fleecehold – creeping forward on stewardship

This column returns surprisingly quickly to the subject of stewardship – specifically the need for arrangements to be made for the maintenance, in perpetuity and to a high standard, of public green space in new developments. The rush is stimulated by a Ten Minute Rule Bill House of Commons debate in Westminster Hall held on 22 January 2019, of which readers may wish to be aware.[1] It was a good debate, but the issues became rather tangled. The response of Minister Kit Malthouse was disappointing because he didn't pick up on the *public* green space issue.

The confusing entanglement in this subject area involves three matters:

- First is leasehold properties which are subject to an annual ground rent. The purpose of the ground rent is to ensure that any increase in land value over the length of the lease could be recouped by the freeholder when eventually the leasehold expires. This was a profound feature of the original Garden City concept, by the way, as any rise in value was thus 'captured' for the 'community' that – by their making of a successful place – created the rising values. In recent years, ground rents have been spotted as cash cows: the leaseholders have to pay up or else; and they cannot easily challenge the level of ground rent, which used to be nominal, and is now sky-rocketing. It is a licence to print money, as a matter of fact, which earned leasehold the sobriquet 'fleecehold', thanks to Justin Madders MP in this debate.
- Second is the difference between ground rents, which relate to private property, and management or service charges, which relate to private amenities shared communally by private property owners (whether leasehold or freehold). These might be communal parking courts, or the leftover bits of grass and landscaping which couldn't be lumped into a particular property boundary. Whatever – the key feature here is that the land subject to charge is private land, 'enjoyed' exclusively by those who have to make the payment.
- Third is the matter of *public* green space in new developments, where arrangements need to be made for maintenance, in perpetuity and to a high standard. In the past, local authorities required that such space be 'adopted' by them, with a cash sum equivalent to several years of their typical maintenance regime. But local authorities are no longer able to fund maintenance in perpetuity, let alone to a high standard. So they don't want to 'adopt', and neither the residents nor the developers want them to either. So these public spaces are either:
  - being made over with a cash sum to the local parish council who will have to raise a rate to manage the burden of the space in perpetuity; or
  - being made over with no cash to a management company chosen by (or owned by) the developer, with the right to levy a service charge on identified properties so encumbered (the charge payer must pay, or lose the property or the right to sell if there is an outstanding invoice; and the payer cannot easily challenge whatever sum is charged); or
  - in the 'sunlit golden uplands' option, being made over to a locally based, accountable, not-for-profit charity with an endowment sufficient to enable high-quality management in perpetuity.

In the latter instance, no charge falls upon any property owners or on ratepayers generally, ever. Milton Keynes' Parks Trust is not the only organisation which receives public space on that basis.[2]

Let's now turn to the House of Commons debate. The subject was the second reading of the Freehold Properties (Management Charges and Shared Facilities) Bill, introduced by Helen Goodman MP (Bishop Auckland, Labour) last November. In opening, the Honourable Member described how:

'the large property developers – Barratt, Bellway, Persimmon and Taylor Wimpey – sell properties that are not free from hold but come with financial obligations and restrictive covenants administered by property management companies such as Greenbelt, Gateway, FirstPort and Trinity Estates,

The Land Trust

Green space managed by the Land Trust at the Beaulieu development in Chelmsford

which take ownership of communal spaces once the developer has moved off the site.'

Adrian Bailey MP (West Bromwich West, Lab/Co-op) jumped in on the Greenbelt name immediately to say:

'I have a problem in my constituency that goes back 16 years, when a group of people purchased houses from Bellway. The adjoining land is administered by Greenbelt. Since then, those people have paid fees every year for the very basic administration of that land, but the company has failed to take the remedial measures necessary to prevent the area from becoming a centre for antisocial behaviour. The residents have complained; one went to court but lost their case. Does my Honourable Friend agree that there needs to be more transparency when freeholders buy their property from developers? Secondly, does there need to be a cheap adjudication system to ensure that the balance of interest between the freeholders and the companies is far more even than it is at the moment?'

Unfortunately it isn't clear whether he was referring to private or public land managed by Greenbelt – that's how the tangling starts.

Helen Goodman resumed, saying there needs to be:

'some rules of the game about the standard to which the estates are built in the first instance. The management companies charge residents an inflated annual fee – in exchange, apparently, for tending to grassy areas, shrubs and other facilities on the estate. That is on top of their council tax. This is a scandal. There has clearly been mis-selling. … Many homebuyers are not made aware of the arrangements for the management of open spaces until the completion of the sale. … There is no room in the glossy brochure for an outline of the legal arrangements, but there always seems to be plenty of space for images of parks, playgrounds and woodland areas, backed up by verbal assurances from the sales rep that they are planned for the estate. Those promises are then broken and the land is passed or sold on to the maintenance company.'

More case study examples were given, and the summary that in Mrs Goodman's constituency:

'the annual fee for each household is somewhere between £100 and £200 a year, depending on the site. At first that does not sound too onerous, but when we consider that 278 neighbours on the estate are also paying the fee, it is obviously a grossly excessive £30,000 just for mowing some grass. In other parts of the country, in line with higher house prices, fees can be up to £400 or £600; I have even heard of fees of £800 a year. There is no limit to price increases and residents frequently report an annual leap in the fee. … there is no transparency and little accountability.'

Private land for private (even communal private) use and land to be enjoyed by the public raise different issues. People who pay an annual service charge for a public amenity come to think of it as 'theirs', to be fenced, gated and kept for the payers only. But the planning standards requiring the spaces in the first place were not set for private enjoyment. Gated communities are not us. The fearful or selfish few who seek such places must be discouraged. That is not our national social contract, even in 2019.

Helen Goodman continued:

'Despite their name, property management companies appear to have no interest in actively managing the land they acquire. On the website of London and Economic Properties Ltd, a Wiltshire-based firm that manages the Middridge Vale development in Shildon in my constituency, property is listed under its 'investments' section. The company boasts of its 'enviable track record, investing across the property spectrum to deliver profits for shareholders'. There is no mention of homeowners. It says of the land at Shildon that it 'benefits from grant income from the Forestry Commission as well as a housing levy from the adjacent housing development which … will provide an annual payment in perpetuity of £100 from each of the 278 houses'. There is no mention of the company's obligations as the caretaker for the site. Ultimately, that is the problem: these extortionate fees and poor service are the result of a culture that sees housing as an abstract investment, rather than the foundations of our families and communities. This is a massive scam. The House of Commons Library gave me figures that suggest that perhaps half a million people have been affected by this problem in the last ten years. That means that somebody or some people are coining in about £100 million a year.'

Helen Goodman said her Bill:

'would cap and regulate estate maintenance fees, to give homeowners financial stability and allow them to buy and sell their homes knowing that costs cannot increase indefinitely. Secondly, it would introduce measures to ensure that shared spaces are maintained to a proper standard, perhaps through something similar to the new homes ombudsman. Thirdly, it would contain provisions for residents if they chose to opt out of their management company and to self-manage...'

Unfortunately this perspective does not encompass the public space issue clearly enough. Mrs Goodman says that 'the private estates model is rapidly becoming the norm for new developments'. It isn't yet, and can be stopped – it is not the best way forward.

Justin Madders (Ellesmere Port and Neston, Labour) said:

'It is clearly another example of homeowners falling foul of greedy developers and the more insidious practices that they have adopted in recent years. … we now see 'fleecehold' estate fees. Freeholders and residents on private housing developments find themselves facing escalating costs when the developers from which they purchased their homes in good faith sell off the grounds maintenance to private providers.'

The Minister for Housing, Kit Malthouse, responded to the debate, his emphasis being on the government's intention:

'to create a new statutory regime for freeholders that is based on the rights enjoyed by leaseholders. This would ensure that maintenance charges must be reasonably incurred and that services provided are of an acceptable standard, and it includes a right to challenge the reasonableness of charges at the property tribunal. … We are also considering whether freeholders should have a right to change the provider of maintenance services by applying to the tribunal for the appointment of a new manager, which might be useful for existing freeholders if they are dissatisfied with the service they receive. The government intend to introduce legislation to implement the changes as soon as parliamentary time allows.'

After an intervention he added:

'At this point it is worth pausing to consider planning arrangements and how they support new developments. When a new development is granted planning permission, local authorities can use conditions, or a section 106 planning obligation, to secure a commitment from developers to provide and maintain open and communal space. This means that the local authority does not have to adopt or maintain the land at its own expense. It is up to developers and the local planning authority to agree appropriate funding arrangements as part of those commitments. ... The local authority has powers to ensure that developers build and maintain communal facilities to the standards and quality set out in the planning permission. … There is only so much money that can be extracted from a particular housing development. It is therefore at the discretion of local authorities to decide the

balance of 106, the cost to them of adopting measures, and where and when maintenance should fall on residents rather than on the local authority.'

Ordinary people cannot fight a basic injustice on public green spaces through all that scaffolding of quangos and lawyers. There is no comfort in that at all. The remedy is clear, fair, affordable, and demonstrably works. All the government has to do is make a speech which says local planning authorities can require public green spaces to be made over to a locally based, accountable, not-for-profit charity with an endowment sufficient to enable high-quality management in perpetuity.

Helen Goodman said, after hearing Kit Malthouse, that 'I think we are creeping forward – or, rather, the Minister is'. After all, Malthouse had said that 'we have to deal with the small matter of national destiny before we get on to equally pressing matters on the domestic agenda'. And so, like all conversations these days, it sinks into the porridge of Brexit, as if real life was not carrying on anyway.

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Notes

1 The whole 'Freehold Estate Fees' debate, recorded in *Hansard*, 29 Jan. 2019, Vol. 653, is available at https://hansard.parliament.uk/Commons/2019-01-22/debates/69D31E91-49DD-4DF4-B638-4620B5314D15/FreeholdEstateFees

2 In Milton Keynes mostly the freehold goes to Milton Keynes Council on the grounds that it will simultaneously transfer the land on a 999-year lease to the Parks Trust, which receives the endowment direct to keep it out of local government temptation. See the short case study on p.51 of *Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc*. National Infrastructure Commission, Nov. 2017. www.nic.org.uk/publications/partnering-prosperity-new-deal-cambridge-milton-keynes-oxford-arc/; and see also *Built Today, Treasured Tomorrow – A Good Practice Guide to Long-Term Stewardship*. TCPA, Jan. 2014. www.tcpa.org.uk/built-today-treasured-tomorrow2014; and *Long-Term Stewardship*. Practical Guides for Creating Successful New Communities: Guide 9. TCPA, Dec. 2017. www.tcpa.org.uk/tcpa-pgs-guide-9-stewardship