

Briefing: Exemption for CLTs from Leasehold enfranchisement rights

Introduction

Schedule 11, proposed schedule 4 (c) to the Town and Country Planning Act 1990, paragraph 11 (2) (page number 331) of the Localism Bill makes the provision for the exemption from leasehold enfranchisement for community organisations in relation to land the development of which is authorised by a community right to build order. A community right to build order is a particular type of neighbourhood development order, the process for which is set out in Schedule 4B of the Localism Bill (page 317).

The individual statutory right to enfranchise a freehold of a house in the Leasehold Reform Act 1967, the collective right of leaseholders in flats to enfranchise the freehold in the Leasehold Reform Housing and Urban Development Act 1993, and the right to acquire social housing under section 180 of the Housing and Regeneration Act 2008 was identified by the Salford University study of the national Community Land Trust (CLT) pilot projects as the major impediment to the successful establishment of CLTs, particularly in urban areas. Enfranchisement rights mean that it is not possible to assure public and private sector landowners, who may be willing to make land available for development by a CLT, that the land asset can be protected in perpetuity and used to create homes that will remain affordable for the community in perpetuity. Leasehold enfranchisement rights enable the purchaser of the home to buy the freehold of the property and benefit from any value up lift in the land. It is also a major impediment to securing long term finance for the development of CLT projects.

It is therefore proposed that there should be an amendment to the Localism Bill that gives all CLTs, as defined by section 79 of the Housing and Regeneration Act 2008, the right, if they wish to do so (and within regulations), to exclude designated homes built on land owned by a CLT from leasehold enfranchisement rights.

Including a more specific and general option for homes on land owned by a CLT to be excluded from leasehold enfranchisement within the main body of the Localism Bill would empower communities to negotiate the acquisition of land from public and private sector land owners. It would also capture the uplift in value as an enduring community benefit when planning consent is granted for housing development.

The amendment would also enable housing built on the land to be retained as housing that is affordable in perpetuity, using the captured development value of the land as an affordable housing subsidy.

There should be a discretionary power for CLTs to exempt homes on CLT owned land from enfranchisement rights, rather than a total exemption. This is because, in some areas of the country, such as the emerging CLT in Sheffield, a CLT may wish to develop housing for sale to cross subsidise affordable homes or to broaden the tenure mix in a community of predominately rented housing by developing some homes for sale.

This amendment has been drafted by Trowers and Hamlins on behalf of **CDS Cooperatives**. It is supported by the **National Housing Federation** and the **National CLT Network**.

The proposed amendment is as follows:

New clause in Part 6, Chapter 6 after 161

“Insert new heading: **Community Land Trusts and Leasehold Enfranchisement** Clause [162]
after s.302 Housing and Regeneration Act 2008 insert s.302A as follows:

s.302A

- (1) Regulations may make provision for securing that in prescribed circumstances —
 - (a) an enfranchisement right is not exercisable in relation to dwellings owned (whether freehold or leasehold) by a community land trust as defined in s.79 of this Act
 - or
 - (b) the exercise of an enfranchisement right in relation to that land is subject to modifications provided for by the regulations.
- (2) Each of the following is an “enfranchisement right”—
 - (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).
- (3) The regulations may—
 - (a) confer discretionary powers on the Secretary of State, a community land trust or any other specified person,
and
 - (b) require notice to be given by a community land trust in any case where, as a result of the regulations, an enfranchisement right is not exercisable or is exercisable subject to modifications.

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