

# Implementing Reforms to the Leasehold System in England: Consultation Update

Following Sajid Javid's promise to "crack down on leasehold practices"<sup>1</sup>, the government is now midway through its consultation: "Implementing reforms to the leasehold system in England".

James Brokenshire, current Secretary of State for Housing, Communities and Local Government, describes proposals as having the potential to "make the leasehold system fairer, more transparent, and cheaper for home owners in the future", promising that "the dream of home ownership for leaseholders should come with no surprises or unfair conditions which put corporate profit over consumer protection".

**Consultation: 15 October – 26 November 2018**

## Background

Javid's announcement was not before time, made as it was in an increasingly hostile atmosphere that included horror stories of rapidly escalating ground rents, unsellable homes and refusals of mortgage applications for residential purchasers. Such reports were generating increased media coverage which, if nothing else, forced the government to consider the point as key policy looking forwards.

Brokenshire's stated aims will come as a relief to those keen for change but the proposals should be closely watched by those developers who may need to adjust their own appraisal methodology and housing delivery models (possibly retrospectively, for those who haven't been paying close attention already).

## Aims of the Consultation

Relating to the housing market in **England** only, the consultation seeks views on the following:

- **Banning** the sale of new-build houses on a leasehold basis (stated to be "at best unnecessary and at worst a platform for misuse", with the claim that houses are being "built and sold as leasehold simply to create a revenue stream for whoever owns the freehold")
- **Restricting** ground rents on new residential long leases to £10 per annum (average new build ground rents are £371 and, although many are index linked, some contain highly onerous review mechanisms that cause a doubling every decade – demonstrating the appeal of buying and selling ground rents as an economic asset)
- **Protecting** freeholders contributing towards communal area maintenance (i.e. ensuring they have the same recourse as leaseholders (such as first tier tribunal referrals) where services are not being provided correctly (or sometimes at all) by a management company)

- **Improving** leasehold property sales (focusing on making sure the required information – to include the lease, service charge history, account information – is readily available at the earliest possible stage) and legislating for reasonable – and maximum – fees

It is recognised that certain exceptions to the proposed ban on leasehold sale for houses will be needed and the consultation specifically highlights shared ownership properties, community-led housing, inalienable National Trust land and excepted sites on Crown land as areas that may benefit from such exemption. It is not difficult to see how this would make sense in practice.



## Long Term Impact?

In terms of structuring new developments, it is a short step for developers to stop selling new build houses on a leasehold basis and to fix ground rents at nominal index-linked rates (such models existed before, so why not again?). However, and as many of those who sit on the other side of the fence would argue, ground rents can have a positive benefit for the wider economy. Used appropriately, ground rents represent stable and determinable income over long periods of time from a diversified creditor base. This can support wider financial instruments, such as annuities.

In terms of protecting freeholders contributing to communal area maintenance, any legislation which seeks to enhance recourse can only be a good thing, particularly if (as seems to be the intention) new home owners are to have a freehold interest. If buyers are not only asking "what do we get" in return for their maintenance contributions, but are actually afforded clear and logical recourse to achieve such maintenance when it is not delivered, then this would be a positive change, reflective of Brokenshire's promised "consumer protection".

In relation to making rules as to the provision of leasehold information, this should arguably be a fundamental aspect of any sale pack anyway and perhaps estate agents and letting websites should be required to commit to providing such information so that all buyers are as informed as possible as early as possible.

1 See our December 2017 ([Early Christmas Present for Future Homeowners Sends Shock Waves Through the UK Housebuilding Industry and Beyond](#))

## Criticisms

The most obvious criticism of the proposals is that they fail to provide any comfort to existing "trapped" leaseholders who do not fall into the post-December 2017 era. We are already seeing signs that this affected group is likely to form the basis of a new PPI-style decade of litigation for "mis-sold" leaseholds.

Besides this, from a "consumer" perspective at least, criticisms are difficult to see.

## When Can We Expect Change?

Not that soon. The consultation closes on 26 November 2018, but suggestions are mid 2020 at the earliest for the cap on ground rent (albeit with a three-month implementation period). Importantly, however, it is recognised that any proposed new laws preventing the sale of new-build houses as leaseholds will likely have retrospective effect to those units sold after the December 2017 announcement of the ban, so developers will need to take note and plan accordingly if they have not already heeded the warnings.

## Where Does the Market Go From Here?

Industry responses have been mixed and some more proactive developers, including PLC house builders, have earmarked huge sums of money (one developer ring fencing £130 million) to "help customers". We watch with interest to see what value such "help" might be and whether it will actually solve the issue for those homeowners who need "consumer protection".

From a developer point of view, if any are still using the leasehold model to sell their new build houses, they need to do so with real caution. Apart from the obvious issues with actually selling the unit to a well-informed buyer, there are reputational issues with which to be concerned. Given that the issue is in mainstream politics and media, any developer unsure of how to market units should seek advice.

We eagerly await the close of the consultation on 26 November 2018 and the publication of a written government response.

How do you feel about the consultation? That is very likely to depend on whether you are a consumer or developer, but whatever your opinion, change is on the way.

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