



COMMUNITY LAND TRUST NETWORK



Leasehold Reform Briefing

UPDATED FEB 2023

In July 2017, the 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. It also launched a review of commonhold, and tasked the Law Commission with advising it on both topics.

This paper outlines our position on leasehold reform.

Why CLTs use leasehold and ground rents

Leasehold enables CLTs to act as long-term stewards of housing, preserving its affordability for future generations. They do this in two ways:

1. Selling leasehold homes to owners, and using the lease to enforce affordability provisions such as a restriction on resale prices.
2. Leasing the homes to a housing association which manages the homes, and using the lease to enforce protections against e.g. the Right to Buy.

More than half of all CLT housing completed to date use leasehold in one of these two ways. 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 a CLT's 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.

The current position for CLTs

The Government said, in its responses to the consultations, that:

- 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 would exempt CLTs from the ban on charging ground rents, which it subsequently did in section 2 of the Leasehold Reform (Ground Rent) Act 2022.

We are waiting for the Government to publish draft legislation and regulations on issues not addressed by the 2022 legislation.

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 Community Land Trust 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 (CRBOs).

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. In July 2020 the Law Commission published its final report backing 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.

While we support the aim to make commonhold more common, we pointed out various problems it poses for CLTs. It would be positive if commonhold could be reformed to address those.

We would welcome reforms to commonhold to make it more compatible with CLTs. In our consultation response we set out a number of problems:

- the 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) are different and incompatible in the current framework for commonhold.
- 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) are also different and not catered for.
- CLTs need to be able to retain ownership of part of the homes, or to restrict their resale prices, to keep them affordable in perpetuity.
- CLTs have taken a diverse range of approaches to affordable ownership, but the Law Commission only considered making commonhold compatible with shared ownership.

Unfortunately, when the Law Commission published its report on commonhold in July 2020 it ignored our analysis and recommendations.

We are waiting to see what further steps the Government will take to promote commonhold, and will advocate for CLTs in any consultation and