

Agenda Item No:



Report to Overview and Scrutiny Committee

Resident Management Companies and the Chilmington Green Management Organisation (CMO)

The Overview and Scrutiny Committee is asked:

1. To consider the report and determine any comments and recommendations to be made.
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Date of O&S meeting: 24 July 2018

Chair of O&S Committee: Cllr Chilton

Relevant Portfolio(s): Planning (Cllr Clokie), Finance and IT (Cllr Shorter), Culture (Cllr Bennett)

Summary: Following the 2018/2019 budget scrutiny process, the Committee endorsed the Task Group's recommendation, that the Committee receive an overview of the CMO model in comparison to a 'traditional' resident management company and its potential application for other developments. This report aims to explain:

- the policy history and justification for a community management model
- how the model compares to community management examples elsewhere in the country
- how the model compares to the private management model typically created by housing developers
- the Government's leasehold and service charge reforms and how these may impact
- wider application and the Local Plan 2030

Exempt from Publication: NO

Background Papers: None

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Report Title: Resident Management Companies and the Chilmington Green Management Organisation (CMO)

Introduction

1. This report is brought to the Committee in response to a request made earlier in the year. The Committee asked that it consider an overview of the planned Chilmington (Green) Community Management Organisation model (CMO) in comparison to a 'traditional' resident management company (private companies created by housing developers), and the wider application of the CMO model.
2. Accordingly, the report explains the planning policy for community management at Chilmington Green, how it compares to other community management models elsewhere, how it compares to the private management model, and how the Government's current leasehold and service charge reforms may affect the model. Finally, the report addresses the position of future application, where the Committee is asked to note how the Local Plan 2030 covers this point. Note, that in terms of considering any comments and recommendations from the Committee, these are likely to need the consideration of the Planning Policy Task Group.
3. This report is to be considered by the Management Team prior to the Committee. Any further advice or recommendations will be tabled or circulated before the meeting.

Background

The planning policy position for community management at Chilmington Green

4. As with strategic planning of this development generally, there is a lengthy history to the formation of the council's policy position for community management at Chilmington Green. This culminated in approval by the Council of the Chilmington Green Area Action Plan in 2012 and its adoption by the Planning Inspectorate in July 2013. Prior to the Council's approval, the policy development period took about two years. This included research, visits to and analysis of other developments' models, and internal and public consultations.
5. The Chilmington Green Area Action Plan (AAP) provides a policy framework to deliver a major urban extension to Ashford of up to 5,750 homes and 1,000 jobs, over a period of twenty-five years or so. It covers policies on several topics, such as community infrastructure, transport improvements, ecology and what character the different parts of the site should have.

6. Chapter 8 of the AAP specifically addressed community development. An extract is reproduced below. Please note, that Chapter 8 sits as part of a suite of aims for Chilmington Green all geared to deliver higher quality and sustainability for a development of this scale.

Extract from Chapter 8 of the Chilmington Green AAP – Developing the Community

- 8.4 *However, a built form and physical design are not, in themselves, enough to ensure that a strong and sustainable community is delivered at Chilmington Green. For example, how any facilities and uses are maintained and managed over time will be crucial in developing a quality sense of place, and in turn help generate sustained community involvement at Chilmington Green. Therefore finding a suitable governance arrangement will be vital to deliver a sustainable community here.*
- 8.5 *One option would be to use the existing parish councils, and ask them to take a lead community role in the running of any facilities, uses or space delivered at Chilmington Green. However, using such 'traditional' arrangements is complicated by the fact that the AAP boundary covers three parish council areas (Great Chart with Singleton, Kingsnorth and Shadoxhurst). As Chilmington Green evolves, so will the capacity to sustain a healthy community, but with a wider range of facilities comes a more demanding management and maintenance role. It is likely that Chilmington Green, once substantially developed, will be sufficient in size to create a parish council in its own right.*
- 8.6 *In light of these complexities, the council is exploring a range of possible solutions. One of these is the promotion of a community development trust type arrangement at Chilmington Green, in the form of an independent not for profit organisation, which would aim to bring social, economic and environmental benefits to the community. It would be a community-led organisation, with an approach that encourages and supports people taking responsibility for their own communities. Such a trust would work alongside the existing parish councils – each body having a set of related but clearly distinguished roles and responsibilities.*

7. Drivers for this approach, and the AAP position generally were led by ambitions for:
- Higher quality of the physical built environment and spatial planning,
 - Sound planning of the requirements for an appropriate level of community infrastructure (roads, schools, shops, community facilities and services)
 - A sustainable level of local employment opportunities,
 - An integrated and vibrant community, where collective action generates strong community passion and well-being.
 - Viable long-term community-focused (ultimately led) stewardship of community assets, and overcoming the problems associated with some private residential management arrangements.
8. Though not to be a 'garden city' as such, the AAP principles had much in common with the Garden City principles founded on the original ethos of places such as Letchworth and Welwyn Garden City. At the time these

principles were heralded by Government as the foundations for future larger-scale developments.

9. Supporting the Council's AAP was a supplementary planning document (SPD) then dealing with Public Greenspaces and the Water Environment (2012). This SPD stated preferences for the Council not to adopt new public open spaces associated with larger-scale development, and where alternative arrangements would be secured.

The Chilmington Green Outline Planning Application and the Section 106

10. Ten months on from AAP approval in 2013, the developers submitted their outline application for the whole development area, following a long period of discussion with planning colleagues and others. After much local and formal consultation, including agreeing the Heads of Terms for a Section 106 Agreement, the application was considered and approved at a special meeting of the Planning Committee in October 2014. Approval was made subject to the completion of a Section 106 Agreement. Given the scale and complexity of the development and the required legal agreements, the process leading to its signing took over two years to complete.
11. Within this period, all the principles and draft legal documents for the planned community management organisation were negotiated and concluded.
12. From a community perspective and excluding schools provision and roads, the capital value of community infrastructure required is over £24 million (April 2014 prices). Further, to support a new community management organisation, the developers agreed a significant cash endowment to provide subsidy during the first half of the development period, plus the provision of built commercial floor-space for endowment to the CMO. Legal documents securing suitable governance of the CMO were also agreed, and are based on the principle of a not-for-profit organisation (as a company limited by guarantee) with the assumption it assumes charitable status. This new organisation would have places for resident trustees, as well as new residents having the opportunity to be 'members' of the company. The governance arrangement is such that there is no one party with an overall control of voting rights; this was deliberate following lessons learned from some other examples researched.

Comparisons with Other Community Management Examples

13. Community focused management of new (and in some cases existing) housing developments and related community infrastructure, is not a new concept by any means. As mentioned in the background, the council undertook a considerable amount of research looking at several examples from up and down the country.
14. Current thinking largely traces its origins to the urban planning principles of Ebenezer Howard, who established both the Letchworth and Welwyn Garden Cities of the early 20th Century. From this 'Garden City movement' evolved the Town and Country Planning Association (or TCPA as it still known) and

the New Towns Act. Many cities and urban extensions worldwide are based on these early principles. The Council's research included a member and officer visit to Letchworth to meet with those responsible for running its management organisation.

15. Other, and more recent development examples that featured in the council's research are listed in the following table:

New Ash Green, near Dartford, Kent	A large 1950/60s designed scheme with a complex system of community governance founded on principles coupling together an 'umbrella community organisation' (like a senate) with 'neighbourhood community management'. All households contribute service charges. Scheme governance is complex however, in this particular case. A lesson learned.
Kings Hill, West Malling, Kent	A large quality development blending commercial and residential – a joint venture between KCC and Liberty Developments (US based). At present a privately managed development, but which will be transferred to full resident control on completion. Residents contribute service charges.
Graylingwell, Chichester, West Sussex	A former hospital site on the edge of the city centre now comprising residential houses and apartments. A joint venture involving developers, an RSL and the former regional development agency. Management of the landscaped environment is through a private management company created by the developers, and community management through the Chichester Development Trust. Residents contribute service charges to the former and contributions to the latter. There was provision for a resident trustee, but some resistance from the developers at the time to implement this. Another lesson learned for the Chilmington Green CMO.
Chatham Maritime Trust/St Mary's Island	CMT is responsible for the large commercial and residential elements of the former Chatham Dockyards. The

	<p>residential component, St Mary's Island has a planned resident population of c 5,000. Its arrangements are similar to the planned arrangements for Chilmington Green, involving resident representation on a trust also comprising the developer and local stakeholders. Similarly, residents contribute towards costs through an estate rentcharge, as planned for Chilmington Green. On a lesser scale than CG, the trust owns and manages community assets. Being a long-established stewardship arrangement, this example provided several pointers for the CG proposals.</p>
<p>Cambourne, South Cambridgeshire</p>	<p>This large development near to Cambridge lies within the former Cambridge/M11 formal growth area. Its ideals have similarities to CG. Long-term stewardship is with a new parish council that owns and manages much of the community infrastructure. The lead representative at the PC was of great assistance to officers and members over a number of visits. From an early point in the CG discussions and negotiations with CG developers, the option of a parish council taking the stewardship role in a similar way was discounted.</p>
<p>Elsa Park, Bourne, Lincolnshire</p>	<p>A development of about 2,000 units. Similar community management principles to CG, through the Elsa Park Trust, with Kier the developers providing proactive support. Residents contribute a service charge to the trust.</p>
<p>Manor and Castle Development Trust, Sheffield</p>	<p>Uniquely, this trust was first created to manage a major SRB programme spanning deprived areas of Sheffield. This balanced trust covering community, local stakeholders and private interests, is responsible for a managing former social housing infrastructure, coupled with a former farm and a substantial new commercial office and flexible workspace building,</p>

	endowed to help underpin the trust's operations (another lesson learned for CG). Local residents contribute towards service costs.
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16. Our fieldwork research was greatly assisted by 'Locality', the specialist community trust organisation and their members and consultants. Locality is partly government sponsored and has membership covering over 600 community trusts.

Comparisons to the private management company model (PMCo)

Overview of PMCos

17. The Committee has referred to this approach as the 'traditional' resident management company model. Its use is widespread and longstanding, and typically is the arrangement for managing apartment blocks where communal areas, common services, and replacement requirements (to the building fabric, lifts etc.) are the norm. Increasingly, private management companies have been created for the long-term management of residential developments more generally, with a significant proportion of Ashford's housing development under this type of arrangement. Where this model is used, reasonable contributions towards the costs of common services are required from residents through either a 'service charge deed' or an 'estate rentcharge deed'.
18. Unfortunately, there is no hard data available to determine how much of Ashford's housing development is subject to this type of arrangement. From sample surveys undertaken, we know it is significant. Various, over the years members have become more involved in listening to residents' concerns about some of the poorer performing management companies, and the difficulty residents have in influencing improvements. Overcoming this issue was major factor in our consideration of the principles for Chilmington Green (CG).
19. Developers may choose to prefer the traditional PMCo approach when seeking planning permission, or be required to consider implementing a private management model if the local authority has a policy of not adopting community spaces. As stated above, it is usually implemented in cases where flatted accommodation is built and leasehold interests granted. PMCos do not normally take on the responsibility for public highway (though there are some exceptions), as public highway is usually built to standards where a highway authority would adopt. Accesses, and associated landscaping to private courtyards serving flatted accommodation, and parts of cul-de-sacs are highway types that are more typically the responsibility of PMCos.
20. At a recent meeting with Barratt Homes, they stated the PMCo approach had become 'normal' over the past ten years for this developer to choose, or be required to create. CG is usual to them in this respect.

21. On the one hand, a PMCo is a simple concept, where land is retained by the developer and the function of managing common services and subsequent repairs etc., is managed by a specially created company (the managing agent). On the other hand, these companies should operate to comply with reasonably complex arrangements that are partly statutory, and partly 'voluntary'. As yet, there is no mandatory regulatory environment that covers all types of private residential management companies and all aspects of their operation.
22. Where developers elect to create this arrangement, usually this is done by setting up a development specific PMCo. The developer may then procure a 'managing agent' to handle all aspects covering the company's responsibilities. In some cases, such as Barratt Homes, the management company is a specialist arm of the developer company.
23. Once a company (usually a private limited company) is created, it must comply with all Companies Act requirements and standard accounting practices, with particular regard to compliance with service charge regulations, and accounting requirements for sinking/reserve funds.
24. Where leasehold properties are involved, typically the case for flats, the PMCo and its managing agent must comply with the relevant law and supporting regulations set out in the Leasehold and Tenant Acts, as amended by the Commonhold and Leasehold Reform Act 2002, and other subsequent regulations, including those specific to service charges.
24. A non-mandatory code¹ for managing agents, approved by the then Secretary of State, was created by the Royal Institute of Chartered Surveyors in 2016, and endorsed by the Association of Residential Managing Agents (ARMA). The Code applies only to residential leasehold properties in England. It covers all lengths of leases and statutory tenancies where variable service charges are payable. The Code does not apply where the landlord is a public sector authority, or a registered social landlord (for other regulatory arrangements apply), but it does apply where a public sector authority or registered social landlord is an agent managing for a private sector owner.
25. Any breach of the Code does not result in a criminal offence or civil liability. However, where a resident seeks remedy through the courts or a tribunal (for example, unreasonable levels of charges, poor performance, or the absence of consultation on specific management matters) the Code could be used for evidential purposes, and where the court or tribunal would be expected to view a breach as a serious matter.
26. ARMA is a national organisation set up to represent residential managing agents (of all sizes). It is worth noting that the residential leasehold sector is unregulated. Anyone can set up as a managing agent and start collecting service charges without the relevant qualifications or experience. This is why ARMA introduced its 'Consumer Charter and Standards' in 2015 aimed at

¹ Code of Practice - Service charge residential management Code and additional advice to landlords, leaseholders and agents – 3rd Edition, RICS, June 2016

consumer protection and best practice in all areas of residential leasehold management. ARMA, in conjunction with a separate body that represents retirement homes managing agents, produced a guidance note for residents living in leasehold properties of how best to implement the statutory 'Right to Manage' (RTM). The RTM is a legal right for residents who may seek to take on the management responsibility through their own resident management company.

27. It will be noted that leaseholders are offered more safeguards than freeholders who are subject to service charge arrangements. Leaseholders have a legal right of redress through to the First Tier Tribunal, this is not currently available to freeholders paying service charges, but see paragraph 39 onwards.
28. PMCos will typically manage and enforce house-builders' covenants.

The CMO is not to be a Private Management Company

29. Due to concerns members had about some PMCos locally, and the desire to strengthen residents' position for the future, one key objective for the council was to build a resident-focused management operation for CG designed with certain safeguards. These safeguards concerned:
 - Rights for residents to appoint resident trustees/directors to the CMO Board
 - Residents' ability to inform and input to the work and development of the CMO
 - No single party should operate control over the CMO Board
 - An increasing number of resident trustees as the development proceeds in time
 - Reasonable service charges/estate rentcharges would be levied, with confidence that increases in charges would be managed within reasonable levels.
 - Where quality (in all its aspects) is maintained
30. As will be seen from earlier sections in this report, the design of the CG CMO has been informed by better practice observed elsewhere, and of lessons learned from elsewhere where unintended consequences arose.
31. The CMO will be a private (not-for-profit) company (registered at Companies House), with company Objects that define the company as a trust. The Company's Objects and its Area of Benefit are to be limited to undertaking its activities for the benefit of the development area and its residents. The intention is for the CMO then to seek charitable registration, giving it the full status of a registered charity. Registration serves to provide further safeguards.
32. The Board governance arrangement is equally balanced in terms of voting rights for directors with 50% rights allocated each to developers and non-developers' nominated directors. Note, that as for any company or trust board

the directors must exercise their decision-making with the best interests of the company/trust in mind. There is to be no casting vote for the chair of the Board. Key parties to the CMO concept: the Borough Council, the developers, and the CMO itself will enter into a contractual agreement where certain material matters may require the consent of these parties before the CMO Board may take a decision. This provides further safeguards. Residents will see an increase in the number of resident trustees to a maximum of five by the end of the development period, though the voting balance would remain unchanged. Once the development is complete, the intention is to change the balance so as to provide resident trustees with control.

33. In addition to the Board and Annual General Meetings, a network of resident consultative forums is intended, to help ensure residents are informed and consulted. Strong communication with residents is a feature of the CMO's plans.
34. Residents will be required to contribute to the reasonable costs of the CMO's responsibilities (but only those associated with managing the landscaped environment, and replacement provisions for community assets) through an estate rentcharge. At all times, the level of estate rentcharges levied must be reasonable and fully justified, and would be expected to include contributions to sinking (reserve) funds for future liabilities. In accordance with the Council's outline planning consent, the principle of a 'cap' for an estate rentcharge maximum was subsequently agreed in detail. This limits annual increases in the cap to the increase to inflation. This is intended to provide some greater certainty for residents. PMCos do not typically adopt this arrangement; hence charges can be subject to greater volatility. Please note that residents' contributions are not planned as the only source of income to the CMO. Unlike PMCos typically, the CMO will have a significant operational cash endowment payable over about ten years, it will have the benefit of an endowed commercial estate from which to derive income, and will have the benefit of service user fees (or alternatively operator management fees) for its community amenities, all in due course.
35. Quality aspects feature as a key objective for the CMO; its importance is underlined in commitments to maintain to approved (through planning) specifications and plans, for the longer term. Material departures from approved plans would be a matter safeguarded through the contractual arrangement previously mentioned.
36. The CMO, however, will not take on the enforcement of house-builders' covenants, or other conditions imposed through planning agreements. Responsibility for this type of enforcement will remain with the developers and the Borough Council respectively.
37. In summary, the CMO arrangement has governance and procedural safeguards designed that are intended to overcome the real and perceived weakness of the PMCo model. Particularly where this model is operated without fully observing the RICS Code of Practice, and where residents may be lacking in awareness of their statutory rights.

38. However, the CG model cannot deal with the issues that may be affecting residents with the operation of some existing PMCos. Last autumn, however, the Government decided to act and seek to improve levels of performance and accountability to residents. Last summer it launched a public consultation called 'Tackling unfair practices in the leasehold market'. This is the subject of the next section.

Government's leasehold and service charge reforms

39. Through a public consultation, the Government stated a clear intention of tackling unfair practice in the leasehold market, but also addressing an un-level playing field in terms of the legal rights to redress, between service charge and ground rent paying leaseholders and freeholders. The Council submitted comments to the consultation, generally supporting the government's proposed reforms, pointing out also the advantages of the Council's CMO concept, being in large part designed to strengthen residents' position.
40. A summary of the then Secretary of State's announcement last December, following the consultation is reproduced below:

Communities Secretary, Sajid Javid said:

It's unacceptable for home buyers to be exploited through unnecessary leaseholds, unjustifiable charges and onerous ground rent terms.

It's clear from the overwhelming response from the public that real action is needed to end these feudal practices. That's why the measures this government is now putting in place will help create a system that actually works for consumers.

Measures to be introduced include:

- *legislating to prevent the sale of new build leasehold houses except where necessary such as shared ownership*
- *making certain that ground rents on new long leases – for both houses and flats – are set at zero*
- *working with the Law Commission to support existing leaseholders and make the process of purchasing a freehold or extending a lease much easier, faster and cheaper*
- *providing leaseholders with clear support on the various routes to redress available to them*
- *a wider internal review of the support and advice to leaseholders to make sure it is fit for purpose in this new legislative and regulatory environment*
- *making sure freeholders have equivalent rights to leaseholders to challenge unfair service charges*

41. A further announcement to include more detail on the reforms is expected before the summer recess. Generally, the intended reforms are to be welcomed.
42. It is widely expected that the Code of Practice governing leasehold managing agents, is extended to freeholders paying service charges or estate rentcharges. Further, it is expected that service charge paying freeholders will be given access to the First Tier Tribunal.
43. At present the CG developers and council officers are assuming the reforms will cover the CMO, though it is by no means certain. Whether exempt or not, the CMO is designed to provide stronger safeguards. Its operational practices will seek parity, as far as is practicable, with the current residential leasehold Code of Practice and relevant service charge regulations. Implementing the reforms for the CMO will mean additional administration, although the CMO is likely to commission this specialist administrative support from an experienced company in the field.

Wider application? The Local Plan 2030 - Governance of Public Community Space and Facilities

44. Our new local plan addresses the potential for further consideration of alternative management arrangements through the inclusion of infrastructure Implementation Policy (IMP4). This policy, concerning future governance arrangements states:

"Proposals that will deliver substantial community space and facilities are required to be supported by a governance strategy which will need to be agreed with the Council. This strategy will need to set out what facilities are to be delivered and by when, and how they will be managed over time to an acceptable standard. Proposals which adopt a community stewardship model of governance will be supported. Should a private management company model be promoted, then it will need to be established and run in a way that is affordable, gives the residents a key governance role and is focused towards the management of the facilities to be delivered by the development. Where the Council takes on an adoption role, financial contributions will be secured from the developer towards the maintenance of facilities for at least a ten year period."
45. IMP4 is supported by a full justification, which can be found in the full Local Plan document (the Local Plan is now at post-hearing stage). Note, that IMP4 has not drawn any comment from the Planning Inspectorate.
46. The key phrase in the policy is *'proposals that will deliver substantial...'* Hence, alternative management (or long term stewardship) arrangements of the CMO type or a version of, may be considered appropriate only on larger scale developments. There is no definition of 'substantial' or what might be larger-scale.

47. Once the Local Plan is adopted it would be possible for its detailed implications and planning conditions to be developed and approved as a Supplementary Planning Document (or SPD). The construction of an SPD would permit further debate and consultation on the detail including, potentially, and appropriate tightening of policy arrangements for developments that are not 'substantial'. This might include considering the scope for added tests to be applied where developers more generally promote private management company arrangements.

Conclusion

48. There is a long history to the planning, negotiation and now implementation of the CG CMO. With first occupations expected later next spring, the remaining months are geared to completing the preparatory work and for the new company/trust to be operationally ready by that time.
49. It is a bespoke arrangement, designed to balance the interests of various parties, and importantly provide a clear focus for its resources to be entirely devoted for the benefit of its future residents. Many aspects of its design are built on other examples, such as Chatham Maritime/St Mary Island and Elsea Park in Lincolnshire. Its values and principles originate from the early Garden City principles.
50. It is also designed to secure stronger rights of influence for residents, the future 'members' of the trust. Ultimately, it is a trust intended for control by the residents.
51. Its governance and operational principles are designed along the same lines as most of the best practice guidance for residential management companies, though with the added intention the CMO is a charitable trust its potential regulation goes even further.
52. As a bespoke arrangement, it may not be entirely suitable for replication in a similar form to other larger-scale developments. One thing the research found was that the various cases studies examined had differences to suit local circumstances.
53. However, the principle of independent community management, or stronger influence, increasingly is being examined and potentially adopted elsewhere. This is particularly the case for larger-scale developments. Our new Local Plan, once fully adopted, includes a policy on this topic and provides the scope, therefore for further and detailed consideration to its possible future application.
54. Finally, the Government has acted to tackle some of the issues of unfair practices in the leasehold market and, of relevance to CG, to strengthen the legal rights of service charge paying freeholders. This is to be welcomed generally.

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