# Written evidence submitted by Peter Ballard to the Leasehold and Freehold Reform Bill Public Bill Committee (LFRB17)

## Executive summary

- The primary purpose of the Leasehold and Freehold Reform Bill ("the Bill") is to expropriate wealth from one group of private citizens, freeholders, to give to another group, leaseholders.

- We have spent 37 years building up our ground rent portfolio of some 57,000 property interests, generating £3.2 million p.a. We are based in Swansea, one of the poorest parts of the UK. The net effect of the transfer of wealth in our case will be that we are made poorer and leaseholders, predominantly in London and the south-east, will be made richer. We employ 120 people across our businesses; some of those jobs are now in jeopardy.

- We are not going to stand idly by and allow what we have worked for in the last 37 years to be expropriated from us. We shall pursue any remedy available to us under the Human Rights Act 1988 ("HRA").

- It is difficult to see that any social objective is being achieved when the group being targeted in the Bill to receive a windfall gain is so heterogeneous and diverse.

- As the Bill currently stands, we believe that the following provisions, individually and taken as a whole, infringe our rights under Article 1 of the First Protocol ("A1P1") to the European Convention on Human Rights ("ECHR"):

  - removal of marriage value (Schedule 2 Paragraph 15);
  - restricting ground rent in enfranchisement calculations to 0.1% of market value (Schedule 2 Paragraph 23);

- removal of development value in collective enfranchisement claims (Schedule 2 Paragraph 24);
- limitation of rent reviews (Schedule 2 Paragraphs 32 to 36); and
- removal of non-litigation costs (Clauses 12 and 13).

• Depending on the levels set by the Secretary of State, the following provisions may also infringe our A1P1 rights:
  - deferment rate (Schedule 2 Paragraphs 24 and 25); and
  - capitalisation rate (Schedule 2 Paragraphs 32 to 36).

• If a cap on existing rents is inserted in the Bill at a later stage, that too may infringe our A1P1 rights.

• The Secretary of State has misled Parliament by his statement on the face of the Bill, made under section 19(1)(a) HRA.

• Outside HRA matters, our position is:-
  - Clauses 27 to 30 and 32 should be amended so that it is the block managers who are held responsible and not freeholders, except in those cases where the obligation to manage falls on the freeholder; and
  - Clause 31 is drafted too widely; it needs to be redrafted to cover only kick-backs to freeholders, landlords and block managers.

**Witness evidence submitted by Peter Ballard**

**Introduction**

1. I am a director of various companies based in Swansea which are all under the common control of the Ballard family and which use the trading name of Compton Group. Our businesses cover a number of different activities such as tour operator, property developer (including the joint development of the largest solar park in the UK at Deeside in north Wales) and sales of ceramic tiles. We have funded Cardiff university–originated research into anti-inflammatory agents for many years; we hope to launch a skincare product in Spring 2024 based on that research. We have a wholly owned subsidiary in Chennai to which we have outsourced our back office functions. Across all our companies we employ 120 people.

2. We have also invested in ground rents. We have been investing since 1987. Over the last 37 years we have built up our portfolio of some 57,000 property interests (comprising freehold and leasehold reversions as well as historic rentcharges), which generate £3.2 million p.a. in rental income. I am submitting written evidence on behalf of the family businesses because the current and potential proposals in the Bill, if enacted, could have a significantly adverse impact on our businesses and our employees; at its most basic, wealth will be transferred from Swansea, situated in south west Wales, one of the poorest parts of the UK, to leaseholders based in London and the south-east. That is the polar opposite of levelling up.

3. In this evidence I shall refer to our businesses as “we”, “us” “our” etc; the Department for Levelling Up, Housing and Communities as “DLUHC”; and the Public Bill Committee as “you”, “your” etc.

**HRA**

4. At the front of the Bill the Secretary of State declared that in his view the provisions of the Bill are compatible with the ECHR. We do not believe that such a view was reasonable. In paragraph 87 of her opinion to the Law Commission dated 30 November 2019, Catherine Callaghan KC advised that, where ground rent represents capital forgone on the sale of the leasehold property (as it always does, otherwise why would leaseholders agree to pay a ground rent?), a scheme of capping ground rent at 0.1% of capital value in the calculation of enfranchisement values (which is what is proposed in the Bill) will not be compliant with Article 1 of the First Protocol ("A1P1") and the risk of a successful legal challenge under the HRA is 50-70%. Furthermore, in the DLUHC's Impact Assessment on capping ground rents ("IAGR"), the total net present value to be transferred from freeholders to leaseholders under option 3, again capping ground rents to 0.1% of market value, is estimated to be £14.7 billion. Given Ms Callaghan's opinion, the DLUHC's own IAGR and the fact that the Bill does not provide for any compensation to be paid to freeholders, it is difficult to see how the Secretary of State could reasonably declare that the provisions of the Bill are compatible with the ECHR.

5. Any claim by freeholders under the HRA will need to be tested against the validity of the underlying policy objective behind the Bill. In my opinion, DLUHC's thinking in bringing forward this Bill is deeply flawed. In particular, DLUHC don't understand that ground rents are deferred consideration; DLUHC wrongly think that ground rents were nominal or zero in the past; DLUHC conflate ground rents with service charges, when they are totally separate, with service charges being much more of a financial burden for leaseholders; DLUHC mistakenly believe that ground rents are hampering transactions in the property market when leaseholders can always adjust their asking prices downwards; DLUHC wrongly single out ground rents as the only situation where

consumers can't understand inflation-linked increases; DLUHC are riding roughshod over private contracts freely entered into; DLUHC are handing a windfall gain to those already on the property ladder; the age demographic most likely to benefit from DLUHC's proposals is one of the least vulnerable in society; businesses and homeowners are treated alike; the segment of society targeted is wholly heterogeneous, with no defining characteristic other than ownership of a leasehold property; DLUHC will make leasehold properties more expensive for those struggling to get on the housing ladder; an alternative proposal of writing off £5,000 from outstanding mortgages would be better targeted at those leaseholders needing a helping hand; and all this while there is a serious housing crisis going on with an acute shortage in the supply of new homes. Simply tagging a piece of legislation with the label "public interest" is not sufficient to overcome objections under the HRA if that label does not correspond with the underlying reality.

6. Furthermore, whereas statutory restrictions imposed on freeholders in connection with lease extensions or rent redemptions may well be regarded by the Court as a control of use for the purposes of the HRA, there is no doubt that the enfranchisement process for both individual and collective acquisitions of freehold reversions will be treated as a deprivation of the freeholders' assets. Unless there is a compelling public policy objective to justify this transfer of wealth from one group of private citizens to another, such deprivation of the freeholders' assets will militate strongly in favour of the compensation payable to the freeholders being set at close to, if not actually at, market values

7. I shall now turn to discussing various clauses in the Bill.

**Clause 6**

8. This proposal downgrades part of the freeholder's interest from a freehold to a leasehold, where the enfranchising leaseholders do not want to pay for the reversion attributable to non-

participating leaseholders. That downgraded interest is inherently less valuable in the hands of the freeholder. In paragraph 132 on page 130 of the Impact Assessment on the Bill ("IALF"), the DLUHC suggest that additional compensation may be required for freeholders, depending on the specific circumstances of collective enfranchisement, to cover a situation where the replacement leasehold is less valuable than the replaced freehold. This suggestion has not been taken up in the Bill.

9. Furthermore, it seems to me that the enfranchising leaseholders will be able to swap the perhaps dubious covenant of the non-participating leaseholders for that of the freeholder, who will then be responsible for meeting the ground rent and service charge liabilities of the non-participating leaseholders. By enforcing a leaseback the enfranchising leaseholders will improve the value of the reversion simply by passing back the bad payers to the former freeholder.

**Schedule 2 Paragraph 15(3)**

10. Marriage value is to be excluded in the calculation of the enfranchisement price. No reason is given in the Explanatory Notes to the Bill. Instead, we must turn to paragraph 7 of the IALF on page 9 where it is explained that "where a lease is simply allowed to run its course, it would return to the freeholder without any receipt of marriage value: the proposed approach [of removing marriage value in the Bill] therefore reflects the value that the freeholder would receive if the lease had simply run its course". It is difficult to see how the DLUHC could be more mistaken in their understanding of marriage value. Of course, there is no marriage value if the leasehold interest merges with the freehold reversion on termination of the lease because the freeholder would then own an unencumbered freehold, which would mean that the freeholder will have scooped 100% of the marriage value. The definition of marriage value is the difference between the combined value of the freehold reversion plus leasehold interest and the value of the unencumbered freehold. By the time the freehold reversion subject to a lease turns into an unencumbered

freehold on termination of the lease, all the marriage value will have gone to the freeholder. In reality, under the present enfranchisement system, it's always going to be worthwhile for a leaseholder to enfranchise before termination of the lease because the leaseholder will still get a 50% share of the marriage value, as opposed to nothing if the lease terminates.

11. It is worth emphasising that a statutory enfranchisement occurs only when the freeholder and leaseholder cannot agree on the price between themselves. Instead, enfranchisement is a deal that the leaseholder can force on the freeholder who is an unwilling seller. Various hypothetical arguments can be put forward to assume whether the leaseholder is currently in the market, or will be in the future, to buy the freehold or the lease extension, but the truth of the matter is that here and now it is the leaseholder who actually is the counterparty buying. If the freeholder were dealing with someone other than the leaseholder, the freeholder would not want to sell at the price prescribed by statute. It is only because the leaseholder has enfranchisement rights that the freeholder has to sell. By the leaseholder taking 100% of the marriage value (with the enfranchisement price itself being at a sub-market value), a disproportionate burden will be placed on the freeholder with the leaseholder walking away with a corresponding windfall financial gain. The present system of sharing the marriage value 50/50 between the freeholder and the leaseholder is a much more equitable solution, given that the freeholder's asset is being expropriated.

**Schedule 2 Paragraph 23**

12. The rent used to determine the term value is capped at 0.1% of the market value of the "freehold of the property". Presumably in the case of a lease extension the "freehold" should instead refer to a unencumbered 999 year leasehold interest because the flying freehold interest in a flat is going to be worth less than a 999 year leasehold interest which has the benefit of enforceable covenants to ensure that the fabric and the common parts of the block are kept in good repair.

13. As for the substance of the paragraph, I can see no justification in capping the ground rent. This proposal is a straightforward, indiscriminate transfer of wealth from freeholders to a whole swathe of leaseholders. In the IAGR, the DLUHC estimate that the transfer of wealth under legislative option 3 (i.e. capping ground rents at 0.1% of market value) will be £14.7 billion. Leaseholders willingly signed up to leases (either at the time of the original purchase or on a subsequent assignment) which contained the ground rent provisions. Why should Government now set enfranchisement values based on the rewriting of contracts privately and freely entered into? Clearly this proposal has implications for a substantial claim by freeholders under the HRA.

14. I welcome the first leg of the exclusion from the capping in paragraph 23(7)(b)(i) because the commercial reality is that the premium was always going to be lower because of the ground rent; that is just the basic business reality of a property purchase; otherwise why on earth would a leaseholder have agreed to pay a ground rent in the first place? However, the first leg is rendered absolutely useless by the second leg, i.e. paragraph 23(7)(b)(ii), which requires the capitalised ground rent to have exceeded the premium paid; I have been buying ground rents for 37 years and have yet to come across a lease containing a scenario which is anywhere remotely near to that envisaged in the second leg of the exclusion.

**Schedule 2 Paragraph 24 and 25**

15. A key issue will be the level of the deferment rate in calculating the reversion value. If it is set too high (which will mean lower reversion values), there is the potential for yet another ground for a claim by freeholders under the HRA. Obviously, until we know what the deferment rate is (which is a fundamental factor in calculating enfranchisement values), we cannot properly comment.

16. It is proposed that the Secretary of State will review the deferment rate at least once every 10 years. Interest rates move up and down all the time; it is wholly irrational to set a deferment rate for the next 10 years, when no one has a clue what will happen to interest rates in the future. Can I suggest instead that, given the long term nature of ground rent income, the deferment rate is set each year at the yield to maturity rate on the longest dated conventional gilt outstanding on the previous 1 December? This rate will change every day, but the deferment rate to be used for enfranchisement can be set at the same level as the yield to maturity of the chosen gilt ruling on the day before the enfranchisement claim is made. This daily rate would then be used in the online calculator. The deferment rate would automatically adjust to changing financial circumstances with no further input required from Parliament. For information, at the time of writing the yield to maturity on the 1.125% Treasury maturing on 22 October 2073 is 3.988%.

17. In cases of collective enfranchisement the reversion value is arrived at by aggregating under paragraph 24(2) all the reversion values of the individual flats owned by the enfranchising leaseholders. No allowance is made for the fact that the enfranchising leaseholders are acquiring the freehold to the wider estate. This means that the freeholder will lose out on any development value relating to parts of the estate outside the demise of the flats. This could result in the enfranchising leaseholders obtaining a windfall gain. The most obvious example would be where it is possible to add additional storeys on top of an existing block of flats. The freeholder would be forced to sell the freehold, at the aggregated reversion values, even though the price they paid for the reversion may well have reflected the possibility of future development. Much is made in the IALF (e.g. paragraphs 65 to 73 on pages 118 and 119) of a new statutory right for the leaseholders to defer payment of development value in exchange for guaranteeing that the enfranchising leaseholders will not themselves carry out the development. But, when it comes to the Bill, there is nothing there about this; instead the Bill provides only that the freeholder has to sell at the aggregated reversion values of the flats owned by the enfranchising leaseholders, who are then

free to do as they wish with the development (either obtaining the windfall profit themselves by carrying out the development or deciding that they do not want further development on the block), with the freeholder totally excluded.

18. In clause 6 of the Bill there is provision for the enfranchising leaseholders to require a leaseback of units owned by non-participating leaseholders. I do not see why on a collective enfranchisement a similar right cannot be made available to a freeholder in respect of the estate (outside the demised flats). The freeholder could elect to take for nil consideration a leaseback of the part of the estate which has development potential. It will then be up to the former freeholder to decide whether they wish to develop. At a time of an acute shortage in the supply of new homes it makes more sense for the decision whether to develop to be in the hands of the former freeholder rather than the enfranchising leaseholders, quite apart from the fact that the former freeholder is only getting back something that belonged to them in the first place.

**Schedule 2 Paragraphs 32 to 36**

19. We now switch back to the calculation of the term value. I have already commented above on the restriction of capping the rent at 0.1% of market value. Furthermore, my comments above on the deferment rate used in calculating the reversion value can apply equally to the capitalisation rate used in calculating the term value.

20. In paragraph 34 which relates to leases subject to fixed reviews, the increased rent is subject to capping at 0.1% of the market value of the property at the time when the enfranchisement claim is made. It would be fairer to provide for the increased rent to be tested against a projected market value on each review date. An increase of 2% p.a. (i.e. the Bank of England’s inflation target) in the market value of the property from the date of the enfranchisement claim could be assumed.

21. In paragraph 35 which relates to leases subject to non-fixed reviews, the formula used to calculate the term value takes into account only rent increases up to and including the next rent review falling after the enfranchisement claim. Unlike the situation with the fixed reviews (where all future reviews are taken into account, subject to the cap of 0.1% of market value), freeholders owning reversions where the rent increases other than by fixed amounts will lose out on all future rent increases falling beyond the next review date. In order to remove this anomaly in the treatment of fixed and non-fixed rent reviews, an increase of 2% p.a. could again be assumed in the calculation of non-fixed rent reviews beyond the next review.

**Clauses 12 and 13**

22. Both clauses prohibit the recovery of non-litigation costs incurred by the freeholder in processing enfranchisement claims. Clearly, to get to this stage, no agreement has been reached in private treaty discussions between the freeholder and the leaseholder. Negotiations have failed and the leaseholder is resorting to the statutory remedy of enfranchisement, which means that the leaseholder is forcing the unwilling freeholder to deal at a price that the freeholder is unhappy with. In the circumstances, it seems to me only fair and equitable that the freeholder should be entitled to recover their reasonable costs of dealing with the enfranchisement claim, given that the freeholder is being forced against their will into a transaction at a sub-market value by state-sponsored expropriation.

23. Moreover, the process of dealing with either a sale of a freehold reversion or a lease extension is a reserved legal activity under Part 3 of the Legal Services Act 2007. Clauses 12 and 13, in effect, remove the ability of a freeholder to pass on their non-litigation costs in such transactions. That means that the freeholder has an unenviable choice: they can either employ an outside firm of

solicitors or handle the transaction in-house. In the former case, they will have to meet the external firm's fees without any recovery from the enfranchising leaseholder and, in the latter, they will have to employ someone, probably not legally qualified, to process the transaction, where the likely outcome will be to complicate the conveyancing process (as most enfranchisement cases arise when a leaseholder wishes to dispose of their interest), given the probable lack of technical expertise on the part of the in-house employee.

24. Under the new section 19C(1) LRA 1967 and the new section 89C(1) LRHUDA 1993, there is reference to a "prescribed amount". We do not know what that amount is. It is pointless requesting evidence in relation to a Bill when a detail as fundamental as this is kept back. Suffice to say that, in considering enfranchisement cases involving very low ground rents where the sum payable for the actual enfranchisement could be very low (e.g. selling the freehold reversion to a leasehold house on a 999 year term with a ground rent below £5 p.a.), it is important that the prescribed amount should be kept at a minimum figure of (say) £1,000 so that the freeholder is not out of pocket in having to process the transaction. You will appreciate that the work involved in selling a freehold reversion for a relatively nominal sum is going to be pretty much the same as the work involved in selling a much higher value reversion.

25. Generally speaking, the over-use of matters reserved to secondary legislation and regulations, much of it subject to the negative rather than the affirmative procedure, is disappointing because vital information, critical to understanding the Bill, is not available to us.

**Schedule 7 Paragraph 2**

26. I do not see why the right to vary a lease to replace rent with a peppercorn rent should be limited to those leases where the unexpired term is more than 150 years. Why not make this right

available to all leaseholders, irrespective of the unexpired term of their leases, provided, of course, the deferment rate is set at a market rate?

**Schedule 7 Paragraph 7**

27. It is not altogether clear who is responsible for the legal costs of preparing a deed of variation of the lease and applying for its registration at HM Land Registry. Perhaps a standard form could be used or, alternatively, a procedure similar to the redemption of rentcharges under the Rentcharges Act 1977 could be implemented.

**Clauses 27 to 30**

28. There are various responsibilities imposed on the "landlord" in these clauses. Presumably, where either the obligation to manage under the lease rests with a third party or the leaseholders have exercised their right to manage, these responsibilities will fall on the block manager, rather than the freeholder. The DLUHC seems to have real difficulty in understanding that freeholders do not necessarily manage the blocks. For your information, we are the direct and indirect landlord of 12,514 flats. We are obliged to manage buildings comprising only 3,505 flats (i.e. 28% of the total). In all other cases, a third party not associated with us is obliged to manage the building. You can see from our situation that more often that not the landlord is not the party obliged to carry out the management functions.

29. Clearly, you can pursue the admirable course of trying to raise standards in the block management industry, but the unintended consequences of such action may well include making block management more expensive for the consumers (i.e. the leaseholders), driving smaller block management companies out of business because they can't cope with yet more legislation and creating more doubts in the minds of those leaseholders inclined to consider exercising their right to manage.

**Clause 31**

30. The heading to this clause (i.e. limitation on ability of landlord to charge insurance costs) gives the impression that this clause will apply only to freeholders. Similarly, the heading for Annex 9 at page 197 of the IALF (i.e. Banning commissions for Landlords, Freeholders and Property Managing Agents in building insurance placements) along with the statement in paragraph 14 on page 200 of the IALF that the placer/manager of insurance will likely shop around for brokers when arranging buildings insurance suggest that clause 31 is intended to stop only freeholders, landlords and property managing agents from receiving kick-backs from insurance companies or brokers; this seems also to be confirmed in paragraph 167 of the Explanatory Notes to the Bill. But that is not how clause 31 is worded; as it stands, clause 31 catches all costs (other than a permitted insurance payment) attributable to payments to arrange or manage insurance. This captures third party brokers who are carrying out their normal business of acting as intermediary between the insurance company and the client (i.e. the freeholder or the property managing agent) and for which the broker charges a commission. The clause is drafted too widely. The clause needs to be re-worded to clarify that the insurance arrangements at the level of the insurance company/broker can continue as previously. As clause 31 is currently worded and if the permitted insurance payment (and, again, we are in the dark on this amount) is too low, brokers will simply retreat from this line of business, which will mean that it will be that much more difficult to arrange block insurance.

**Clause 32**

31. I shall make the same point here in relation to clause 32 as I did for clauses 27 to 30 above, namely that, where either the lease does not impose on the freeholder the obligation to insure the block or the leaseholders have exercised their right to manage, the duty under clause 32 should fall on the block manager, rather than the freeholder.

32. If, however, the intention is in fact to make the freeholder responsible for providing the required information even if the obligation to insure does not rest with the freeholder, but rests with a third party, then it is inequitable that (for example) the freeholder can be held liable for damages of up to £5,000 if they cannot provide information to which the freeholder has no access. As ever, it would also help if we actually knew what is meant by “specified information”.

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