

BLLENHEIMS GUIDE FOR FREEHOLD HOUSES ON MANAGED ESTATES

This information is taken from guidance issued by ARMA (the Association of Resident Managing Agents) and is designed to assist Homeowners with a Freehold property on an estate managed by Blenheims to understand some of the specific issues relating to the ownership & management of such developments.

SUMMARY & DEFINITIONS

Some private estates have both freehold houses and blocks of leasehold flats and all Homeowners of these properties will be expected to pay for the upkeep of the communal areas on the estate, regardless of how they own their property. The communal areas may simply be private roads; but they can also include aspects such as landscaped gardens, trees and woods, boundary walls/fences/hedgerows, playgrounds, electric gates, street lighting, refuse areas, sewage pumps, drainage systems, TV aerial systems etc. This document looks at the rights and obligations of owners of freeholder houses (referred to in this document as "Freeholders") who pay Service Charges on private estates, and the role of Blenheims.

Although Freeholders may be paying for exactly the same services as Leaseholders, there is an important legal distinction between the two types of owner. The Government has passed a number of Acts of Parliament giving rights and protection to leasehold owners, which do not apply to Freeholders, so your rights are slightly different.

Service Charges

Confusingly, lawyers and managing agents use different names for the charges paid by Freeholders. The most common term is Service Charge (the same as payments made by Leaseholders of flats) but they are also referred to in some instances as Estate Charges; or Maintenance Charges. At Blenheims we use the term Service Charge.

Even more confusingly there may be other charges payable by owners of freehold houses such as Rentcharges; Variable Rent Charges; or Estate Management Scheme charges. This document however only deals with the Service Charge aspects rather than any of the other matters mentioned and should you have queries on these other types of charges, please refer to your Property Manager.

Residents' Management Companies

The most common arrangement on private estates is for a limited company to be set up that owns and/or has a responsibility to manage the communal areas. Each Homeowner becomes a member of that company. These companies are called Residents' Management Companies (RMCs) and they have the responsibility of managing and maintaining the estate, part of which includes the collection of service charges from Homeowners. Some Homeowners will need to volunteer to become Directors of the RMC.

There are also some private estates that Blenheims manage where the estate area common parts are owned by an external landowner (this could be a company or a private individual) which has no other interest in the estate. This landowner is likely to have the same responsibilities as an RMC in the management and maintenance of the estate as well as the collection of service charges.

Managing Agents

It is common for companies with the responsibility to manage and maintain, or indeed those who own and maintain the communal areas of private estates (including RMCs) to employ managing agents to carry out the maintenance and other services on their behalf. The managing agent will sign a contract with the RMC and be accountable to its company's Directors; it has no legal contract with the individual Freeholders. This is the role that Blenheims undertakes.

The managing agent will normally carry out the following services on behalf of the company that owns the communal areas or the RMC:

- Prepare a Service Charge Estimate/Budget to be approved by the RMC
- Send out Service Charge demands to Homeowners
- Organise contracts (gardening for example) and deal with repairs
- Advise on health & safety matters and handle any statutory issues
- Prepare annual accounts for the Service Charges at the end of each financial year

PAYING FOR THE UPKEEP OF COMMUNAL AREAS

Freehold ownership of a house is conveyed with a legal document called a deed of transfer (TP1). This will contain a clause requiring them to pay a contribution towards the cost of maintaining the communal areas amongst other things. A well written deed will also set out exactly what items the Freeholder must pay for; what proportion of the total costs they should pay; the dates the payments should be made on; and whether annual statements of account will be provided.

It is this document that determines what we charge Freeholders for on behalf of the company that employs us to manage the communal areas and when those charges are made. It is usually a requirement in the TP1 to collect Service Charges in advance in order that the services can be provided. At the end of the financial year of the company any unspent Service Charge money will be credited back to Freeholders, again in accordance with the TP1.

If you don't have a copy of your TP1 to check on your obligation to pay charges, you can get a copy from the Land Registry for a small fee.

RESTRICTIONS ON FREEHOLDERS

A Freeholder's home may be their castle, but on some estates the deeds may impose certain restrictions on what they can and can't do to their home. Here are some of the most common:

External decorations	Some estates require paintwork to follow a certain colour scheme. This may have been a requirement of the original planning permission.
External alterations	You may need permission from the management company before you make any alterations to the external appearance of your home. Again, such clauses are often required as part of the original planning permission. This requirement does not negate the need for planning permission and/or compliance with building regulations from your local authority.
TV aerials and satellite dishes	Adding an external aerial or satellite is usually viewed as an external alteration, and once again you may need permission from the management company.
Parking	Some roads on private estates are quite narrow and aren't built to the same standard as public highways. In these cases, parking in the road is often banned under the deeds of the houses.
Usage	It is fairly common for the TP1 to place a restriction on how the property is used and may state the property can only be for residential use.

If you are planning any alterations or improvements to your home, you should check your TP1 to establish whether there are any restrictions to which you have to adhere. This can save considerable time, money and in some cases upset.

Blenheims' role in such matters is to enforce the legal framework under which the property was purchased and it is our responsibility to be fair and equitable to all Homeowners in carrying out this task.

ANNUAL STATEMENTS OF ACCOUNT

Blenheims will normally prepare annual Service Charge Accounts for an estate which show income (usually Service Charges) and expenditure that has been made in the management and maintenance of the estate. RMCs, also issue annual Company Accounts which sometimes contain a summary of Service Charges paid and expenditure. Blenheims will normally circulate both Service Charge Accounts and Company Accounts.

IF YOU ARE UNHAPPY WITH CHARGES OR THE SERVICES WE PROVIDE

You should complain to us in the first instance and if we cannot resolve the problem by other means we will advise you to use our Formal Complaints Process, which is available on request. As we are a member of ARMA you also have the right to complain to an independent ombudsman once you have been through our Formal Complaints Process.

It is important to remember that we report to, and take instructions from, the Directors of the RMC. If we are following lawful instructions from the RMC with whom we have a contract, then we may not be at fault. If you are unhappy with what an RMC is doing, then you should make a complaint to the Directors in the first instance. If you are still not happy, you should seek to remove the Directors or raise a motion to change matters at the Company's Annual General Meeting, if you are a member.

If there is an external company which has responsibility for the management of the estate that is not made up of the Freeholders or Homeowners, then you and your neighbours can collectively approach the company and ask them to sell you the freehold of the communal areas. This will allow you to take over responsibility, but there is no right in law for Freeholders to do this; it is a matter of financial negotiation between both parties.

Tribunals – Not an Option

Even though you may be asked to pay a Service Charge, and even pay into the same pool as Leaseholders on your estate, the same rights and protections from unreasonable service charges do not apply to Freeholders. Leaseholders can challenge their Service Charges by taking the matter to a Tribunal. Tribunals have the power to take an independent view and decide what constitutes a reasonable charge. Unfortunately this option is not open to Freeholders.

HEALTH AND SAFETY AND INSURANCE

Communal areas of freehold estates (such as private roadways) must comply with health and safety laws. So a general risk assessment should be carried out. If there is just a private road and footpaths this does not have to be a complex exercise, or require professional advice, but the types of risks that may exist need to be covered and should be recorded. The management company of the communal parts needs to take out third party liability insurance. This will cover claims for damage or injury from users of the roads, footpaths and gardens etc. Freehold houses will not be included under this insurance, so you will need to ensure that you have adequate cover in place for your property.

FINAL WORD

If you are an owner of a freehold house living on a private estate, you should reasonably expect to pay Service Charges for the upkeep of the communal areas.

Even though you might share the estate with Leaseholders, you unfortunately do not share the same rights when it comes to what you pay. It is important to know however where you stand and what options you have in case you run into problems in the future. The manner in which Service Charges and any other charges are structured should have been highlighted and explained to you by your solicitor when you purchased your property.