Date/Dyddiad: 22nd August 2022

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VALE of GLAMORGAN
BRO MORGANNWG

Councillor Ian Perry
ianperry@valeofglamorgan.gov.uk

Dear Councillor Perry,

Town and Country Planning Act, 1990 (as amended)
Private Management Companies

I write with reference to your Community Liaison Committee request relating to the management of open space and highways by private management companies. This is an issue which I am advised has been raised by and addressed to the AM and MP previously and consequently, I am writing to you specifically on these points.

Private management companies and estate management charges are regrettably not something which the Local Planning Authority (or wider Council portfolios) has control over. The Council cannot presently legally require a developer to transfer public open spaces to the Council for adoption and the developer is not required to inform the Council who they have appointed to oversee the management of these areas. Similarly, the Council cannot, therefore, require this by condition as it would not meet the statutory tests.

The Council can impose conditions/Section 106 obligations to ensure that the land identified within the permission remains as public open space. The Council can also impose conditions/Section 106 obligations to ensure that appropriate maintenance regimes are in place for approved public open spaces. These can then be enforced via a Breach of Condition notice or injunction, in the event the maintenance regime is not being adhered to, and if it is considered appropriate.

For major developments, the Section 106 Agreement typically gives the developer an option to transfer areas of public open space required to serve the new development to the Council for adoption and future maintenance, if the Council are agreeable. Where this is to be the case, the land is transferred to the Council free of charge and a commuted sum will be calculated to ensure the adequate maintenance of the land, to the specifications of the Council, typically for a 20 year period. The Council cannot enforce that this is the route the developer takes.

The Minister for Housing and Local Government recently announced the publication of the summary of responses to Welsh Government's call for evidence on estate charges on housing developments. You can find her statement on the publication, and the document itself at these links:

https://gov.wales/written-statement-publication-summary-responses-call-evidence-estate-charges

https://gov.wales/estate-charges-housing-developments

The Vale of Glamorgan Council raised concerns regarding management companies as part of the consultation.

The Council regrettably does not have any jurisdiction or ability to control service charges which are passed on to the new homeowner and there is not any specific guidance to provide assistance on the matter. My understanding is that the service charge tends to be legally secured via an agreement at the sale of the property, and is within the deeds to the property. This makes it a contractual and civil matter between the home owner, developer and the new management company.

Regarding Town or Community Council management/maintenance, I am not aware of an instance where this has occurred, and we would not be able to insist upon it. However, it may be the case that in principle, this could be achieved. This would likely require a legal opinion and may prove complex in terms of the governance arrangements that would need to be in place. It would also require the developer to be prepared to pay the necessary commuted sums. Nevertheless, at the point of responding to planning applications, I would suggest the Town/Community Council could convey if they wished to propose this arrangement, and a dialogue could potentially be entered into.

I hope this is helpful. Please don't hesitate to contact me if you feel that I can be of further assistance.

Yours sincerely,

Ian Robinson
Operational Manager for Planning and Building Control