

Consultation Response to 'Leasehold home ownership: buying your freehold or extending your lease'

The following response is submitted by the National CLT Network and the UK Cohousing Network. Please note that we have only answered question 66.

Background to the use of leasehold by Community Land Trusts and cohousing communities

- We are pleased to see that the Law Commission has recognised and set out our two organisations' positions on leasehold reform more generally, and on leasehold enfranchisement specifically.
- Community Land Trusts, cohousing communities and other forms of community led housing use leasehold responsibly and ethically to further their objects.
- Community Land Trusts, under their definition in section 79 of the Housing and Regeneration Act 2008, acquire and manage land and other assets for the social, economic and environmental interests of their local community. They should ensure that assets are not used or sold except in a manner in keeping with that purpose. Leasehold provides a robust, well understood and efficient means of implementing this, and is most often used to sell homes at a price deemed affordable to those in need in the local community, and to retain the homes as affordable in perpetuity.
- Cohousing communities do not yet enjoy a statutory footing. After a consultation of its members in the second half of 2018, the directors of the UK Cohousing Network formally agreed a proposed definition, which they believe could be used in the context of any legislative reforms related to leaseholds. They chose to mirror the three main elements of the definition of CLTs in the Housing and Regeneration Act 2008. This is provided in Annex A. Its core elements provide that cohousing communities only use their homes and other property to fulfil its community benefit objectives. Cohousing groups use leasehold to this end, protecting the integrity and future management of the cohousing community for so long as the members of that community wish it.
- The consultation paper also mentions housing co-operatives. Our two organisations work closely with the Confederation of Co-operative Housing, which has not yet responded to these consultations for the reason that – as the consultation paper notes – the issues are not generally applicable to fully mutual housing co-operatives.

Views on the proposed exemption for Community Land Trusts and other forms of community housing

- We strongly support the proposal that there should be a new exemption from enfranchisement rights for Community Land Trusts and cohousing communities.
- Without such an exemption, Community Land Trusts and cohousing communities can only fully protect their homes from enfranchisement by seeking a Community Right to Build Order. However, as the consultation paper notes this process can be lengthy and costly. The rationale for exempting homes built under a Community Right to Build Order should apply equally to those owned by a Community Land Trusts or cohousing community.

The housing models to which the exemption should apply

- At a minimum, the exemption should apply to Community Land Trusts as defined by section 79 of the Housing and Regeneration Act 2008, and to cohousing communities as defined by a new statutory provision (or other appropriate regulatory provision) following the proposal set out in Annex A.
- In recent years, community groups have increasingly sought to blend features of Community Land Trusts, cohousing, co-operatives and other approaches. We have embraced this innovation by encapsulating all these approaches under the banner of 'community led housing'. The Government has accepted this approach, adopting our definition for example in the Homes England prospectus for the Community Housing Fund¹. That definition provides three principles:
 - meaningful community engagement and consent occurs throughout the development process. The community does not necessarily have to initiate and manage the process, or build the homes themselves, though some may do;
 - the local community group or organisation owns, manages or stewards the homes and in a manner of their choosing, and this may be done through a mutually supported arrangement with a Registered Provider that owns the freehold or leasehold for the property; and
 - the benefits to the local area and/or specified community must be clearly defined and legally protected in perpetuity.
- The prospectus also sets out a list of eligible forms of body corporate (para 25), which should have legal objects that match the above definition.
- In order to fulfil the third principle, that the benefits (commonly affordable housing) are legally protected in perpetuity, all eligible bodies corporate ought to have the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721611/CHF_prospectus_-_FINAL.pdf

option to be exempt from leasehold enfranchisement.

- We do not yet have a proposed legal definition of community led housing. But the Law Commission could consider whether the above, the statutory definition of Community Land Trusts and the proposed definition of cohousing communities in Annex A could form the basis of a new, more general legal definition of community led housing. This could be a suitable basis for the leasehold exemption.

The way in which the exemption should work and the circumstances in which it should apply

- We have previously suggested that exemptions could follow from the Community Land Trust or cohousing community issuing a notice to the effect, based on an express decision approved by their members. The notice could take the form of a resolution at a General Meeting. The exclusion of enfranchisement rights could also be reflected in the lease. We do not have a fixed view on how this should work, so long as the process is simple and efficient.
- We would not want any legislation or regulations to fetter the rights of Community Land Trusts or cohousing communities to exercise the exemption. For example, by providing that they can only be exempt in designated areas, or under certain conditions. It should be for the local community to determine the applicability of the exemption, following their particular objects and local circumstances.

The enfranchisement rights which should fall within the exemption

- We believe the exemption should encapsulate the following rights:
 - (a) the right under Part 1 of the Leasehold Reform Act 1967 to acquire the freehold of a house (enfranchisement),
 - (b) the right under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (collective enfranchisement in case of tenants of flats), and
 - (c) the right under section 180 of the Housing and Regeneration Act 2008 (right to acquire social housing).

Any other issues which consultees consider relevant to such an exemption

- The consultation paper also notes that shared owners may be restricted from owning more than 80 per cent of the value of their property in designated protected areas, made possible by provisions in the Housing and Regeneration Act 2008. The justifications for this were that in such places homes taken fully into private ownership would be difficult to replace, and that landowners may be reluctant to

put forward the land unless they can be assured that the homes would remain affordable in perpetuity.

- Community Land Trusts, by their nature, require the means to retain their homes as affordable in perpetuity. The inability to cap shared ownership leases at 80 per cent outside of designated protected areas therefore limits the suitability of shared ownership. Some CLTs are content to allow owners to staircase to 100 per cent, but most are not. These properties are difficult to replace - often held by small community-based organisations with a limited supply of suitable local land - and landowners have expressed reservations about selling or gifting land unless the homes remain affordable in perpetuity.
- Community Land Trusts thereby match the justifications used for nationally designated protected areas, but on the basis of locally determined criteria of need and appropriateness.
- We would therefore also urge the Law Commission, and the Government, to consider extending the protections provided in sections 301 and 302 of the Housing and Regeneration Act 2008 so that Community Land Trusts including those outside designated protected areas can restrict staircasing to 80 per cent or more of the full value of the home.

For further information, please contact the Director of the National CLT Network, Tom Chance on tom@communitylandtrusts.org.uk or 020 3096 7791.

Annex A – proposed definition of a ‘cohousing community’

1. A cohousing community will comprise residential units², together with communal and ancillary facilities, collectively created by members³ of that community, and with an objective of fostering the social and environmental wellbeing of all its members, as well as contributing to the wellbeing of the wider area in which the cohousing community is located.
2. The management of a cohousing community is shared by all its members, who shall also be members of the body corporate owning the freehold or head leasehold interest in the relevant land⁴. All member households⁵ occupy their individual residential units on terms that ensure that the cohousing community’s objectives are achieved.
3. The terms of membership and the role of members in decision-making will be determined as appropriate by each cohousing community to ensure accountability to all the members. Members may also include, say, a housing association as the immediate landlord of any social/affordable rented homes.

² ‘Residential units’ is the Law Commission’s proposed term to mean both flats and houses to get round the legal problems of defining a ‘house’ or ‘home’.

³ ‘Members of the community’ for the time being i.e. at any time in the history of the project the numbers of members may only be a proportion of the final number of members capable of being housed.

⁴ ‘Relevant land’ will normally be the whole site on which both homes and any communal facilities are built.

⁵ ‘Households’ could also include a number of non-related individual adults sharing by agreement. Each cohousing community may determine how each household and its occupants are represented in the governance of the community.