



COMMUNITY LAND TRUST NETWORK



Leasehold Reform Briefing

In July 2017, the Department for Communities and Local Government launched a consultation on proposed reforms to the leasehold market in England, which included a ban on the sale of new-build leasehold homes and limiting ground rents to 'peppercorn' rates. This paper outlines our position on the need for leasehold reform.

Why CLTs use leasehold and ground rents

These reforms could have had a damaging impact on CLTs across the country. Leasehold enables CLTs to act as long-term stewards of housing, preserving its affordability for future generations. A third of all CLT housing completed to date has been completed under leasehold, and restricting the sale of new-build leasehold housing would impede the delivery of the 4,500 new affordable homes currently in the CLT pipeline.

Ground rents are used in a number of ways, often to cover their core running costs which can't be captured in a service charge. Some CLTs lease their land to a housing association and collect ground rents which provide their only income. We set these issues out in our consultation response, submitted on 19 September 2017. This is available to download at the bottom of this page.

The current position for CLTs

The Government published its response to the second round of consultation in June 2019, setting out how it intended to implement the reforms. It said:

- there will be an exemption for community led housing (including CLTs) to the ban on leasehold houses, and the Government will continue to work with us to develop a legal definition for regulations in future legislation
- it did not receive enough evidence that CLTs could use alternative funding schemes to ground rents, and so banning them would threaten our sector's growth, so it will exempt community led housing (including CLTs) from the measure to reduce ground rents to a peppercorn level.

We are now waiting for the Government to publish draft legislation and regulations, and will work with officials to implement these exemptions.

Leasehold enfranchisement

One flaw of leasehold is that the home owners have the option of "enfranchising". If you own a leasehold house you can buy the freehold of your property, and leaseholders in flats can collectively buy their freehold. This is a major loophole for CLTs, and means they cannot be certain that they can hold onto their land and homes in perpetuity.

The National CLT Network has long lobbied for CLTs to be exempt. For example, when the Localism Act 2011 was progressing through Parliament, we unsuccessfully pressed for this to be introduced alongside an exemption for Community Right to Build Orders.

The Law Commission launched a consultation on leasehold enfranchisement in 2018, in which they proposed to introduce such an exemption for CLTs. We have responded welcoming this proposal. Our response can be found below.

In July 2020, the Law Commission backed our 10-year campaign to exempt CLTs from leasehold enfranchisement, giving CLTs the ability to protect affordable homes in perpetuity.

The Law Commission has accepted that the law should now be changed so CLTs can exempt all homes without needing to go through the lengthy and complicated process of obtaining an CRBO. This would not only add protections for CLTs, but could open the door for wider exemptions, e.g. to shared owner staircasing. The Law Commission suggests that CLTs could apply for exemptions on a case-by-case basis to the relevant Tribunals in England or Wales.

The Commission also agreed that there should be a statutory definition of Community Led Housing, so the exemption could equally apply to cohousing communities and other forms of CLH.

We will be pressing the Government to legislate for this exemption in any bill on leasehold reform and may work with Parliamentarians to promote an amendment if necessary.

Commonhold

The Law Commission also consulted on reforms to commonhold in 2019. Commonhold is an alternative to leasehold, where there is no third party freeholder. Part of their consultation dealt with CLTs, and with shared ownership, to make them compatible with commonhold.

The Law Commission also published a report on commonhold in July 2020, an alternative home ownership. While we sympathise with the aim to make commonhold more common, we pointed out various problems it poses for CLTs. It would be really positive if commonhold could be reformed to address those. Unfortunately, the Law Commission rejected or ignored our evidence. We would welcome reforms to commonhold to make it more compatible with CLTs. We are also sympathetic to the idea that it should become the default tenure, rather than leasehold. However, in our consultation response we set out a number of problems not addressed by the Law Commission:

- the different objects of a Commonhold Association (to manage the shared building fabric and surrounds they live in) and a CLT (to hold assets for the benefit of the wider local community).
- the difference between the membership of a Commonhold Association (just the owners of the homes) and a CLT (including the wider local community, with one member, one vote).
- the need for CLTs to be able to retain ownership of part of the homes, or to restrict their resale prices, to keep them affordable in perpetuity.
- the diverse approaches CLTs have taken to affordability, which go beyond shared ownership, and so would require that CLTs can use any approach to leasehold within commonhold.