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Be transparent about the fees payable by tenants in retirement properties and new-build houses

Concern has been expressed from several quarters about a perceived lack of transparency, at the point of sale, about the fees and other financial arrangements contained in leases of housing in two segments of our current new-build residential market; specialist retirement accommodation and leasehold houses.

In the February [Housing White Paper](#), the Government pledged to deal with any unfairness in the terms on which new leasehold houses are sold. In March, the Law Commission issued its report "[Event Fees in Retirement Properties](#)" in which it expressed concern at hidden fees in this sector. In April, the All Party Parliamentary Group on Leasehold and Commonhold Reform ("[APPGLCR](#)") [reported](#) on the need for reforming several aspects of residential leases. What do these reports recommend and what are the implications for developers and investors in these subsectors?

LEASEHOLD HOUSES

What are the problems?

According to the APPGLCR, leasehold construction represented almost 50% by value of England's new build development in 2016. This rises to almost 90% of new build in London. Over 40% of new houses built in 2016 were leasehold. One of the action points identified in the Housing White Paper is the need to promote transparency and fairness for this growing number of leaseholders. These 2 reports warn of a number of problems for buyers of new leasehold houses including:

"Ground rents with short review periods and the potential to increase significantly throughout the lease period may not be offering a fair deal. We are absolutely determined to address this. We will therefore consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold."

Housing White Paper

- Leasehold houses being marketed as cheaper than freeholds, and purchasers not realising that the associated costs of leasehold houses can make them more expensive in the long run.
- Some new leasehold houses being let on leases with ground rents which are reviewed frequently and can increase significantly throughout the lease term. For example, a starting ground rent at £300 per annum which doubles every decade could multiply to £4,800 in 40 years' time.
- Leaseholders who want to alter their house, for instance by building an extension, are sometimes being charged around £1000 for a licence to alter, having not been aware of this cost prior to purchase.
- Unlike owners of leasehold flats, owners of leasehold houses do not benefit from the right of first refusal when the freehold is sold. Some new-builds are sold on relatively short leases in anticipation of the freeholder receiving another premium when the leaseholder buys the freehold pursuant to the Leasehold Reform Act 1967.

What has been proposed in order to deal with these issues?

The Government has said that it will consider re-launching commonhold as an alternative form of tenure. It has also committed to working with the Law Commission to identify opportunities to incorporate additional leasehold reforms as part of their 13th Programme of Law Reform. They have also agreed to take account of the report from the APPGLCR.

Some developers of existing homes let on leases with problematic escalating ground rents are said to be already taking action to modify the terms of these leases.

RETIREMENT PROPERTIES

What are the problems?

There has been a huge increase in the amount of housing built to cater for the elderly, in a wide range of accommodation types, ranging from acute need care homes through to luxurious bespoke apartments. The issues currently under discussion relate only to the terms contained in the long leases of retirement properties, as opposed to the arrangements under which residents live in care homes for the elderly. The problems relate to various financial terms which are sometimes included in these leases:

- the fees that tenants are sometimes charged when certain events happen, such as when they sell their lease, sublet or mortgage their property, if the property is inherited or if an additional person such as a carer or relative moves in; and
- the terms on which a leaseholder can exit from the lease. Sometimes a very large fee is charged and sometimes the leaseholder is obliged to sell the lease back to the freeholder at the original sale price, which means they lose any increased market value.

In 2013 the Office of Fair Trading investigated the use of transfer fees in leasehold retirement houses, and concluded that these were potentially unfair contracts terms contrary to the legislation which is now the Consumer Rights Act 2015. The OFT did not take legal action, but secured undertakings from several landlords

LEASEHOLD HOUSING TERMS IN THE NEWS



July 2016: The Law Commission launches a consultation into its 13th programme of law reform. Leasehold law is on the short list.

February 2017: The Housing White Paper raises concerns about escalating ground rents.

March 2017: The Law Commission reports on unfair event fees in retirement properties.

April 2017: The APPGLCR releases its [report](#) on improving key areas of leasehold and commonhold law.

April 2017: Taylor Wimpey issues a statement at its AGM that it will make a provision of £130m, “to alter the terms of the doubling lease to materially less expensive ground rent review terms, with the group bearing the financial cost of doing so.”

May 2017: the Nationwide Building Society announces that it will no longer lend on leases with ground rents that increase by any method other than RPI.

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operating in this sector about the extent to which these terms would be enforced. In 2014, the DCLG asked the Law Commission to consider these financial terms.

What has been proposed to deal with these issues?

The Law Commission's March 2017 report recommends that:

- a new code of practice on event fees in retirement properties should be put in place and approved under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. This would limit the circumstances in which an event fee could be charged in future, and would oblige the freeholder to ensure that clear information (including worked calculations) is given to purchasers at an early stage;
- the Consumer Rights Act 2015 should be amended to categorise as "unfair" any event fee which breaches this code; and
- estate agents who market these properties should be given guidance on ensuring that retirement flats are marketed in accordance with the code. A central database should be set up to contain all the information an estate agent would need to provide to customers.

The Law Commission also recognised that the way in which these fees are structured can be advantageous to leaseholders who live in properties where property maintenance, cleaning, caretaker or warden staff and other services are provided and who would not be able to afford to pay for those services if they were charged up-front.

THE KEY MESSAGE: ENSURE TRANSPARENCY AT THE POINT OF SALE

It is not yet clear what action (if any) the Government will take in response to the recommendations of the Law Commission and the APPGLCR respectively in relation to event fees in retirement housing and the financial terms in leases of new-build houses.

In the meantime, residential developers should take steps to ensure that customers fully understand the financial terms contained in new leases for sale. In the context of retirement homes, proactively implementing some of the Law Commission's recommendations would be sensible in order to protect against reputational damage.

Investors buying assets in this sector should ensure that their due diligence process highlights any leases which raise concerns in this area. Investors who already own freeholds in these sectors which may be vulnerable to challenge on the grounds of a lack of transparency should consider following Taylor Wimpey's example by making a provision for the cost of varying these leases.

Developers also sometimes structure new developments in such a way that they create income streams from infrastructure such as combined heating systems. In light of the Government's apparent stance on ground rent, developers and investors should take careful advice before committing to such schemes.

FOR FURTHER INFORMATION, PLEASE CONTACT

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