WIQRA LETTER TO BILL COMMITTEE

Dear Sir/Madam,

LEASEHOLD AND FREEHOLD REFORM BILL – VITAL AMENDMENTS

There are three amendments desperately needed by all leaseholders in mixed-use buildings like ours, to protect us from bad freeholders and to enable us to buy our freeholds or opt for Right to Manage as the Bill already intends to enable:

1. **Use the new Bill to amend provisions of the Building Safety Act (BSA) to allow a Manager appointed under Section 24 of the Landlord and Tenant Act 1987 to take on the Accountable Person (AP) and Principal Accountable Person (PAP) dutyholder roles, where a tribunal deems it appropriate.**
2. **Use the new Bill to amend the "structural dependency" rules for mixed-use estates, so that estates with less than 50% commercial floor space will not be disqualified by sharing plant or services.**
3. **Adopt Law Commission Recommendation 41 of its 2020 enfranchisement report that lessees with three leases or more in a building should NOT be disqualified from participating in a collective enfranchisement claim.**

Why we need these amendments:

1. Amending the Building Safety Act so S24 managers can be PAP and AP

No.1 West India Quay (WIQ) is a mixed-use building, consisting of twelve floors of hotel and serviced apartments. The upper 20 floors of the building are made up of 158 apartments, sold on 999-year leases in 2004. Residential floor space makes up 53% of the building, which means, of course, that **we do not have the right to enfranchise nor do we qualify for Right to Manage**. Unfortunately, the new Leasehold and Freehold Reform Bill will not change this, as it stands. (More on this in point 2 below.) To give you a small taste of life here, our charges have been hiked by nearly 40% over the past two years. The average one-bed now costs from £12,000 per annum in annual charges. A two-bed costs anything up to £20,000 and three-beds up to £33,000. This is a block with zero communal facilities – no gardens or outdoor space, no pool, no gym and a lobby which we are currently furnishing and repairing out of our own pockets. Many families here can no longer afford their apartments, but local estate agents are hesitant to list WIQ flats, because of our high service charges. Last month, a leaseholder was refused a mortgage because of the charges. *If we cannot afford service charges, but also cannot sell or remortgage, lessees are in danger of forfeiture.* **All this means is that the ability to replace our freeholder with a court-appointed manager via Section 24 of the Landlord and Tenant Act 1987 is our only way of escaping management failure and financial exploitation.**

Last month, the First-tier Tribunal heard the first test case involving the clash between the BSA and Section 24, brought by our sister estate, Canary Riverside. The Tribunal determined that **the BSA prevents a Manager appointed under Section 24 from assuming the dutyholder roles of Accountable Person (AP) and Principal Accountable Person (PAP)**. This means it is no longer within the gift of a tribunal to hand over a whole residential building and its service charges to a Section 24 manager, even where leaseholders put forward convincing proof of freeholder fault. Instead, the BSA imposes a bifurcation of management between a freeholder (as AP/PAP) and a S24 manager. The messiness of such an arrangement and the risk of it going badly wrong, with a now muddled

hierarchy of command and two managers pulling in different directions, will deter the FTT from issuing new Section 24 orders.

Fire and structural safety are the priority in buildings over 18 meters like ours. But almost any aspect of building management could be deemed safety-related. How lifts are serviced. How flammable cleaning materials are stored. Whether contractors, brought in for plumbing or electrical works, repair breaches to compartmentation. How concierge staff are hired and trained. All this introduces conflict into service charge budgeting. As a result, a recalcitrant freeholder, as the AP and PAP, can argue they need control of more and more aspects of a building on safety grounds, until any existing S24 Order is rendered meaningless. As for new S24s for buildings like ours, what would be the point in even applying? There are virtually no circumstances any longer in which a properly cautious Tribunal could deem an Order "convenient".

Why can't the AP/PAP and the S24 manager just co-operate? This was the assumption of the original drafters of the BSA. But who would enforce such co-operation? Although a S24 manager officially works for the court, he or she cannot go running to Tribunal every time a disagreement arises, which could now happen on a daily basis. As for voluntary cooperation, why would any freeholder who has been stripped of their management rights by leaseholders be willing to co-operate with a S24 manager who is their pick, especially when that S24 manager controls the estate finances and can prevent any attempt to divert cash from service charges and reserves?

This is not an isolated problem. Four estates within a mile of us on the Isle of Dogs have applied for S24s or were about to apply, but have paused their Applications because of the BSA situation. That's around 1,000 leaseholders in our own backyard. Notably, all are from the oldest estates in the area. As the honeymoon fades with these modern residential blocks, building faults develop and bad freeholders fail to manage and/or overcharge. UK Cladding Action Group (UKCAG) confirmed to us that a number of their members with cladding and fire safety remedial issues need the protection of S24 to stop freeholders pocketing millions of public money from the Building Safety Fund and to ensure that works are done to a reasonable standard and in a timely manner.

Section 24 of the Landlord and Tenant Act 1987 has been recognised and protected by successive governments as a critical backstop for seriously mismanaged residential buildings for almost forty years. We hope we have persuaded you of just how dangerous it would be, not just for us or for Riverside but for thousands of leaseholders across the country, if this protection is lost as one of the surely unintended consequences of the Building Safety Act.

2. Why we need amendment to the "structural dependency" rules for mixed-use buildings

The Bill already tries to help leaseholders in mixed-use buildings by raising the threshold needed to qualify for enfranchisement or Right to Manage from 25% of commercial floor space to 50%. In enfranchisement reform, giving leaseholders the ability to force the departing freeholder to take a leaseback on commercial property to cut the premium also tries to help leaseholders in mixed-use buildings. However, these changes will help almost no one, if the current rules on "structural dependency" remain. Under those rules, leaseholders with shared services or underground carparks linking commercial and residential parts of an estate will be disqualified. (Our estate is typical, being a single building where plant and services are necessarily shared, with subterranean areas made up of carparks and rubbish removal stores serving both commercial and residential.) The current rules on structural dependency were laid out in the 1993 and 2002 Acts of Parliament, before high-rise and large mixed-use developments took off in this country. Their assumptions about how these buildings work are outdated. In its 2020 reports, the Law Commission made a series of sensible recommendations addressing the problems, including relaxing the currently strict "vertical division"

rule for enfranchisement and RTM, while introducing a third test, so that the RTM can be granted in relation to a building or part of a building “which is reasonably capable of being managed independently”. In our building, residential and commercial floors are under separate management, with liaison when there needs to be. If shared services can be managed under freeholder control, why not with leaseholders in the Right to Manage role? Removing the structural dependency rules would help many leaseholders to avoid troubling the courts with Section 24 applications in the first place as they would have two other routes to control of their homes and money. **Without amendments to this effect, the headline provision in this Bill to lift the qualifying threshold in mixed-used buildings from 25% to 50% of commercial floor space will be of little use.**

3. Why we need leaseholders with three or more apartments in a development to have the right to participate in a collective enfranchisement claim

The barring of leaseholders with three or more properties in a development from participating in a collective freehold acquisition is yet another threshold that makes no sense and prevents leaseholders like us from enfranchising. Our freeholder, like many others, has been steadily buying up apartments in our block over the past eight years or so, as a hedge against legislative reform. Freeholders are able to do this via a series of onshore and offshore single purpose vehicle (SPV) companies. If no more than two of these acquisitions are held via a single company, all will qualify in any vote on enfranchisement. Contrast that with our biggest leaseholder who owns 27 apartments, bought via a single company twenty years ago when the building was first released. They will not qualify. This leaseholder can’t transfer their holdings to SPVs without incurring considerable capital gains tax. But if they *do not* qualify, while the freeholder with his increasing array of SPVs *does*, then it becomes mathematically impossible for the rest of us WIQ leaseholders ever to reach the 50% threshold required to purchase our freehold. With Recommendation 41, the Law Commission’s 2020 enfranchisement report urges the removal of this restriction. We hope their advice will be enacted. **Failing to address this problem goes against the spirit of a Bill which is designed to make it easier for leaseholders to free themselves from abusive freeholders and gain control of their homes.**

Thank you for reading this submission. We hope you will be able to include our amendments, without which life will remain intolerable, not just for us, but for thousands of leaseholders, whatever else the Bill accomplishes.

With very best wishes,

Sheryl-Anne Glanvill, Harry Scoffin, Jane Hewland, Jenni Bracken, Matteo Benedetto, Mikir Shah, Paul Denning, Andrew Orr, Pauline Field
The Committee
One West India Quay Residents Association