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**Response to HM Government consultation on
Reforming the Leasehold & Commonhold systems in
England & Wales**

February 2022

Response of the Property & Development Committee of the Birmingham Law Society to the consultation on Reforming Leasehold & Commonhold systems in England & Wales

This response has been prepared by the Property & Development Committee of the Birmingham Law Society. The Society is the largest local law society with some 5,000 members. The response represents the collective view of the Property & Development Committee whose members are specialist lawyers practising in all aspects of the property & development law and are from all branches of the legal profession.

Introduction

It should be noted that the members of the Committee are not freeholders, managing agents, lay individuals or owners of a leasehold interest. However, the members frequently advise on and conduct transactions involving leasehold and freehold property and have regular dealings with management companies. As a result, we contribute to this debate on behalf of the wider conveyancing community.

Question 1

Non-residential limit for collective enfranchisement to be 50%

The Committee would strongly support this limit

Question 2

Do you support or oppose a 50% non-residential unit limit for collective enfranchisement?

At present no more than 25% of the internal floor area, excluding common areas is allowed in non-residential use e.g., shops or offices. We would strongly support the increase to 50% as it will assist leaseholders of flats in mixed use buildings. It would

mean that in future leaseholders would only be excluded from enfranchisement if the non-residential part of the building exceeds 50% of the total internal floorspace. Many leaseholders wish to obtain the freehold and manage the building but are prevented because of the current limit of 25% but if the Government were to change the limit it could improve the choice they have over how they own and manage their properties.

The increase could promote fairness and transparency for homeowners and increase choice for those leaseholders who wish to take a greater role in the ownership of their properties.

Question 3

If new limit were 50%, would you buy the freehold?

It could certainly benefit leaseholders to purchase the freehold but with limitations if there is a mixed property situation as it would need more detail as to how the mixed-use arrangement would work. For example, how would the system work if there were not enough qualifying tenants to take over the management or ownership?

There is also a cost involved in purchasing the freehold and, therefore, even if a tenant qualifies to purchase, they may not have the funds to do so. There is an argument that the leaseholders may lack the expertise to adequately fulfil the management functions that are needed. It is an onerous responsibility to manage a building and it may be that the owners would have to employ professional managing agents which would add to cost.

Question 4

Please see above.

Question 5

Are any individuals, organisations, or types of properties that you believe should be exempt from the proposed increase in the non-residential limit to 50%?

Potentially accommodation leased to employees or staff whereby the properties are for the use of others such as National Trust properties and other trusts. The reason that these properties are in trust is for the benefit of others not just for the freeholders.

Question 6

Please see the responses to questions 3 and 4 above

Question 7

Please see responses to questions 3 and 4 above.

Questions 8 & 9

Mandatory leaseback to reduce the cost of enfranchisement, do you agree?

We agree in principle to introducing an option to assist. This may reduce the price payable for enfranchisement and make it more affordable and accessible for leaseholders to enfranchise and potentially make it cheaper. Combined with the proposed 50% non-residential limit, this could increase the number of leaseholders who can exercise their right to enfranchise. Again, this must be tempered by the fact that many leaseholders may not have the expertise to take on the management of a building without a management company being employed which could increase costs.

Questions 10, 11 & 12

These questions have already been partially addressed in the earlier responses above.

However, we believe that it could address the imbalance. The most significant issue would still be repair and maintenance. At present the landlord can retain certain management responsibilities and a residents management company can be responsible for all other management responsibilities previously held by the landlord including management of the residential units and common parts.

The current law excludes premises from the right to manage if non-residential parts of the building exceed 25% of the total internal floor area.

One of the issues that owners said was they did not proceed with a right to manage claim due to mixed use and the complexities particularly where there is a majority residential use. There has to be a balance between the interest of other occupiers in a residential situation and occupiers such as commercial tenants of shops. More detail would need to be supplied by the Government before it could be decided if it would be a benefit or detriment to leaseholders to manage mixed property particularly where there is a lack of expertise and managing agents would need to be involved which would add to the cost.

Question 13

Should landlords' votes be capped at 1/3rd of total leaseholder votes?

We would support this proposal but not all leaseholders would be engaged with management so the overall votes would be affected.

Question 14

In shared ownership leases with an initial repaid period, should providers have a right to vote?

We would in principle support this suggestion. Shared ownership providers such as housing associations would still have a hold over the property due to the ownership of their proportional share.

Question 15

Should shared ownership providers be able to delegate decision making to the shared owner?

We would support the shared ownership delegation but again this would need more information as to how it would work. It would provide more involvement to the shared owner as if they were the freeholder but in view of the different share in all shared ownership properties then there may be an uneven balance.

Question 16

Level of fee for a Commonhold Unit Information Certificate?

In view of the charges that management companies make at present a fee of £150 to £200 would appear to be reasonable. It is unreasonable to expect management companies to charge less as there are updated accounts and up to date information that has to be collated. The risk would be that if the forms were not able to be collated and there is more than one form then the management companies would charge for each form. The Government need to ensure that ALL information is on the new form and includes items such as fire risk assessment and asbestos reports as part of the pack and that these are not charged for separately.

Question 17

Should there be a sanction of no fee if deadline for providing certificate is missed?

We strongly support this proposal.

This would avoid the problems of the slow delivery of leasehold information from managing agents and is information which the Commonhold Association should have readily available.

22 February 2022

Birmingham Law Society Property & Development Committee