

## CLARIFICATION STATEMENT

15 September 2021

**OPEN CABRERA**

We have received yet another rambling communication on 9 September 2021 from the Junta Board.

It repeats the same **CONFIDENCE TRICK** that was played by the Developers in 1993 in order to convince the Homeowners that the Developers should not pay maintenance fees.

As one homeowner wrote: 'What a load of twaddle. They blame everyone but themselves. They make things so complicated in order to frighten everyone'.

***Junta Board: "You will all become 'Developers' and have to pay for the urbanisation"***

OC Response: No, we will not. Anyone that has bought a house in Cabrera has paid their 'concrete quota' to the Urbanisation Firms / Developers to provide the required infrastructure in the urbanisation plan. (unless it clearly states otherwise in their deeds). As such, we have all paid our dues.

***Junta Board: "We are going to calculate all the infrastructure costs back to 1993 and you will have to pay us because you owe us."***

OC Response: No, we will not. You have already been paid by the home buyers through their payment of 'concrete quotas'.

It's a disgrace that the Developers have not provided the required infrastructure with the money. It is a disgrace that 5% of the homes do not have an Endesa electricity supply.

It should also be pointed out that there are an unknown number of villas that are not connected to the mains sewage system, contrary to the Treasurer's assertion that all properties in Cabrera are connected to mains sewage. This demonstrates another example of misinformation promulgated in the Junta Board's name.

The Developers have treated the Junta members with complete disdain. There are no published Junta records setting out the infrastructure work aside from one budget in May 2002 for phase 1 of €1,233,998 (which acknowledges a requirement to submit a budget).

By 2004, issues were recorded regarding Developers not paying their contributions for urbanisation works. By 2008, the Town Hall was insisting that the Developers should include a budget for infrastructure work.

Does this sound familiar?

**Junta Board: "You will have to pay for all the future infrastructure as well"**

OC Response: No, we will not. The Developers will pay for the infrastructure expansion and recover fixed, known 'concrete quotas' as set out in the Urbanisation Plan. The future purchasers of plots or homes in Cabrera will make their fair quota contribution towards the required infrastructure at the point of purchase and the Developers will make their fair quota contributions if they wish to urbanise plots in readiness to sell.

Under Rule 15 of the Statutes, it may be necessary for the Town Hall to perhaps consider expropriation of land from the delinquent Urbanisation Firms to fund the completion of the urbanisation.

The Homeowners should not be treated as a source of funding to be used at the uncontrolled whim of the Developers. An example of this is provided by one Homeowner:

*"The transformers should have been put in 12 years ago. I was denied builders electric.*

*I paid GBP 13000 for solar panels and then paid for electric to be connected.*

*I strongly object to paying again." (for the new transformers costing several hundred thousand euros)*

There are 6 transformers shown in the Urbanisation plan. The transformer at the Arch was installed prior to the formation of the Junta de Compensacion in 1991. So, since the formation of the Junta, it seems that the Developers have not provided a single transformer in 30 years!

The Treasurer repeatedly mentions that he provided 'the transformer in the La Pilica area'. We have questioned this (but no response) and we believe that there is no such transformer in the La Pilica area which is located inside Poligono 1.

**The Urbanising Firms (Developers) will be aware of the following:**

If they bought an Urbanising Firm that was incorporated in the formation of the Junta de Compensacion, then they have **inherited all the obligations** of that firm. They cannot avoid their obligations by saying that it was the previous owner of the firm that failed to provide homeowners with the infrastructure that they purchased.

**The Urbanising Firms (Developers) will be aware of the following:**

The Urbanisation Firms will have to pay for all the **service and maintenance** payments that they have avoided since 1993. If they bought an Urbanising Firm that was incorporated in the formation of the Junta de Compensacion, then they have inherited all the obligations of that firm and that debt includes the avoided **services and maintenance** payments since 1993.

The Urbanising Firms should [continue](#) to fund the development of Cabrera in accordance with Urbanisation Plan and as reflected in the 1993 AGM minutes. The urbanising firms have always had the responsibility for completing the urbanisation.

They should raise the necessary finance of their own in the normal way as reputable urbanising firms do. They should take out loans of their own from the banks to fund the urbanisation if necessary, they should sell their land and houses to raise capital and they should recover specified and known 'concrete' infrastructure contributions from each home purchaser at the time of each sale to a new landowner.

If they do not have the financial standing to be able to act as an Urbanisation Firm, then the Developers should consider selling their holdings to an Urbanisation Firm that could act as a professional developer.

Instead of a completed urbanisation infrastructure, we see townhouses and houses for rent or sale, a restaurant for sale, a €1 million villa for sale in Vera, an office block and developed plots in the La Pilica area.

We can't help but wonder why the infrastructure is not completed?

### **How should the Junta de Compensacion Operate?**

In concept, a Landowner or group of Landowners (Urbanisation Firms, Developers) get together and decide to pool their landholdings to create an urbanisation. At this stage, there is no planning permission on the land and theoretically there could be no homeowners in the proposed urbanisation.

The Landowners \ Urbanisation Firms then approach the Town Hall in order to get planning permission.

The Development is overseen by the formation of a Junta de Compensacion. The Junta de Compensation is a body that is set up to [administer](#) the urbanisation until such time as it is deemed to be complete and can be handed over to the Town Hall as a completed urbanisation. It is called a Compensation scheme because the original Urbanisation Firms cede some of their lands for the common areas and roads and, in return, they get their fair share of development plots in the urbanisation. (ie, they are compensated in allocated plots for their differing contributions).

As the Town Hall does not wish to find themselves in the position where rogue Developers sell off all the plots and houses and leave all the infrastructure incomplete and decaying, they usually ask for a bank guarantee (AVAL) to ensure completion from the urbanisation firms. In Cabrera, the AVAL for the Developers used to be paid by the Developers until they arranged for it to be paid solely by the Homeowners. Apparently, the Developers don't feel that it is their responsibility to pay for their own bank guarantee to the Town Hall.

Ironically, it was the commitment of the Urbanising Firms to complete the development that enabled them to get planning permission from the Town Hall for Cabrera in the first place. It was not the future homeowners that were asking for planning permission or taking out AVAs to guarantee the completion of the urbanisation.

The design of the urbanisation and the plot allocations are all formalised in the Urbanisation Plan and a budget is set for the creation of the infrastructure. The projected costs for the infrastructure are distributed between each of the plots according to the land area. This forms the 'concrete quotas' mentioned in the Statutes that need to be paid by each new homeowner that buys into the development. This 'concrete quota' should only be paid once by a Homeowner.

[Because the infrastructure is owned by the Junta de Compensacion, this infrastructure needs to be maintained by the ALL members of the Junta \(Developers and Homeowners\) in proportion to their land ownership until such time as the development is complete and can be handed over to the Town Hall.](#)

This is how it works in Spain and this is how it is reflected in the Statutes.

The Urbanisation Firms / Developers would not be in this position if they had honoured their commitment to the Town Hall to complete the urbanisation.

As homeowners buy urbanised plots from the Urbanisation Firms, so the Developers' contribution to the maintenance and services cost reduces until such time as they have sold all their plots and therefore have no obligation to pay anything. Given that the Urbanising Firms agreed to complete the Urbanisation work in 4 years according to the plan, there should have been no maintenance costs for anyone two decades ago as the urbanisation would have been handed over to the Town Hall.

The Junta de Compensation should invoice each developer for their respective concrete quotas based on each urbanisation budget produced against the approved and costed urbanisation plan. This budget should be approved at an AGM.

These concrete quotas should be recovered by the Developers at the point of sale of urban land and / or urban land with a constructed house. Otherwise, the Developers would never recover the payments made to the Junta de Compensation to build the infrastructures required by the urbanisation plan.

The Junta de Compensacion should then pay the concrete quotas that have been collected to the company(s) that carry out the infrastructure build in the approved budget. The funds should be first collected from the Developers and then spent by the Junta Board in accordance with the urban budget and plan.

The process is exactly the same for the Maintenance and Services. The budget is produced and agreed. Then the Junta de Compensacion should invoice **ALL** the landowners for their fair share of the annual contribution (**not** only the Homeowners).

It should be noted that the responsibility for the implementation of the urban plan and payment of the associated costs is that of the Junta de Compensacion and not the individual developers.

It is important to get this message across because, when the Developers start to claim that they have spent millions on urbanisation, well in fact it was not their responsibility to incur the expenditure. It has always been the Junta De Compensacion Board's responsibility. The funds should have been first collected from the developers and then spent by the Junta Board in accordance with the urban budget and plan in the same way as they do for Maintenance.

The only record that should be acceptable as proof of expenditure on urbanisation is that contained in the Junta de Compensacion accounts. The Developer accounts are not part of the Junta and they cannot invoice the Junta for their costs as it should have happened the other way round based on resolutions agreed at an AGM.

Under the overwhelmingly dominant control of the Developers (overwhelming majority shareholders), the Junta de Compensacion appears to have neglected all due process regarding the planning, administration and development of Cabrera Urbanisation for decades.

There is no published development plan and there are no progress reports. There are no routine published budgets and there is no routine financial reporting on the infrastructure works undertaken. In fact, it seems that the Junta de Compensacion has never raised invoices to the developers for their respective payments for the urbanisation plan / costs.

It really is the 'Wild West'.

**And the Junta Board now writes:**

*"What has the CRA, and OC done for the positive benefit of Cabrera? Naturally you are at liberty to make your own conclusions, but by the illogical action and advise that are circulating, their objective can only be to devastate Cabrera as we know it, for what purpose? Only time will reveal."*

As homeowners in Cabrera, why on earth would we wish to 'devastate' Cabrera?

We simply wish to clean up Cabrera which is a three-decade long development failure.

The CRA and OC have simply asked pertinent questions about the operation of the Junta and its finances. These questions remain unanswered.

No openness. No transparency. No willingness to engage. Owners must therefore draw their own conclusions.

Why the reticence to respond? Why hide the answers? Why is the Junta always so quick to mislead, obfuscate, complicate and conflate rather than simply to deliver a straight answer?

We can speculate but only time will reveal.

Why would we need to chat away about Junta issues on some arbitrary social media website when the Junta Board has not responded to any of our questions? Without clear answers from the Junta, what is there to discuss? We can only speculate under such conditions.

Why would we need, as the Junta Board suggests, to go foraging in the Junta Office on an individual basis to try to find things out? We don't need to engage in the same repeated, futile exercise that so many Homeowners have described to us. This Junta Board does not want to answer any questions.

The Junta Board has proudly announced that they have prepared a 'practical feasible proposal' for Cabrera.

Well, where is it?

Is it going to be the "1993 Agreement – Revisited"?

Is it going to promote yet another way for the Developers to avoid their maintenance and services obligations?

Are we going to see it now or is it going to be held back and only produced in a 'big reveal' at the AGM in November 2021?

Only time will tell!

Kind Regards

**OPEN CABRERA**