



DISTRICT COUNCILS' NETWORK

Innovative and collaborative  
solutions for people and places

## **Tackling unfair practices in the Leasehold Market**

### **DCN Response**

#### **The DCN**

Our Network is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the LGA. We lobby central government, the political parties and other stakeholders directly on behalf of our members, as well as commissioning research, providing support, and sharing best practice.

## **DCN Submission**

### ***Q1: Are you responding as (please tick one):***

On behalf of an organisation. The DCN is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the LGA. We lobby central government, the political parties and other stakeholders directly on behalf of our members, as well as commissioning research, providing support, and sharing best practice.

### ***Q2: If you are responding as a private individual, is your main interest as:***

N/A

### ***Q3: If you are responding on behalf of an organisation, is the interest of your organisation as (tick all that apply):***

Other (please specify)?

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### ***Q4: Please enter the first part of the postcode in England in which your activities (or your members' activities) are principally located (or specify areas in the box provided):***

The District Council Network covers the whole of England. Our Network is a cross-party member led network of 200 district councils. We are a Special Interest Group of the Local Government Association (LGA), and provide a single voice for district councils within the LGA. We lobby central government, the political parties and other stakeholders directly on behalf of our members, as well as commissioning research, providing support, and sharing best practice.

## **3. Limiting the sale of new build leasehold houses**

### ***Q5: What steps should the Government take to limit the sale of new build leasehold houses?***

The DCN believes that the Government should legislate against selling new build houses as leasehold, unless there is a valid reason for the house to be leasehold (such as those cited in the Leasehold Reform Act 1967 and listed in paragraphs 3.2, 3.3 and 3.4 of the consultation paper) New build homes should be sold as freehold interest at the point of sale.

**Q6: What reasons are there that houses should be sold as leasehold other than under the exceptions set out in paragraph 3.2?**

The DCN supports the Government in its aim to stop the unfair and unnecessary use of leasehold homes. New build homes should be sold as freehold unless there is a valid reason for them to be leasehold.

Community Land Trusts should be added to the exceptions for the purposes of retaining land in trust for the benefit of the community, not for commercial purposes

Members commented on Shared ownership without stair casing restrictions to support the Government's aim to increase the number of homes built for sale on shared ownership terms. An exemption could be made permitting the leasehold for houses provided as affordable homes (defined by Annex 2 of the National Planning Policy Framework). When the occupier acquires 100% of the equity the house should become freehold.

**Q7: Are any of the exceptions listed in 3.2 not justified? Please explain.**

No

**Q8: Would limiting the sale of new build leasehold houses affect the supply of new build homes? Please explain.**

The DCN have no evidence that limiting the sale of leasehold houses will affect the supply of new build homes. Developers who sell new build leasehold homes are likely to take into account the loss retention of land value via the ground rent that would result in the limiting or ending of selling new build as leasehold. The market would correct itself around three basic conditions; build price; land price; developer profit. The developers will always aim to sell homes at the best price the market can support. It is believed that Leaseholds are used to create new long term investment opportunities that can be sold on, rather than being a major factor in the initial sale price. If all developers are treated equally the market will naturally correct through open market competition.

**Q9: Should the Government move towards removing support for the sale of new build leasehold houses through Help to Buy Equity Loan, unless leasehold can be justified and where ground rents are reasonable (which could be a nominal or peppercorn ground rent), and if not, why not?**

The DCN supports this, except that 'move towards' indicates a staged response whereas we believe that this can be achieved almost immediately. The government should set the highest standards where public funds are being used and should therefore not support leasehold houses through the help to buy scheme. The immediate cessation of the financial incentive that Help to Buy provides developers would cause them to rethink their 'custom and practise' in those parts of the country where unnecessary leasehold sales are most prevalent.

**Q10: In what circumstances do you consider that leasehold houses supported by Help to Buy Equity Loan could be justified?**

Where the homes are built on a site owned by a Community Land Trust set up with the intention of retaining the land in trust for the benefit of the community in perpetuity and not for commercial reasons.

**Q11: Is there anything further the Government could do through Help to Buy Equity Loan to discourage the sale of leasehold houses?**

See answer to Q9.

**Q12: What measures, if any, should be considered to minimise the impact on the pipeline of existing developments?**

Under current legislation a developer always retains the right to return to the negotiating table at any time during a development to seek to renegotiate unfulfilled planning obligations where they are no longer considered to be viable. The developer is obliged to pay for a Local Authority's independent valuation. This mechanism can be used to address impacts on developments in the pipeline.

#### **4. Limiting the reservation and increase of ground rents on all new residential leases over 21 years**

**Q13: What information can you provide on the prevalence of onerous ground rents? We are keen to receive information on the number and type of onerous ground rents (i.e. doubling, or other methods) and whether new leases are still being sold with such terms.**

No further evidence available

**Q14: What would a reasonable ground rent look like, in terms of i) the initial annual ground rent, ii) the maximum rate of increase in annual ground rent, and iii) how often the rate of increase could be applied to an annual ground rent? Please explain your reasons.**

The DCN believes that ground rents should be set at a peppercorn level (ideally about £5 per annum but not more £50), with no annual increase. This will protect the leaseholder from unfair leasehold increases.

If there is a situation where ground rent is to increase then this needs to mirror appropriate price or property indexes and be re-based on a regular basis to avoid cliff-edge effects, rather than arbitrary geometric progression

However it also essential that the cost of seeking approval for a change to the building (small extension) is similarly set and capped at a fixed cost scale linked to the value of any change and the cost of the approval process.

**Q15: Should exemptions apply to Right to Buy, shared ownership or other leases? If so, please explain.**

The DCN view is that the exemptions for Right to Buy and preserved Right to Buy should still apply as it ensures that these ground rents remain at a low level.

Consideration needs to be given to Community Land Trusts to cover their costs, especially where the leaseholder is an entity such as a Housing Association rather than a private individual for whom the dwelling is their principal or sole residence.

**Q16: Would restrictions on ground rent levels affect the supply of new build homes? Please explain.**

The DCN feel that the most important issue to address is unfair rate of increase in ground rents along with unfair ground rents and unfair use of leasehold.

It is important to ensure that new homes are affordable over the long term for those buying them. This can be done by ensuring that if there is an increase in ground rent it should mirror appropriate price or property indexes and be re-based on a regular basis to avoid cliff-edge effects, rather than arbitrary geometric progression.

**Q17: How could the Government support existing leaseholders with onerous ground rents?**

This is an important issue as the proposals in the consultation consider limiting ground rents in *new leases*, following any commencement of new legislation. This will leave many leaseholders with unfair ground rents in the same situation unless measures are taken to support them. To support existing leaseholders with onerous ground rents consideration should be given to applying the legislation retrospectively. Alternatively primary legislation could be introduced to provide limitation to existing leases with effect from a future date, for example to render the future doubling of ground rents unlawful.

**Q18: In addition to legislation what voluntary routes might exist for tackling ground rents in new leases?**

It is surprising that no reference has been made to the due diligence of those solicitors acting on behalf of the purchaser and what advice they may have given their client prior to purchase. There may be scope in the professional code of practice to encourage better highlighting of the implications of purchasing on a leasehold basis.

## **5. Exempting leaseholders potentially subject to 'Ground 8' possession orders**

**Q19: Should the Government amend the Housing Act 1988 (as amended by the Housing Act 1996) to ensure a leaseholder paying annual ground rent over £1,000 in London or over £250 in the rest of England is not classed as an assured tenant, and therefore cannot be issued with a Ground 8 mandatory possession order for ground rent arrears? If not, why not?**

The DCN supports this principle.

## **6. Service charges for maintaining communal areas and facilities on freehold and mixed tenure estates**

***Q20: Should the Government promote solutions to provide freeholders equivalent rights to leaseholders to challenge the reasonableness of service charges for the maintenance of communal areas and facilities on a private estate? If not, what management arrangements on private estates should not apply?***

The DCN supports measures to ensure freeholders and leaseholders have the same rights and opportunities to challenge the reasonableness of service charges for communal areas and facilities.

Local Authorities current and future financial positions have prompted many to reconsider taking on the financial responsibility for play, open space and shared areas on new developments. Developers have always had the right to pass the land, maintenance and services across to a Management company and impose an annual service charge. Where the service is falling short of resident's expectations it should be made easy for leaseholders and freeholders to complain about managing agents via the redress schemes.

## **7. Future issues**

*The Government intends to look at:*

- *improving common hold,*
- *how managing agents operate*
- *leasehold terms and enfranchisement*

***Q21: The Housing White Paper highlights that the Government will consult on a range of measures to tackle abuse of leasehold. What further areas of leasehold reform should be prioritised and why?***

DCN members suggest that priority is given to how managing agents operate, to ensure that they provide a fair and reasonable service.

Another area to be prioritised is the amendment of the Leasehold Reform Act 1967 to further reduce the opportunities for developers to create unnecessary leaseholds and primary legislation to restrict ground rent increase both in terms of frequency and proportion.

Contact for further information: [dcn@local.gov.uk](mailto:dcn@local.gov.uk)

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