

'Tackling unfair practices in the leasehold market' - consultation response from the National CLT Network, UK Cohousing and Locality.

Please see below a joint consultation response from the National CLT Network, UK Cohousing and Locality. It has been submitted by the National CLT Network. Please note that only the relevant questions have been answered. For further information please contact:

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Q1: Are you responding as:

- On behalf of three organisations

Q3: If you are responding on behalf of an organisation, is the interest of your organisation as:

- An organisation representing freeholders
- An organisation representing leaseholders
- Other

Q4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located (or specify areas in the box provided):

- The National CLT Network is based in SE1, but represents Community Land Trusts active across England and Wales.
- UK Cohousing represents Cohousing groups across England, Wales, Scotland and Northern Ireland.
- Locality is based in N1 (London), but represents members delivering community-led housing across England.

6. What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?

- We support this consultation's goal of addressing the unfair and unreasonable abuses of leasehold by developers and private investors. However, we are concerned about the impact on Community Led Housing and in particular Community Land Trusts (CLTs) and Cohousing groups.

Impact on CLTs

- CLTs are a form of community-led housing, set up and run by ordinary people to build and manage homes for the benefit of their local communities. They act as long-term stewards for housing, ensuring that it remains genuinely affordable in perpetuity to benefit not just one generation, but every future occupier. CLTs are defined in Section 79 of the 2008 Housing and Regeneration Act, which requires CLTs to ensure that assets are not 'sold or

developed except in a manner which the trust's members think benefits the local community'.

- In order to preserve the affordability of the homes, many CLTs retain the freehold of the homes and sell homes or flats under leasehold. They do that through either shared ownership or resale price covenant disposal models. One-third of all CLT housing completed to date has been sold under leasehold.
- CLTs have had no involvement in the exploitation of leasehold, and any blanket ban that restricts their capacity to deliver new affordable housing would harm – not benefit – consumers. As outlined in the answer to Question 8, restricting the ability of CLTs to sell leasehold homes would impact on the delivery of 4500 CLT homes in the pipeline.

Impact on cohousing

- Cohousing is a form of community-led housing, created and run by their residents who have self-contained homes as well as shared community space. Senior Cohousing (50+) is emerging as a new positive choice for people who want to downsize but find the mainstream retirement housing market does not meet their requirements to make this move. Cohousing principles can apply to both market and all forms of affordable housing in all tenures.
- Leasehold is the tenure of choice of many Cohousing projects. It enables the community owned management of the shared spaces and common house. Where Cohousing projects have been developed in partnership with a housing association to provide mixed tenure homes, a leasehold arrangement has been critical to that arrangement. For example the Older Women's Cohousing project in Barnet, London, has a head lease of 999 years to self-manage the project, with Housing for Women (a Registered Provider) owning the Freehold and being the immediate landlord of the social rented properties.

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| <ul style="list-style-type: none">• We therefore request an exemption for Community-led housing projects, and in particular CLTs and Cohousing projects, from any outright ban on new-build leasehold sales. |
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- CLTs are defined in Section 79 of the 2008 Housing and Regeneration Act. Cohousing is not defined in statute. Our request could be achieved either by referencing the existing definition of CLTs and a new statutory definition of Cohousing, or by referencing a new definition of community-led housing. While there are other community-led approaches (such as co-operatives) that are less impacted by these proposals, they would not be adversely impacted by inclusion in any exemption. A draft statutory definition of community-led housing has been prepared and can be made available to the Department. We noted the contribution of Philip Rainey QC, one of the speakers at the APPG on Leasehold and Commonhold Reform on September 11th 2017 that CLTs and similar bodies would be sensible and justifiable exclusions from any ban.
- Whilst our preference would be to reference CLTs and cohousing or Community-led housing in an exception, we would also be open to discussing the possibility of capturing CLTs and Cohousing or community-led housing in general within a wider exception.

Voluntary Code of Conduct for Public Interest Leases

- Community-led housing is part of a coalition of organisations that use leases to retain control of land for public interest purposes, in contrast to the exploitative practices of many developers and investors. In the right hands, leases are the best way of maintaining long-term, responsible stewardship of land and homes, where the landlord is effectively a trustee of the public interest purpose for which the home or other property is being leased.

- **We propose the introduction of a voluntary Code of Conduct for Public Interest Leases, to be developed in partnership with other public interest landowners, including housing associations and other socially responsible landlords, with the support of the legal and chartered surveying professional bodies.**

- The Code of Conduct would include provisions to prevent onerous or unsustainable ground rents. It would promote best practice in the leasehold market, assist government in challenging less responsible landlords, and give consumers the necessary confidence that they are receiving fair treatment and good value.
- We have discussed the idea of a Code specifically with garden city organisations, as being the most closely aligned with similar values and purposes. There is interest in the idea of working with government on a non-statutory Code, both from them, as well as some housing associations, niche developers, and custom builders. We are therefore confident that the government would receive a positive response to any invitation to work with them to co-produce such a Code.
- We should acknowledge that the Leasehold Knowledge Partnership (LKP), which provides the secretariat for the APPG on Leasehold and Commonhold Reform, does not support this idea lest it provide openings for unscrupulous landowners to continue their current practices. We are confident that it would be possible to define public interest land ownership sufficiently tightly to exclude that risk. In the absence of new primary legislation to realise the reforms LKP are proposing, we believe that the operation of a Code could provide a valuable reference point for showcasing good practice, and for highlighting socially irresponsible and exploitative practices that would assist the government in dealing with existing leasehold arrangements.

Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.

- Leasehold is used by a high proportion of current CLT housing projects – a third of all completed CLT homes were sold under leasehold and a similar proportion of the current pipeline of 4500 homes will be sold as leasehold. Introducing restrictions on the sale of new-build leasehold houses would therefore impede the delivery of these affordable homes.
- For example, Bristol CLT is currently developing a 49-home site with United Communities in Lockleaze, with the majority of new homes available for affordable, shared equity leasehold.

A ban on new-build leasehold sales would jeopardize the viability and fundability of this project.

- Similarly, Naked House, a community-led provider set up as a CIC and aiming to establish projects as CLTs, are currently building 22 new homes for leasehold ownership, at up to 40% below market values, in a lease based partnership with Enfield Council, with funding from the Greater London Authority (GLA). The GLA hopes to fund further projects of this type, in which there will be various mixes of houses and flats. A ban on new-build leasehold sales could unnecessarily delay the delivery of the first project, and undermine the prospects for replicating the project in land leasing partnerships with councils across London, where the lease helps protect the long term affordability of the homes.
- The proposal would also affect Cohousing projects currently on site and in the pipeline. For example, Cannock Mill Cohousing in Colchester has secured £3.8m funding from the government's Home Building Fund is on site developing 23 homes (houses and flats) using a 999 year leasehold arrangement with a ground rent and a formal Scheme of Management to effectively manage the shared internal and external spaces. The lease and Scheme in combination protect the integrity of the cohousing principles used to design the scheme, and ensure that future occupiers cannot alienate shared assets from their intended uses, or undermine the effective management of the whole scheme. A ban on new-build leasehold houses would therefore be a major issue for both the purchasers and funders, potentially causing significant delays to the delivery of new homes, the vast majority of which are for 'downsizers'. It would also put up yet another barrier to Cohousing and limit the future growth of this socially beneficial sector just at the point at which it is gaining traction both with Government and the public.

Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.

- A significant proportion (45 at present) of CLTs work in partnership with housing associations where the CLT grants the Registered Provider a lease over the CLT's land. In these partnership schemes, leasehold ground rents, set at a very modest level, provide CLTs with their only source of revenue to cover both community engagement and ongoing governance costs of the organisation, which are themselves very modest.
- In the example of a planned partnership scheme in Dorchester, it is proposed that the CLT will receive a ground rent of £208 per home per year. This is circa 0.002% of the discounted property value.
- Restricting ground rents to 'peppercorn' rates would threaten the viability of this form of partnership, with the loss of this very modest resource impeding CLTs' capacity to deliver new affordable housing.
- Likewise, restricting ground rents could affect the appetite of housing associations to partner with Cohousing groups, if they feel they are not able to make a fair return to cover their ongoing costs in this arrangement. This partnership route is critical to ensure that affordable and social rent properties are part of a mixed tenure inclusive Cohousing community.

- In addition, Community-led housing schemes often develop on smaller, challenging sites that are not of interest to larger housing developers. The capitalisation of fair and reasonable ground rents can support the viability of community led housing projects on difficult and challenging sites.

- **We therefore urge that any reform to ground rents retains the freedom for Community-led housing projects, and in particular CLTs and Cohousing projects, to charge reasonable ground rents.** The Government could take the same approach to definitions as in our answer to Question 6.

- A 'reasonable' ground rent may require further definition, and, as outlined in the answer to Question 6, could be couched in terms of the statutory definition of community-led housing or the definition of CLTs and cohousing. For example, a CLT that charged a ground rent greater than that required to achieve its statutory purposes would be deemed to be charging an unreasonable ground rent.

Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?

- As outlined in the answer to Question 6, we propose the introduction of a voluntary Code of Conduct for Public Interest Leases, to be developed in partnership with other public interest landowners, including housing associations, with the support of the legal and chartered surveying professional bodies. It would include provisions to prevent onerous or unsustainable ground rents. A Code of Conduct would promote best practice in the leasehold market, assist government in challenging less responsible landlords, and give consumers the necessary confidence that they are receiving fair treatment and good value.

Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?

- We note that the consultation paper proposes a forthcoming review of leasehold enfranchisement. Leasehold enfranchisement threatens the permanent affordability of CLT homes and, in turn, deters private landowners from providing lower-cost land for future CLT housing. It also undermines existing requirements for permanent affordability in Section 106 agreements.
- The 2011 Localism Act makes provision for the exemption from leasehold enfranchisement for organisations using the Community Right to Build Order process. This was in response to our request for a full exemption for CLTs: the Order referendum was thought to be necessary to give the exemption local democratic legitimacy. Very few communities have opted for that route so far, given the significant complexities and cost of putting in place an Order. In contrast, there are now 225 CLTs, and it is our view that the statutory definition in Section 79 of the Housing and Regeneration Act 2008 already gives CLTs sufficient democratic legitimacy by virtue of:
 - Their social, economic and environmental wellbeing purposes, thus clearly aligning them with the purposes of planning and the powers of public authorities, and;

- Their open membership and local democratic controls.
- As the Government subsequently adopted the definition of a CLT as the key criterion for a community body to qualify for the making of a Community Right to Build Order, it now seems anomalous that CLTs themselves cannot take a locally accountable decision to exempt properties from leasehold enfranchisement.

- We accept that exemption should not be a default position, and that CLTs should make an express decision for each development they undertake. **However, we ask that CLTs are now given the same powers as Community Right to Build organisations in order to retain ownership and control of their homes.**

- This exemption would be specifically for CLTs and not other forms of community-led housing, some of which would not want to see residents excluded from these rights (for example, Tenant Management Organisations). However, leasehold enfranchisement is an issue for cohousing groups so we would welcome a discussion with the Department about how an exemption might apply to cohousing specifically.