at the planning stage which is owned and run by the builder. After the estate is completed the company may be passed to a managing agent or to the residents. The land may or may not be handed over. We have heard of at least one site where the developer has retained the land and employed an agent directly to manage their land. Consequently, some residents may have input into choice of agent and some have no choice at all.
4. Estate charges cannot be challenged or queried in the same way as leasehold service charges can. There are no special laws or protections as there are for leasehold service charges.
5. The managing agents are often a monopoly and unaccountable to the residents who pay the charges. Exploitation of this situation is rife.
6. If a rent charge is used to enforce payment, then there is a an old law** which allows repossession for non payment (for any reason – even if in dispute). The government has promised to repeal this, but right now it is causing headaches for sellers and those remortgaging. It is making lenders nervous of loosing their freehold interest.
7. As more of the public and their mortgage lenders become aware of the pitfalls, houses are becoming devalued and harder to sell.
8. The estates are often poorly managed, especially once the developer has finished selling houses. This, combined with poor construction standards, is leading to blighted estates long term as well as high costs for residents.
9. There are some parallels with the cladding scandal, although we are grateful the defects we inherit are not usually life threatening. However, poor construction standards and cost cutting for profit without adequate quality control has lead to the burden of huge and unforeseen costs to the home buyers in both cases.
10. The CMA are currently performing a market study on privately managed estates and have published their interim thinking in their working paper of November 3rd 2023. In summary they are forming the view that lack of adoption is the major underlying problem and that estate charge payers are significantly disadvantaged by these arrangements. Their full report is due at the end of February 2024.

**The Leasehold and Freehold Reform Bill 2024**

**What the Bill Does**

1. The Bill proposes to reform section 121 of the Law of Property Act to remove the draconian remedies for non payment of an estate rent charge. This is something we have needed for some years and will prevent bullying threats from managing agents and obviate the need for Deeds of Covenant to placate wary lenders.

2. There are also a number of measures to require more transparency and accountability over the charges themselves with the right to challenge their reasonableness in a tribunal.

We are very concerned that this feeble attempt at regulation, offering us almost parity with leaseholders, but not with other residents who do not pay for public areas (except through their council tax), will only serve to legitimise the privately managed estate model. This model is inappropriate for managing public areas and unfair to the households paying the charges.

**What it Doesn't Do**

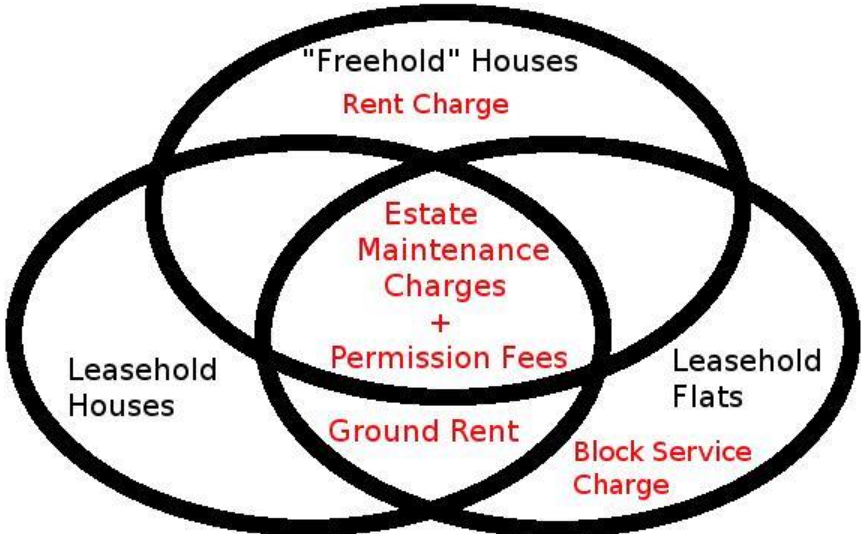
1. There is no right to manage. Although many of our supporters are involved with self management – an option offered in more recent years – it has really only been self defence from managing agents exploitation and bad practices. Over time, we have come to realise that estate management is complex and increasingly so. It is really beyond the scope of a normal householder even to be able to ensure a managing agent does a good job.
2. We have also had reports of rogue resident directors, which householders unfamiliar with company law, find hard to manage. We have concluded that estates need knowledgable and professional management and that for public spaces only adoption will achieve this.
3. There is nothing in the Bill which would ensure that the liability for maintenance does not include un remedied defects. In contrast, adopted areas must be built to a standard which is checked before handover,which ensures a quality build.
4. This Bill fails to offer any measures which would lead to more adoption. We are surprised as the government must be aware of the CMA's current market study. Adoption is a more financially efficient way of managing public spaces. There are economies of scale over the LA area and an existing method of keeping track of house moves for payment. Private managing agents commonly charge up to 50% of the estate charge just for administration costs.
5. We know that the right to challenge at a tribunal has not been very effective for leaseholders in limiting their spiralling costs and poor management practices. We do not see how these rights will fully protect estate charge payers.
6. There is no need to have estates privately managed, unlike shared common areas of a block of flats – adoption is a far superior alternative as it would remove unfairness, restore the value of homes and ensure higher standards of construction for the long term benefit of the whole community. Adoption would also render much of what is in this Bill unnecessary for estates with public access.

Cathy Priestley and Halima Ali 11th January 2024

** fleecehold is a term invented by a National Leasehold Campaign member and has been used for a number of exploitative practices, but most commonly for estate charges on freehold homes. "fake freehold" has also been used for this scenario as the presence of a charge on the property does not render it "free of hold".*

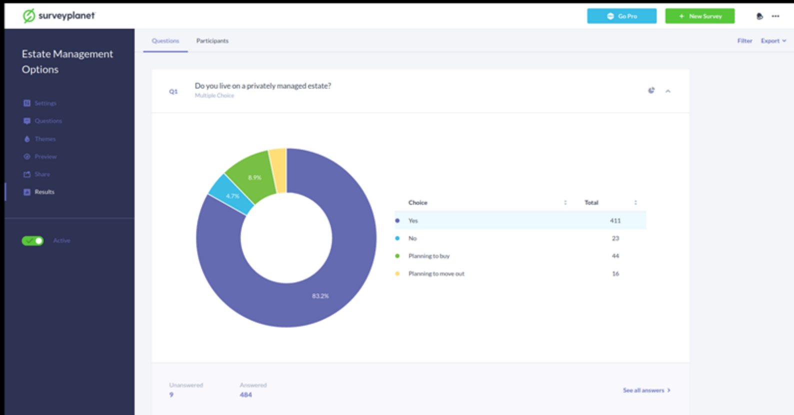
***The Law of Property Act 1925 section 121 gives the rent charge owner powers to enter the property and/or take out a statutory lease on it if the rent charge is not paid (for any reason including not knowing it was due!) within 40 days of of it falling due. This hasn't been done on any big scale, but managing agents do send out section 121 notices to mortgage lenders as a bullying tactic. They do this rather than explain or justify their excessive charges.*

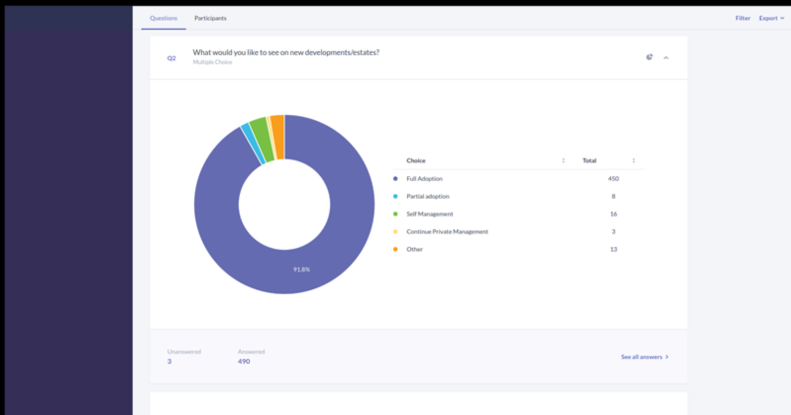
*Appendix A*

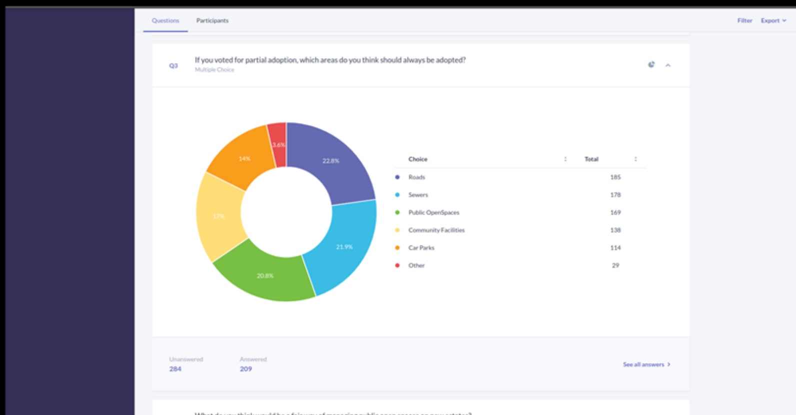


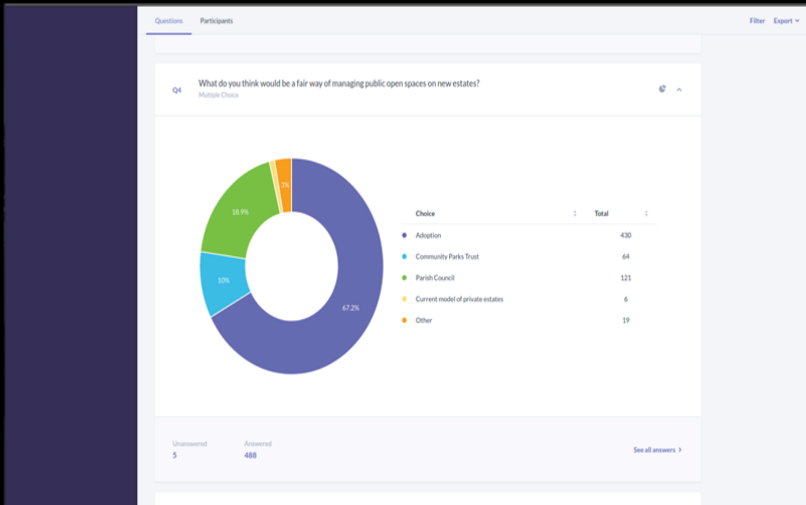
*Appendix B*

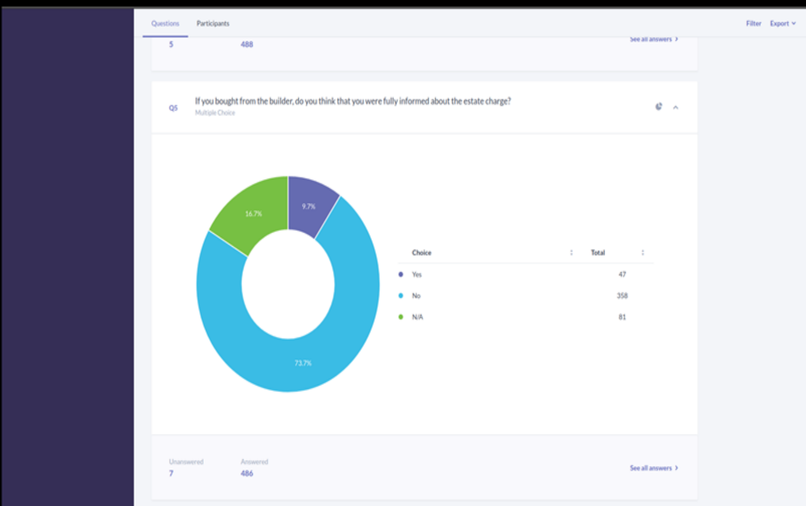
*Survey Planet Results on Estate Management as at July 2021*

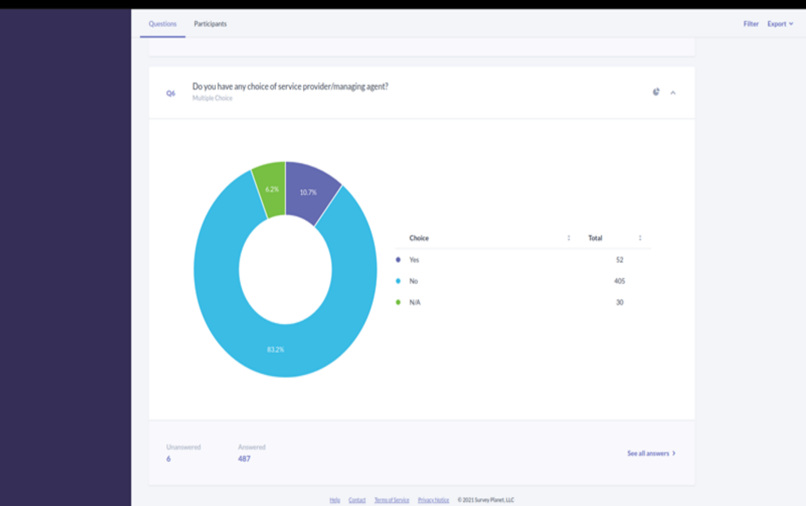



Questions
Participants
Filter
Export
Q4
What do you think would be a fair way of managing public open spaces on new estates?
Multiple Choice
67.2%
10%
18.9%
3%
Choice
Total
Adoption
430
Community Parks Trust
64
Parish Council
121
Current model of private estates
6
Other
19
Unanswered
5
Answered
488
See all answers


Questions
Participants
Filter
Export
Q5
If you bought from the builder, do you think that you were fully informed about the estate charge?
Multiple Choice
9.7%
16.7%
73.7%
Choice
Total
Yes
47
No
358
N/A
81
Unanswered
7
Answered
486
See all answers


Questions
Participants
Filter
Export
Q6
Do you have any choice of service provider/managing agent?
Multiple Choice
10.7%
6.2%
83.2%
Choice
Total
Yes
52
No
405
N/A
30
Unanswered
6
Answered
487
See all answers