Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003

Written submission from East Ayrshire Council

It is the Council’s view that the provisions in the 2003 Act do not act as a barrier for owners to change factor although the Council has no direct experience of the issues arising from those owners who are dissatisfied with the services of land-owning maintenance companies.

Similarly, the Council has no direct experience of the options available under the 2003 Act to vary or remove existing real burdens however consider that the options available could be utilised in certain circumstances.

I have highlighted responses to the specific questions raised.

1. Section 53 of the 2003 Act allows enforcement rights in relation to real burdens to be created by implication where properties are “related”. Are there problems with the way this section operates in practice?

No, in council house sales, the Council specifies the properties which are included in the ‘common scheme’.

2. Section 63 of the 2003 Act controls the duration of “manager burdens” (the ability of a developer to appoint a property factor). Do the timescales contained in section 63 strike the right balance between the interests of homeowners and the interests of developers?

Not applicable; see below.

3. Local authorities and housing associations can impose a manager burden which lasts up to 30 years on properties purchased under “right to buy” legislation. Is it necessary to tie homeowners into an arrangement for such a long period of time?

On the basis that local authorities are likely to still have residual ownership interests (and probably will continue to do so in the longer term), with consequent repairing obligations for their own properties, 30 years does not seem an unreasonable period of time, particularly as such burdens imposed in the early 1980’s are now expiring, which has – and will increasingly have - an impact on authorities ability to maintain their own properties.

4. “Right to buy” homeowners can vote to replace a property factor with a two-thirds majority despite a manager burden being in place. Are there any examples of situations where this right has been exercised? Is a two thirds majority achievable in mixed tenure developments?
No examples within East Ayrshire Council’s area however exercise of such an option may impact adversely on the Council’s ability to maintain their own properties, notwithstanding the subsistence of a manager burden.

5. A local authority/housing association may own units in a development and provide the factoring service. Should the local authority/housing association’s voting rights be modified to make it more difficult for them to block a vote to dismiss them as property factor?

No, for the reasons specified above.

6. Section 28 of the 2003 Act allows owners to dismiss a property factor by a simple majority vote where the title deeds are silent on the issue. Section 64 provides that, regardless of what is stated in any real burden, a property factor can be dismissed with a two-thirds majority vote. Are these provisions workable in practice? The Committee would be interested in any experiences of homeowners/residents’ associations in using the legislation in this way.

Not applicable; no relevant experience.

7. Under a “land-owning maintenance company” model, an organisation owns green space around a development (which may encompass landscaped areas, drainage systems, play parks etc.). The land-owning maintenance company is required under real burdens affecting the land to maintain it and homeowners are required to pay for this service.

(a) Are the current options available to homeowners who are unhappy with the service provided by such a company effective?

Not applicable.

(b) Are there options for reform which balance the interests of homeowners and land-owning maintenance companies? (Note that the Scottish Government has consulted on this issue[1]).

Not applicable.

8. It is possible to vary or remove real burdens under sections 33 and 34 of the 2003 Act. However, if one owner objects, the variation will not be effective for the whole development. Do these provisions set the right balance between the interests of separate homeowners? The Committee would be interested in the experiences of homeowners/residents’ associations in using this aspect of the legislation.

No relevant experience.

9. It is also possible to vary or remove “community burdens” (a form of burden affecting a number of units in a development) under sections 90 and 91 of the 2003 Act by application to the Lands Tribunal. A sum may require to be paid in compensation to any homeowner negatively affected. Do these provisions set the right balance between the interests of separate homeowners? The Committee would
be interested in the experiences of homeowners/residents’ associations in using this aspect of the legislation.

No relevant experience.

10. An application to the Lands Tribunal may require the interested party to instruct a solicitor. The losing party may also be liable to pay the legal expenses of the winner. Note also that legal aid is available where the applicant meets the qualifying criteria. Is this form of procedure appropriate to the issues at stake? Does it inhibit homeowners from bringing applications under the 2003 Act? Is it appropriate/desirable to create an alternative procedure?

No relevant experience.

East Ayrshire Council
26 February 2013