Leasehold & Freehold Reform Bill Committee
House of Commons
London
SW1A 1AA

**By email: scrutiny@parliament.uk**

17 January 2024

Dear Committee Members,

**Leasehold & Freehold Reform Bill**

We represent a coalition of property estates, investors and developers from across the UK, who include Cadogan, Calthorpe Estates, the Church Commissioners, Grosvenor, John Lyon's Charity and Related Argent. We are writing to you in response to your “Call for Evidence” which will we hope assist with, not only your scrutiny of the Bill, but also your understanding of the impact (and unintended consequences) that certain of the proposals will have on our businesses.

Whilst we broadly support the Government's objectives to reform the leasehold system in order to address specific abuses, we have concerns about three specific elements of the proposed reforms as set out in the Leasehold and Freehold Reform Bill. These are: (i) the “abolition” of marriage value (clause 15(3) Pt 4 Sch 2 of the Bill) (ii) increasing the threshold for the collective enfranchisement of mixed-use buildings from 25% to 50% (clause 3 of the Bill) – referred to as the “50% Rule” and (iii) the new right for a nominee purchaser to require mandatory leasebacks to be granted to the freeholder of certain flats and other units in a building, following a collective enfranchisement (clause 6 of the Bill).

The Secretary of State acknowledged, during the Second Reading of the Bill, the positive role played by reputable landlords in the ownership and management of real estate. Our concern is that these particular measures will have serious unintended and adverse consequences for the businesses of those reputable landlords whilst having little (if any) impact on the abuses that the government says that it wants to address.

We have commissioned independent expert analysis of these particular proposals, drawing on the expertise of leaders in the field. This work has identified key conflicts with the Government’s wider policy agenda and stated objectives of the Bill, the headlines of which are:

1. The wealthiest parts of the country stand to gain the most financially. “Abolition” of marriage value brings the greatest financial benefits to London and the South East, undermining the Government’s aims to level up the least prosperous parts of the country.

2. Few homeowners stand to benefit. The intended beneficiaries are homeowners, yet the data shows that the majority of leaseholders are investors. It follows that the transfer of wealth through “abolishing” marriage value will primarily benefit investors, speculators and private landlords, many of whom will be non-UK based.

3. Building new homes and major regeneration schemes will be harder. Collective enfranchisement reform (the “50% Rule”, coupled with mandatory leasebacks and the valuation changes) will reduce the numbers of new homes built (particularly in those areas identified by the Government as most in need), reduce the attractiveness for inward investment, challenging viability, and make it much harder to undertake large-scale regeneration projects.

Looking at each of these particular measures in more detail.

(i) Marriage value

First, marriage value is not a valuation concept peculiar to enfranchisement valuations. It is a well understood valuation principle which existed long before enfranchisement was introduced. As such, it is widely understood and accepted in the market. As a consequence, this element of value is reflected in transaction prices. That is, it is recognised and priced in by purchasers.

Secondly, it has been accepted by successive governments for over 50 years that marriage value is a legitimate element of the landlord's property interest. The issue has been debated many times in Parliament and on each occasion, it has been acknowledged that, in order properly to recognise the landlord's legitimate property interests, they are entitled to receive a fair market price to include a share of marriage value.

Thirdly, the reference to "abolishing" marriage value is a complete misnomer; it exists as a matter of valuation fact and will continue to exist even if this Bill is enacted. All that will happen is that the landlord's share of marriage value is gifted to the leaseholder. It is a one-off windfall gift which in the majority of cases will be enjoyed by an investor (as opposed to a home-owning) leaseholder. Its "abolition" will have no impact on overall house prices nor make it any easier to acquire a home. Arguably, it will make it more difficult by increasing the value (and price) of short leases.

The data shows that, although the proportion of leasehold properties which are rented privately varies across the country, it is never less than 40% and sometimes over 80%. In central London it exceeds 60%. However, this is not unique to London. In Manchester (69,000 leasehold flats, 76% rental), Liverpool (37,000 leasehold flats, 82% rental) and Leeds (37,000 leasehold flats, 72% rental). Therefore, the main beneficiaries of this one-off transfer of wealth will not be owner occupiers but investors.

In addition, the data shows that "abolition" of marriage value will bring the greatest financial benefits to London and the south-east (with many of these leasehold investors offshore and not homeowners), thereby undermining the Government's aim to level up the least prosperous parts of the country. Over three quarters (78%) of total value transfer as a result of the "abolition" of marriage value would be in London and the south-east, already by some way, the wealthiest parts of the country.

Moreover, the wealth transfer would particularly be concentrated in just three London boroughs (Camden, Westminster and Kensington and Chelsea), home of some of the wealthiest residents in the country. These boroughs are also home to some of the highest rates of foreign home ownership (Westminster the highest rate, Camden and Kensington and Chelsea in the top six boroughs) and as such the wealth transfer will benefit non-UK based landlords or investors disproportionately.

(ii) The "50% Rule"

The members of this coalition are a broad range of historic family businesses, charities and other owners each with a long association with their respective areas and the communities who live and work there. All the members have a proud history of place-making and community involvement. As a coalition group, we invest in, create and manage sustainable neighbourhoods. The members impact on the areas in which they invest is extensive and includes providing subsidised housing to people who support the community, subsidised community shops such as butchers and greengrocers for local residents, and substantial investment in the public realm. This is achievable through common ownership and effective area management.

The proposed 50% Rule threatens this. The threshold for collective enfranchisement will have the effect of reducing the number of new homes built (particularly in those areas identified by the Government as most in need) – developers will look to build to a 49% residential level, rather than 74% or undertake the refurbishment of existing space. It will make it very much harder to undertake large scale mixed-use regeneration projects, such as in King's Cross.

The 50% Rule increases the likelihood of enfranchisement (and consequential loss of control) in mixed-use (commercial/residential developments) and this casts long-term doubt on returns for investors.

In addition, we fear that critical high value commercial properties in major urban centres will end up in the hands of inexperienced and unmotivated groups of leaseholders, potentially impacting the substantial economic contribution such areas make to society and the economy.

Increased enfranchisements are likely to lead to increasingly fragmented ownership (i.e. smaller freehold land parcels in a given area), thereby reducing the ability of landowners to ensure the quality of the area, including the diversity and curation of local retail, and affecting returns on their investment.

The Government's favoured "gentle density" promoted by Create Streets is likely to be much harder to achieve. Successful major regeneration projects, requiring complex, time consuming and expensive land assembly will be much harder to bring forward with greater fragmented ownership of land, meaning the Government's stated aim of replicating King's Cross up and down the country will be more difficult to achieve.

(iii) Mandatory leasebacks

Many of the concerns that we raise in the context of the "50% Rule" can be applied equally to this proposal. In addition, there are other concerns.

The proposal is that, in order to make enfranchisement "cheaper", a nominee purchaser will be able to require a landlord to take leasebacks on (i) any flat that is not participating in the claim and (ii) any commercial unit. It follows that, whether or not a landlord wishes to retain an interest in a building (over which he will no longer be able to exercise any control), he will be obliged to do so. This has to be considered in the context of a no-default right; the landlord may have been exemplary in his conduct but that will not prevent the loss of his freehold.

The incentive on leaseholders to acquire what may well be a highly valuable commercial investment will nevertheless be motivated by an opportunity to acquire "cheaply" an investment which might not otherwise come on to the market.

The leasebacks on any non-participating flats will create a hierarchy of "overriding" lease which will add greatly to the complexity of management and the recovery of service charges. Overriding leases have many legal and administrative problems associated with them.

As regards any commercial units, this proposal will cause an immediate value loss to the landlord (for which he will not be compensated) by the replacement of a more valuable freehold interest with a leasehold interest.

It is perfectly possible that, following a collective enfranchisement, a landlord may find himself in the position, in consequence of the grant of leasebacks, of still retaining the greater value in the building. Nevertheless, management of the building will have passed to the leaseholders and that former landlord will no longer have any management control over it.

To reiterate, there are many reforms in the Bill which we can support. Furthermore, if Parliament is minded to bring forward other amendments (for example, on regulating property managers, or reforming the law of-forfeiture), we are in principle likely to be supportive. Given that the reforms in the Bill will no doubt lead to many buildings passing into the hands of leaseholders without property management experience, we are certainly concerned at the failure of government to adopt Lord Best's recommendations for the regulation of property managers.

We believe our expertise, together with the research and analysis we have undertaken, can help to support you not only in improving this Bill but also in avoiding the unintended consequences. At a time when new investment is crucial to meeting the Government's policy objectives, we believe there are more balanced ways to meet the aims of the reforms, whilst avoiding (i) benefitting leasehold investors rather than homeowners and (ii) negatively impacting investment and development decisions and commercial activity across the built environment, different sectors and regions.

For the reasons we have set out, it is our view that these three proposals are an unjustifiable interference with our legitimate property rights and as such should not be enacted.

We would be very happy to provide further oral evidence to the Committee if that would be useful. Our colleagues will follow up on this submission with the Committee Clerk, but please do contact us via Sam Emery at se@londoncommunications.co.uk or on 0207 612 8486 should you require any further information in the meantime.

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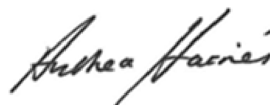
Yours sincerely,

James Raynor
Chief Executive
Grosvenor Property UK



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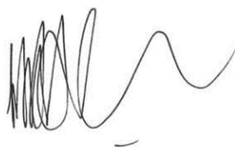

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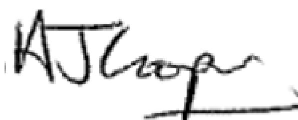

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