

Impending autumn follows an interesting summer, during which it would have been difficult to miss what has been described as the “leasehold houses and ground rent scandal”¹ breaking over development schemes which have seen new houses being sold under lease arrangements. Developers involved in setting up estates based on this type of arrangement have been in the firing line of unwelcome publicity which has posed some difficult questions and led to a [Government Consultation: Tackling unfair practices in the leasehold market](#) (the Consultation).

Are there real moral issues at stake here, as has been suggested, or are we seeing what is, like it or not, a legitimate commercial practice being pilloried as a result of incomplete advice to purchasers within a market of limited real choice?

And as developers, what does the future hold now?

The Issue

Under our traditional model of home ownership houses have been sold as freehold – the proprietor owns the property and the land it sits on. However, there has been an increasing trend towards selling houses as leasehold which means that the buyer is basically a tenant (albeit with a long term rental) arguably weakening the “Englishman’s home is his castle”² principle which we tend to think of as a right.

Leasehold is not a new concept, as anyone living in a flat will know. However, flat owners enjoy greater protections than leasehold house owners. For example, if a developer sells the freehold of a block of flats, the tenants have a right of first refusal. Flat leaseholders also have the right to challenge unfair service charges. “Owners” of houses occupied under a leasehold arrangement have no similar rights.

The lack of safeguards for leasehold house arrangements explains, in part, the recent headlines. Not only do leasehold models for new houses see high ground rents which increase rapidly, occupiers face potentially high costs for purchasing the freehold, as well as charges for consents and general administration. As a result, buyers have found themselves locked into expensive contracts with no way out: now alert to the problem, lenders are unwilling to offer mortgages against properties with this sort of ground rent liability and buyers do not want them either.

Government Proposals

The Consultation looked to developers, residents, solicitors, lenders and landlords, amongst others, to comment on the potential impact of a number of different proposals, specifically seeking views on:

- Prohibiting the sale of new leasehold houses (with some possible exceptions where developers are *obliged* to sell a house on a leasehold basis, for example, National Trust property, garden villages or those within a cathedral precinct).
- Possible changes to the Help to Buy scheme in relation to leasehold houses which would see this type of loan being limited to new build leasehold houses only where there are specific circumstances to justify this and then only where ground rent terms are reasonable.
- Limiting the starting value and increase of ground rents on all new residential leases over 21 years.



¹ *The Guardian*, “Leasehold houses and the ground rent scandal,” 25 July 2017.

² Established as common law by lawyer and politician Sir Edward Coke in *The Institutes of the Laws of England*, 1628: “For a man’s house is his castle [and each man’s home is his safest refuge].”

- Updating Ground 8 of the Housing Act 1988 so that long leases over 21 years with an annual ground rent in excess of £1,000 in London and £250 outside of London cannot be an Assured Tenancy. This is important, as Ground 8 was intended to ensure assured tenants do not build up rent arrears - not place tenants who have paid a significant premium at risk of repossession in unintended circumstances. Landlords are reassured that any change will not affect their ability to take legal action against a tenant for breach of the lease terms.
- Providing freeholders on private estates with equivalent rights to leaseholders to challenge the reasonableness of service charges.
- Areas for future leasehold reform, such as improving commonhold, looking at how managing agents operate and considering leasehold terms and enfranchisement.

Opportunities to be involved in shaping the future of leasehold interests do not come along that frequently and it is expected that many individuals as well as many within the industry will have taken the chance to comment.

What Next for Developers?

Responding to the Consultation was the obvious first step. But what next, pending the outcome? Given that the government clearly set out its views on current opinions around impact on choice, house prices and supply, is there anything else to consider?

Some developers are voluntarily taking steps to try to resolve this situation but this is not an isolated issue where leasehold is concerned. Flat owners have long wrestled with freehold owners and management companies over rentcharges, lease extension costs (described as “the biggest scandal of the leasehold world”³) consent costs and service charges – yet none of these, singly or together, has prompted proposed legislation in the way that the current problem has done. Yes, this is a real problem for developers but they are not solely responsible for a legal system which has enabled the current issues to perpetuate.

This is one aspect of a far, far bigger issue which will require significant buy in across the property industry and government to resolve. Other jurisdictions have successfully addressed the problem⁴ and there is the opportunity to do so here. There is a burning hunger for change in this area but the real question is whether or not there is the appetite within the industry and government to deal with the fallout.

³ James Wyatt, Chartered Surveyor Parthenia Valuations.

⁴ *The Guardian* article referred to in footnote 1, above, refers to Amsterdam’s move to convert all existing leaseholds into perpetual leases and restrict ground rent to a peppercorn – effectively, nothing. Scotland has also moved to reject leasehold with its Abolition of Feudal Tenure (Scotland) Act 2000.

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