

TAKING ESTATES IN CHARGE BY A LOCAL AUTHORITY

As we all know, over the last number of years, a number of housing estates across the country remained unfinished. Common areas in housing estates, including green areas, footpaths, sewers, public lighting and water connections may cause confusion and can become problematic when buying or selling a property.

The taking of housing estates under the charge of local authorities is governed by the Planning and Development Act 2000 as amended by the Planning and Development (Amendment) Act 2010.

WHAT DOES TAKING IN CHARGE MEAN?

When a local authority takes a development in charge, this simply means that it takes responsibility for the maintenance of all roads, footpaths, water mains, drainage services, public lighting etc.

IS THERE AN ONUS ON THE LOCAL AUTHORITY TO TAKE A HOUSING ESTATE IN CHARGE?

The answer to this question will depend on the circumstances at hand. There are three scenarios which can arise:

1. If the development has been completed to the satisfaction of the local authority and if it complies with all planning requirements, the local authority **must** initiate the procedure to take the estate in charge if requested by the developer or by a majority of the owners of the houses involved.
2. If the development has not been completed to the satisfaction of the local authority, the local authority **must** in most cases start the procedure to take the estate in charge if requested by the majority of

the owners concerned within 7 years of the expiry of the planning permission.

3. In the case of Uncompleted Developments, the Local Authority has an absolute discretion to take the unfinished estates in charge if certain conditions are met.

LIABILITY

Being aware whether or not an estate was taken under charge of a local authority is essential in legal proceedings as it is necessary to know who exactly is responsible for certain areas/ fixtures.

Take, for example a personal injuries claim. If someone suffers an injury in an estate and wants to take legal proceedings there are three essential ingredients to a claim.

- Is there liability, i.e. is there someone at fault?
- Is there an injury
- Is there someone who can actually pay for the injury if damages are awarded?

DOES EVERY ESTATE HAVE TO BE TAKEN IN CHARGE?

No. There are examples all over the country of estates which were never taken in charge by the local authority. The estate can be managed and maintained by a management company or by the residents themselves. This gives rise to a private situation, governed by private law and not an action against a local authority.

BEWARE OF THE POTHOLES!!

Potholes are inevitable and unavoidable. This leads to the common question of what responsibility do the local authorities have for potholes and what liability can it leave a local authority open to?

In a nutshell, if a pothole exists on a public road or footpath and a local authority does not attempt to repair it, the local authority is not liable for it. However, if a local authority does repair a pothole but it has not been repaired to an approved standard, the local authority may be open to liability for any injury that may arise.

This is not to say that the local authority is liable for every incident which has occurred at a pothole which they have repaired. Potholes are inevitable and their existence and reoccurrence in certain areas is unfortunately unavoidable.

The Local Authority will be free from any liability once the pothole was repaired in accordance with how it should have been repaired and one must take into account surrounding circumstances. Certain roads have more traffic than others, may be prone to higher levels of frost and rain water. This would cause potholes to reappear more frequently in some areas rather than others.

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