

KEY MANAGEMENT ISSUES FOR NEW DEVELOPMENTS

Creating a workable future, cost effectively



If you have in your hands...

- ✓ a set of plans
- ✓ a lease
- ✓ a Section 106 agreement
- ✓ a start date

**Then you're probably too
late to change anything.**

Start early!

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1. ABOUT THIS BOOKLET

This booklet has been produced to help developers build new mixed - tenure and mixed - use communities, in a cost effective, sustainable and profitable manner with the help of their managing agents.

The booklet should also help managing agents to identify the areas for improvement which will lead to the success of the development, both in its sales phase and in the years thereafter.

It is intended to enhance understanding for all parties involved in the creation of new, vibrant, mixed - tenure and mixed - use developments – housing diverse communities in the ‘urban villages’ of the future.

The headings and bullet points below are designed to be thought provoking, to provide subjects for discussion, debate and agreement, in order that all parties can achieve the ‘win-win’ situation and identify ‘the differences that make the difference’. It is not intended to be a ‘Developer or Property Management Encyclopaedia’ but a checklist of many of the matters to be considered for new developments. Developers are recommended to work with a managing agent who is a Corporate Member of the Association of Residential Managing Agents (ARMA). Investing in the right team on day one will pay dividends in the years to come.

2. WHERE TO START?

In truth there is no one starting point. The land buyer, the architects, the lawyers, the sales team, the housing associations, the property managers ... will all have their own natural entry point. Their goals, their working methods, their training, their previous experiences, will take them to a particular point in the list below and they will work outwards from there.

That is fine, but hopefully this booklet will enable each specialist to appreciate the other viewpoints, the other concerns and goals, the other financial and practical implications and thereby not inadvertently create problems for others further down the line.

Whatever the starting point subject-wise, the starting point time-wise is always ... yesterday! Or if you are lucky ... now, today! As soon as the land purchase completes, all parties should meet to agree the collective vision for the new development. Time and money spent here will pay enormous dividends later - in time saved, in expenses avoided, in reduced stress and goals achieved.



3. THE LEASE **A**

The most crucial document for the future running of the development

- Start Date
 - Outside Restrictions? Are there legal/practical/other factors affecting the date?
 - Head Lease? Should there be one? Would it help enhance the freehold value?
- The Term
 - 999 years, 125 years, another term? What will enhance the value of the sales and the freehold reversion?
- Ground Rent
 - Studios, 1 Bed, 2 Bed, Retail, Commercial, other types.
 - How much for each type of unit? Note comparables. Apply a 'scientific' approach.
 - What is the rationale? Must be reasonable to enhance sales, but balanced with the freehold value.
- Rent Reviews
 - 25 yearly, 33 yearly, another period? Again, consider the freehold value.
 - Fixed, doubles, variable, what methodology? Consider tax on the freehold sale.
- Structure & Parties **B**
 - Freeholder(s).
 - Future sales? Consider the years ahead – what should be done now?
 - Freehold enfranchisement. Can you avoid a fragmented future?
 - Resident Management Company/Companies.
 - Limited Company – limited by shares, or guarantee?
 - Consider shareholding options for differing types/sizes of property units.
 - Are 'A Shares' and 'B Shares' needed? Balance democracy with practicality.
 - Who votes on what issues; estate matters, block matters, the composition of the board, commercial interests etc? Consider probable management problems.
 - Leaseholders.
 - Owner occupiers, buy-to-let, housing associations, commercial/retail.
 - Others.
 - Is/should anyone else be a party to the lease?
- Other Considerations
 - Is commonhold an option? Unlikely at this time – but do not be left behind when it takes off.
 - What are the different types of use and how do they affect the lease clauses?
 - Restrictions e.g. not to sublet, no washing hanging on the balcony, etc.
 - Ensure 'flexibility' and 'variability' clauses for service charges (etc) during build.
 - Regular budget updates; the future is not a known quantity, changes will happen.
 - Voids and void costs. With care and planning by the developer and agent void costs can be controlled.
 - Buy-to-Let issues. Cash flow verses long term capital value. Consider the impact on the community.

4. BUDGETS: Estate Charges, Service Charges, Block Charges **C**

- Basis for charging – unit/floor area/other. Must be sensible, fair, justifiable to avoid future disputes.
- What is included/excluded? Eliminate gaps – everything must be paid for somewhere.
- Estimates/budgets. Criteria will change – review regularly – update sensibly and ensure they are realistic – shock increases two years down the line are bad for all parties.
- Contracts. Maintain leaseholder choice within long term management stability.
- Parties involved. Consider each payment schedule – who is involved and why?
- Cash flow. During construction through to last sale.
- Reserve funds. Do not exclude! Realism here pays dividends long term.
- Landlord & Tenant legislation: five year rule relating to long term agreements prior to the sale of the first unit.

5. MANAGING AGENTS **D**

- Who?
 - Big or small – what is appropriate? Think objectively. Take advice.
 - Suitable, experienced, resourced. Specific developments need specific talents.
 - Initial requirements. What is needed during the construction and sales phases?
 - When are they required? Consultants now, agents later? Choose appropriately.
- Beauty Parades
 - Where, when, how? Start early – very early.
- Management Agreement(s)
 - Term? Balance commerciality for managing agent with democracy for leaseholders.
 - Fees
 - Pre sales fees. Professional advice, professional results. Do not think too low.
 - Post sales fees. Low fees limit resources and reputations suffer.
 - Who is the client/clients? Do not confuse the developer with the real client.
 - Specification. Make sure it is practical, appropriate, in plain English, financially clear.
- Client
 - One client with other interested parties. Preferably one Residents Management Co. but there may be more; if so ensure their relationship is clear and workable.
 - Who, why, which? Specifically who is the agent's client? Are there conflicts of interest?

6. SOLICITORS

- Developer's solicitors.
- Housing association's solicitors.
- Purchaser/leaseholder's solicitors.
- Other parties e.g. previous freeholder(s) or superior landlord(s).
- With all of the above:
 - What are the concerns/instructions for this solicitor?
 - Contact points and details.
 - Instructable or consultable?
 - What are their deadlines and/or trigger points?
 - Information packs required?

7. SECTION 106 **E**

- Build times and trigger points. Note what is fixed, what is flexible, and the consequences.
- Housing association requirements and expectations. Mostly reasonable, sometimes not. Discuss, agree.
- Community Issues. Consider this new community within the wider community.
 - Bus Routes
 - Car Clubs
 - Community Centre
 - Cycle Clubs
 - Health Centre
 - Library
 - Shops
- Other Requirements
 - What must be provided by when? Usually financially important. Think ahead.
 - Provided – but not used? Comply with the s.106 but within management stability.

8. GREEN ISSUES **F**

- Rainwater Harvesting
- Solar Power
- Wind Power
- BioFuel
 - Heating
 - Power
 - Hot Water
 - Combined
- What are the billing arrangements? Remember the five year rule relating to long term agreements.
- Council of Mortgage Lenders – concerns/rules. Do not fall foul by mistake. Check legalities.

9. SPECIFICATIONS

- Plant & Machinery. Find out details early. Predict maintenance, repairs and requirements.
- Life expectancy. When will replacement be needed? Put it in the financial timetable.
- Renewal costs. Major works need reserve funds. Use current/known costs to predict the future.
- Contracts and Contractors. What is needed and why? Poor contractors will need replacing. Remember the five year rule relating to long term agreements.

[In all the above, know precisely what you are dealing with. Get it in black and white!]

10. DRAWINGS, PLANS, DIAGRAMS **G**

- Site plan. Clarify the extent of your site, legally and physically. Who are the neighbours? Who owns or has maintenance liability for boundaries?
- Block plans. What is each block/building – legally/physically – and what is it made of?
- Floor plans. Accurate plans are needed for conveyancing and to aid professional management and repairs handling.
- Elevations. Precise details will effect major works, reserve funds, Health & Safety.
- Neighbouring property/land. The neighbours will affect daily management. Predict it.
- Electrical and other utilities. Ascertain details of all installations. Where can replacements be sourced? What are the maintenance requirements?
- Landscape. Does the actual match the plans? And what will it be like in five years? What sort of ongoing maintenance will be required?
- Drainage. Out of sight, out of mind? Obtain details. Consider preventative maintenance.
- Rainwater. Where does it go? Can it be saved and utilised? Will it flood something/someone?
- Changeable, finalised, built, updates? Check and re-check, particularly during construction.
- Associated contractors/specialists. Should you use them, do you have to use them or are there specific organisations that are needed?
- DDA compliant? Think disability. What can be done? What should be done?

11. LISTED BUILDINGS / CONSERVATION AREAS / TREE PRESERVATION ORDERS

- Where, which, what?
- Requirements? What specifically does listing mean? What must be done now and in the future?
- Costs? Does listing mean increased costs? Are there grants available?

12. SERVICES

- Cleaning, gardening, staffing, rubbish management, recycling, window cleaning, the list is endless – but do not miss any! And can they be provided in a cost effective and practical manner?

13. HEALTH & SAFETY

- Timetables. Choose sensible, appropriate and practical dates. And who can do it?
- Risk Assessments including fire. Not just a paperwork exercise. Keep it sensible and practical.
- CDM Manuals. Get details in black and white – before they get archived or lost. The developer has a legal duty to produce these and hand them over to the manager.
- Costs. Are there costs associated with assessments, testing, scientific analysis?
- DDA issues. Think of disabilities. Try it for yourself.
- Handover issues. Timing of revised risk assessment including fire as occupation starts.

14. INSURANCES

- Construction. What is covered, for how much and for how long?
- Buildings. How will this be started – flat by flat? Who will pay and when?
- Terrorism. Do not ignore it. Think carefully about it. Be realistic.
- Lifts/plant. There will be more than you think. Ascertain accurate replacement costs.
- Public Liability. With mixed-use developments this is increasingly important.
- Other e.g. Employer's Liability and Directors & Officers Liability for RMCos.
- For each of the above:
 - Who, when, handover arrangements?
 - Values?
 - Commencing when?
 - Phased handover?
 - Who pays the premium?

15. STAFF

- Employer – Developer, Freeholder, RMC? Get the paperwork to match reality.
- Contractors i.e. not employed staff.
- Contracts of Employment. The law is ever changing. Get professional advice and help.
- PAYE and NI registration.
- TUPE. Think about changes of employer; for example when managing agents arrive.
- Interviews. Who will do this – and why? Maintain professional objectivity.
- Permanent or Temporary, Full or Part Time. Balance flexibility, stability, reliability.
- Day to day supervision. Who will do this? Will it change during construction, sales and handover?
- Staff site facilities.

16. BUILD TIMETABLE **H**

- What is built when – and what are the practicalities?
- Interim arrangements.
- Fixed dates; see s.106.
- Trigger points; see s.106, sales timetable, etc.
- Services deliverability.
- 'What if' scenarios.

17. HANDOVER ARRANGEMENTS

- Expectations of the various parties.
- Practical arrangements e.g. who hands keys to who – and when? Meter readings.
- Financial arrangements e.g. who pays for installation of fixtures and fittings such as furniture in the common parts?
- Legalities and responsibilities.
- Arrangements for dealing with snagging and works under warranty. How paid for/ordered or arranged?
- Back stop.
- Services deliverability.
- 'What if' scenarios.

18. OTHER THOUGHTS & CONSIDERATIONS **I**

- Management Consultancy
 - Involve managing agent/consultants early.
 - Involve them in initial design – early changes mean practical savings.
 - Project fees. The managing agent should not be expected to do this for free.
- Maintenance
 - On going requirements.
 - Maintenance plans/timetables.
 - Short term and long term costs.
 - Warranties.

- Management considerations
 - Retail unit management.
 - Commercial unit management.
 - Boundaries between different managers. Are they seamless?
 - Should one agent manage all?
- RMC Handover
 - What are the handover arrangements?
 - What are the trigger points and/or timetable?
 - What arrangements are there for recruiting and inducting the lessee directors?
 - What documentation and financial information will be provided?
 - Who will act as Company Secretary? Often the agent takes on this role.
 - What if there is no handover?
 - Fiduciary duties.
- Disability Discrimination Act
 - Look at everything with DDA in mind.
- NHBC
 - Scope of warranties.
 - Information booklets, contact details, etc.
 - Individual units?
 - Communal areas?
- Marketing and sales
 - Sales packs and information.
 - Developer contributions. Provide generic and site specific information.
 - Managing Agent contributions. Own details and future details/plans for managing the site.
 - Service standard levels. Make these open, honest, costed, professional.
 - Buy-to-Let issues. Comment on practicalities, capital growth, cash flow.
 - Updates. Circumstances change constantly. Provide frequent updates.
 - Welcome packs. **J**
 - Standard information. Link to the site website. Update constantly.
 - Interim arrangements. Be open and honest about sales phase changes.
 - Service Level Agreements. Make them realistic, reflecting practicalities.
 - Updates. Communication is key. Update and remind, frequently.
 - Website.
 - Development websites. Useful, cost effective, green, site specific.
 - Developer pages. Provide a distinct developer area.
 - Managing Agent pages. Site specific management pages.
 - RMC pages. Residents need their own area. Who maintains it?
 - Newsletters.
 - Agree who will produce.
 - Regular updates.
 - Timetables, expectations, actuals.
 - Honest and open.

19. SUMMARY

The developer must not look at these issues as a barrier to profitability, but should consider them as ensuring quality management and sustainability. In the eye of the public consumer and potential future customer, any development always has the original developer's name attached to it no matter who the architect, lawyer, managing agent etc are or have been.

20. ACTION POINTS

Action Point **A**

The lease is not the sole domain of the lawyer. In fact the lawyer cannot draw up a lease without instructions from the developer – and the developer cannot provide accurate and appropriate instructions without an agreed vision for the completed new development. And if that new development is to become a successful, sustainable, new community it must run well for years to come.

Consequently the developer should engage the services of an appropriately qualified managing agent or management consultant immediately the new site is purchased. Consult early! Plan for success!

Action Point **B**

The new development has to work as one entity to be manageable and sustainable. Consequently think carefully about who will control and populate the new community and who will contribute to its success. Residential, commercial, retail, community occupiers – and the visiting public – will all play their part. The lease needs to reflect this. It should be flexible where possible, restrictive where appropriate, but workable whatever.

The managing agent will be the one who has to run the development successfully on a day-to-day and long-term basis. The lease will be the 'rule book.' The solicitors should therefore enquire of and learn from the managing agent. Consult early! Draft THE successful lease!

Action Point **C**

The law surrounding service charges has changed dramatically in recent years. This has produced practical difficulties, legal necessities, and financial hurdles to be overcome by the managing agent. It is very easy for an inappropriate word, or an ill thought out lease clause, to produce financial and legal problems for a development for years after completion.

Whilst solicitors should know the written law inside out, they will not necessarily know the practicalities that result for the managing agent, the leaseholders and the Resident Management Company. Developers should therefore instruct their solicitors to consult openly and in depth with their managing agents.

Action Point **D**

The choice of managing agent is crucial to the long term success of a development, not to mention the developer's short term success during the sales phase and the enhancement of his brand.

Choose the right manager for the right reasons. Each new development will have its own unique requirements – and the choice of managing agent should reflect those criteria. ARMA has a 16 page booklet advising on 'Appointing a Managing Agent,' which developers could use to run their 'beauty parades'.

Action Point **E**

A wise developer does not negotiate a s.106 Agreement without the help of the managing agent. A little sentence agreed to here can have devastating and costly consequences four, five or more years down the line. Conversely, a little something inserted now may pay dividends later on. So take your management advisor with you to the s.106 meetings.

ARMA has produced a 16 page booklet on 'Mixed - Tenure' (and Mixed - Use) as a guide to the sort of management issues that arise from s.106.

Action Point **F**

Green Issues are an ever moving target. Government targets, Local Authority wishes and scientific advances will change the 'green scene' several times during the build phase – not to mention the sales phase and the subsequent life of the development.

Keeping a constant eye on changing circumstances is a must. Regular consultation with the Local Authority and the managing agent will enable the developer to keep abreast of what is needed and what is practical. Ask now – and keep asking frequently.

Action Point **G**

Drawings, plans, diagrams and specifications have an enormous part to play in the success of the build phase on any development. They also contribute greatly to the success of the management in years to come. It is therefore very frustrating for a managing agent to find out too late that some things are written in stone, which makes the management more difficult and costly.

Before the architect finalises relevant plans the developer should consult the managing agent to see if these plans will work well in practice. The position of a bin store, for example, may be insignificant to the developer but a property manager may have grave concerns about security, disability or manual handling issues. If 'a line can be moved on paper' to deal with such concerns it will be better for everyone.

Action Point **H**

The build phase of any development is a dangerous time. Quite apart from the safety of workers, purchasers and visitors this is a period where services have to be provided 100% of the time, with quality and cost effectiveness – all within an ever changing environment. The completed development may provide adequate parking for visitors, for example, but during the build phase there could be a pile of hardcore in that area. Practical issues resulting from the changing physical environment will require management decisions – and those decisions will produce financial implications. Consequently, if developers are to minimise unforeseen bills, void charges, and a reduced bottom line, they should plan ahead with their managing agent to ensure an appropriate end result for all concerned.

Most residents are reasonable. Keeping them informed, openly and honestly, helps to keep them reasonable – and that is a job for both developer and managing agent. They should plan ahead, work jointly for the common good, and circulate information to all parties regularly.

Action Point **I**

Management Agreements reward the managing agent for work done following completion of sale. But today's complex mixed - tenure and mixed - use developments can require years of work before those completions take place. Developers therefore need to work with managing agents on a different basis during those pre-sale years.

Agreeing a project fee for those early years is a difficult thing – how long is a piece of string? The extent of the work is not known, the time frame is not known (and is usually longer than predicted), and the external influences cannot be predicted. However, a wise developer should pay appropriately for quality advice from management experts. They have no hesitation in paying appropriate fees to their other professional advisors so a developer should follow the same route for quality management advice. The result is a successful development for years to come – which builds the developer's reputation and boosts future sales.

Action Point **J**

Pre-sales information and post-sales welcome packs need to be accurate and up to date. What to include in them will vary from site to site - and from day to day during the build phase. ARMA produces a booklet called 'Living in Leasehold Flats' which provides a layman's guide on how the leasehold system works and which should be included in every pack. The developer's sales teams and managing agents should work together to provide accurate information, which will serve both sides' needs, and will be helpful and informative for purchasers.

Action Point **K**

Start improving the future of your next development right now by contacting ARMA. Booking your place on the next 'Management Issues for New Developments' workshop will be your first step to building an even more successful future.



ABOUT ARMA...

ARMA is the only trade body in England and Wales to focus exclusively on matters relating to the block or estate management of long leasehold residential property, whether for resident management companies or investor freeholders.

With over 200 corporate members managing in excess of 800,000 units in more than 30,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties), ARMA members are committed to reputable practices, professional codes of practice, consistent levels of service and client satisfaction.

ARMA members comprise selected firms and sole practitioners. All members agree to adopt and abide by ARMA's principal objectives and undertake to comply with the Code of Practice issued by the Royal Institution of Chartered Surveyors (RICS) as approved by the Secretaries of State for England and Wales under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

For more information about ARMA and our services visit...

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