

LEASEHOLD AND FREEHOLD REFORM BILL: CALL FOR EVIDENCE

15 December 2023

1. INTRODUCTION

- 1.1. The Community Land Trust Network is the official charity supporting Community Land Trusts (CLTs) in England and Wales. We are a membership body and represent 358 CLTs with over 1,950 homes and other assets, and which together are working on projects to provide another 7,000 homes and other assets.
- 1.2. For further information on CLTs and this response please contact Tom Chance, Chief Executive of the Community Land Trust Network, on tom@communitylandtrusts.org.uk.
- 1.3. We fully support the thrust of the government's legislative agenda to better protect leaseholders, stamp out abuse, and to replace leasehold with freehold or commonhold wherever possible.
- 1.4. However, CLTs use leasehold and ground rents ethically to provide long-term stewardship of assets including affordable homes. More than half of all CLT housing completed to date use leasehold in one of these two ways:
 - i. Selling leasehold homes to owners, and using the lease to enforce affordability provisions such as a restriction on resale prices (maintaining affordability for future buyers in perpetuity).
 - ii. Leasing the homes to a housing association or housing co-operative which manages the homes, and using the lease to enforce protections against e.g. the Right to Buy.
- 1.5. We hope the Leasehold and Freehold Reform Bill will include three measures:
 - i. Exemption from a ban on selling leasehold houses.
 - ii. Exemption from peppercorn limits on ground rents.
 - iii. Exemption from leasehold enfranchisement.
- 1.6. We believe these proposals are appropriate and do not risk undermining the government's objectives. CLTs are defined in statute as non-profit organisations, required to use their land ownership to serve the social, economic and environmental interests of their local

community, so there is no risk of the exemption being abused to profiteer off leaseholders. They are required to protect their assets and only allow their disposal if it is in the interest of the wider community, requiring them to have the ability to retain the freehold in perpetuity. All the occupants of their homes are able to join the CLT for a nominal sum and to participate in its governance, democratically, and many CLTs reserve places on their board for occupants of their homes / commercial units / etc.

- 1.7. The ability of CLTs to protect affordable homes in perpetuity, and avoid them being 'lost' to the open market, is a key factor in motivating people to volunteer thousands of hours over years to bring projects to completion; in securing the backing of their local community especially in sensitive locations; and in securing land - often at a discount - from private and public landowners. The prospect of homes being lost to the open market would be a major disincentive.

2. PROTECTING CLT LEASEHOLD HOUSES

- 2.1. The Government has not yet tabled amendments which it has stated publicly will come in order to ban the sale of new leasehold houses. We support this ban, but would like to see CLTs exempted.
- 2.2. As noted in paragraph 1.4, CLTs make significant use of leasehold to provide and protect affordable homes in perpetuity. This can include shared ownership and forms of discount market sale, where the discount is retained for future resales. Leasehold is generally viewed as a more secure instrument than freehold covenants, and retains the CLT's ownership of the underlying freehold which is its core purpose.
- 2.3. In its response to the 2018 consultation on implementing reforms to the leasehold system in England¹, the government stated that it would accept this principle and exempt community-led development from the ban on leasehold houses.
- 2.4. This was reflected in paragraph 3.1.1 of the Homes England Capital Funding Guide, which implemented this ban and required shared owners to be able to staircase to 100% and by the freehold, but it provides that CLTs and other forms of 'community led development' are exempt.

3. CLT LEASEHOLD ENFRANCHISEMENT EXEMPTION

- 3.1. The ability of leaseholders to buy the freehold of their property is, for CLTs, a loophole that undermines their statutory purpose to hold assets in perpetuity, and their ability to apply this in the case of retaining affordable housing.
- 3.2. We have long lobbied for CLTs to be exempt from leasehold enfranchisement. For example, when the Localism Act 2011 was progressing through Parliament, we unsuccessfully pressed for this to be introduced, and the government instead introduced

¹ <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

an exemption for Community Right to Build Orders (CRtBOs). But only 1 out of 96 completed CLT housing projects has used a CRtBO.

- 3.3. The Law Commission launched a consultation on leasehold enfranchisement in 2018, in which they proposed to introduce such an exemption for CLTs. In July 2020 the Law Commission published its final report in which it proposed enabling CLTs to apply for exemptions on a case-by-case basis to the relevant Tribunals in England or Wales.
- 3.4. The government has not taken a position on this question, but we would hope to see the exemption introduced into this bill.

4. PROTECTING CLT GROUND RENTS

- 4.1. The Leasehold Reform (Ground Rent Act 2022) exempted leases for community-led housing from the ban on ground rents above peppercorn level. The exemption includes where the freeholder or landlord is a community land trust.
- 4.2. The new bill requires in section 8(3)(a) that extended lease cap the ground rent at peppercorn levels. Schedule 7 upholds the exemption for CLTs and other 'community housing leases' from this measure. We hope this will be retained.
- 4.3. The government is currently consulting on how else this might be applied retrospectively and may introduce further amendments to the bill. We would like to see that same exemption maintained.
- 4.4. One of the key functions for a Community Land Trust is to steward the interests of the wider community in land it owns. This can include realising some of the value of the land through an annual ground rent from the leaseholder(s) rather than a one-off capital payment; and using the leasehold arrangement to protect the community's ownership and control of the land, for example to preserve affordable housing in perpetuity.
- 4.5. The charging of this ground rent does not relate to providing a service to the leaseholder(s) and so cannot reasonably be introduced as a service charge or estate charge.
- 4.6. For CLTs a further benefit of ground rents is that they are chargeable against the title, and in the event that they aren't paid as they fall due, the CLT can at least recover them, efficiently and cheaply, from the equity value when the home is sold. Unpaid service charges are personal debts and have to be recovered through the courts, making recovery both more costly and uncertain. Ground rents, therefore, provide greater security to the CLT, and reinforce the concept that the rent relates to the value of the land and home (which is what ground rents were originally and fairly designed to be), rather than to services provided. It also enables future ground rents to be capitalised during development to support viability of difficult schemes. Our legal advice has been that estate charges and service charges are not an appropriate or reliable mechanism for recovering

the enhanced value.

- 4.7. CLTs use this ground rent income to cover their operational costs, and to reinvest in further community development activity. Many disburse small community grants, e.g. to parent and baby groups or to repair a village hall. Many also use the income to forward-fund new projects to develop housing, workspace and other assets of importance to the wider local community. These are not housing services exclusively for occupants.
- 4.8. It is common for CLTs to lease homes to housing associations, which in turn let the homes to tenants or sell them on a shared ownership basis to householders. In these cases, there is no direct financial or service relationship between the CLT and the occupants of the homes, and any service charge the housing association charges to the residents is unrelated to the ground rent the CLT recovers from the housing association for the use of its land.