



Rosemarie Jones
Deputy Head of Real Estate

scrutiny@parliament.uk
By email

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Dear Sirs,

Response to call for evidence from the Church Commissioners for England

1 EXECUTIVE SUMMARY

- 1.1 Whilst the stated aim of the Leasehold and Freehold Reform Bill (“the Bill”) is to redress the balance between freeholders and leaseholders, the current proposals go too far. There is already a huge body of regulation around residential leaseholds, far more than in any other sector of the property market. It could, therefore, be said that the balance has already been addressed by Parliament, but we are beyond that point as the Bill is now before Parliament.
- 1.2 The proposals in the Bill fail to take account of the benefit of a responsible and experienced landlord, particularly within the context of the complexity of many mixed-use buildings and developments. It places enormous burdens on freeholders seeking to manage buildings (many of whom may be companies owned by the leaseholders and this will be ever more the case if the rules around collective enfranchisement are further relaxed as is proposed) by removing the ability to recover the legal costs of enforcement action against defaulting tenants.
- 1.3 This last point is arguably the most significant and worrying proposal which hasn’t been the subject of any prior consultation and is likely to lead to the deterioration of residential and mixed-use buildings as gaps in the service charge result in critical works not being carried out. This in turn will have a detrimental impact on the value of the leasehold properties within the building and could easily lead to a situation where leaseholders are unable

re-mortgage or sell their flats due to the condition of the building and other issues with management.

2 EVIDENCE OF THE CHURCH COMMISSIONERS FOR ENGLAND (THE COMMISSIONERS)

2.1 The Church Commissioners for England are a registered charity who support the Church of England's ministry through management of a permanent endowment fund, which enables them to provide financial support for the Church. The Hyde Park Estate ("the Estate") is one of the largest residential estates in central London and forms part of the endowment fund. The Estate is located to the north-west of Marble Arch and to the north of Hyde Park. The Estate is bounded by Edgware Road to the east, Bayswater Road to the south and Sussex Gardens to the northwest. It covers over 90 acres.

2.2 The Commissioners have been responsible for the development and management of the residential properties on the Estate since 1868. The Estate's dedicated team manages over 1,200 mainly leasehold residential properties, alongside 150 commercial properties in Connaught Village and the wider Estate. The team also manages the parks and gardens located within the Estate. The income from the Estate forms a significant part of the Commissioners' charitable activity.

2.3 The Commissioners have responded on certain aspects of the Bill as part of a coalition of property estates, investors and developers from across the UK, including Related Argent, Cadogan, Calthorpe Estates, Grosvenor and John Lyons Charity. However, there are additional aspects of the Bill which cause the Commissioners concern and where we comment in more detail below.

2.4 Costs Recovery on Lease Extension and Freehold Claims

We are concerned by the proposals in sections 12 - 13 of the Bill, which effectively prevent a landlord from recovering its legal or professional fees other than in certain limited circumstances. Lease extension and freehold claims are a form of compulsory purchase and if a freeholder is unable to recover its costs, it is being forced to pay to dispose of a valuable asset regardless of whether it would choose to do so or not. It is also important to add that it will be paid significantly less value for that asset if the current proposals for valuation are approved. As the law currently stands, the Commissioners generally only recover a proportion of its professional fees incurred in connection with lease extension and freehold claims as there are already restrictions on recovery.

A point to note here is that landlords' costs of lease extension and freehold claims will be reduced by the simplification of the procedure proposed in the Bill. It is therefore reasonable to expect leaseholders to bear those costs given the substantial value they are adding to their property interest through the enfranchisement process. Whilst we agree that leaseholders should be able to challenge costs which are considered unreasonable, it is extremely unusual for the party being deprived of an asset to be required to bear the burden of the costs of that transaction. We are not aware of any other form of compulsory purchase where this is the case, opening a challenge to the new legislation under Article 1 of the First Protocol to the European Convention on Human Rights should the Bill be passed in the current form.

2.5 Recovery of Legal Costs from Long Leaseholders

This is dealt with in Section 34 of the Bill and could have a significant adverse impact on the management of residential property across the country. A well-funded service charge is critical for carrying out works of repair and maintenance to a building, however, in our experience, there will always be long leaseholders who either will not pay or cannot pay their service charges. By removing the ability of the landlord to enforce the terms of the non-paying leaseholders' lease against them, critical building works may not be done. This would lead to a deterioration in the condition of the buildings which ultimately, would impact the value of leaseholders' property interests.

Like the consultation on ground rents in existing leases, to which we are responding separately, these proposals effectively tear up existing contracts so that freeholders are unable to recover legal costs either through the general service charge fund or against the defaulting leaseholder. The Bill says that the Court or Tribunal can make an order that these costs are recoverable either direct or via the service charge but this simply adds a further layer of process and cost which has to be paid. It is not an unreasonable proposition that where a leaseholder has failed to pay sums owed under a contract and the contract they have entered into provides that in such circumstances the leaseholder should pay the costs of any enforcement action, the freeholder should be entitled to recover those costs pursuant to the contract.

On a policy basis, there is an extremely concerning 'thin end of the wedge' argument here. Should Parliament be passing legislation which radically alters the terms of contracts entered by two parties with the benefit of legal advice?

Whilst the policy of the Bill is intended to benefit leaseholders, the consequences of this measure are likely to have quite the opposite effect. As well as dealing with non-payment of the service charge, as freeholder the Commissioners are frequently required to take action against leaseholders for other breaches of their lease. In particular, there has been a recent significant rise in leaseholders engaging in short term lets of flats, both for holiday accommodation but also for medical tourism. This use is prohibited under the terms of most residential leases and on a day-to-day level can cause a nuisance and disturbance for other occupiers in the building. Short term occupiers are more likely to engage in anti-social behaviour and the presence of multiple unknown guests present a security risk to others in the building. As a result, where the Commissioners have received complaints regarding short term lets it has taken action against the leaseholders involved. It should be noted that these leaseholders are making a profit from these unlawful activities. The Commissioners have also been contacted by Westminster City Council in response to complaints received from residents and asked to take action against short term lets. The Commissioners are engaging with this request.

If the Commissioners are unable to recover the legal costs of such action, either from the defaulting leaseholder or via the building service charge, this will make it difficult for the Commissioners to take action in the future. That action would ultimately be for the benefit of the other residents in the building and so making these changes will be to the detriment of leaseholders.

Yours faithfully



Rosemarie Jones
For and on behalf of the Church Commissioners for England