

Written evidence submitted by Jo Darbyshire on behalf of the National Leasehold Campaign to the House of Commons Public Bill Committee (LRGRB05)

Leasehold Reform Bill

National Leasehold Campaign (NLC) Background

1. Founded by Katie Kendrick in January 2017, the NLC is a community of leaseholders, brought together on Facebook, campaigning for the abolition of leasehold. Currently over 22k members strong, the NLC offers support and guidance for leaseholders in England and Wales. We work closely with the Leasehold Knowledge Partnership.

<https://www.facebook.com/groups/786983251448976/>

<https://www.leaseholdknowledge.com/>

Executive Summary

2. The NLC welcomes the ground rent reform bill as the first step towards the abolition of leasehold in England and Wales.
3. The NLC notes that although the selling of leasehold houses has almost dried up, thanks to the adverse publicity generated by NLC members and LKP, this bill is necessary to prevent any future return to selling leasehold properties to generate income streams and create investment vehicles from the ground rent on homes.
4. NLC members have personally experienced the many loopholes that developers and freeholders use to exploit leaseholders. The Committee must view their contributions and lobbying to amend this bill with an objective and critical eye. We fully expect the sector to try to water down this bill and deliberately attempt to obfuscate.
5. We encourage the Committee to ensure that any exceptions to this Bill are kept to an absolute minimum, and that the inclusion of retirement properties is enforced from 1 April 2023.
6. The NLC wishes to ensure that the Public Bill Committee is aware that this Bill, whilst removing the risk of ground rent abuses by developers and freeholders in the future, does nothing to address the misery that many existing leaseholders are facing today following more than decade of onerous ground rents and systematic mis-selling of leasehold properties. We urge you to ensure the next piece of legislation must be to help existing leaseholders to prevent a 2 tier system for any longer than is absolutely necessary.

Background

7. The membership of the National Leasehold Campaign has identified a catalogue of leasehold abuses detailed in paragraphs 3 - 20 below. 94% of those surveyed regretted buying a leasehold house.^[1]

8. The NLC has evidence of the blatant mis-selling of leasehold homes by developers' salespeople, with misleading or lack of critical information to enable consumers to make an informed choice when buying a leasehold home. All major developers are involved, including, not exclusively, Taylor Wimpey, Bellway, Redrow, Jones, Barratt, David Wilson, and Persimmon. Many customers were told that they could buy the freehold at a later date (after two years was often quoted) for a figure quoted by the sales person only to find their freehold has been sold on. Others were told that all properties on an estate would be leasehold only to find that as future phases were released, these properties were freehold.
9. Many NLC members used conveyancing solicitors recommended by the developer. They were told that it would make the process go "quicker and easier" or "smoothly". Many of the conveyancing solicitors failed their basic duties of ensuring that their client understood leasehold tenure and the details and obligations of their lease terms.
10. We are not aware of a single member of the NLC that was made aware of the licence fees/permission fees that their leases contained; including costs to simply ask for permission along with stinging permission fees for alterations to their properties. In the past, the industry has held seminars and published information for freeholders as to how to maximise this secondary income.
11. Leases are not easy to read or understand for anyone that does not have legal training. We are aware of some in the industry encouraging the wording of leases to be deliberately complex. In their 2012 report, Savills quote "Developers are also becoming more 'savvy' to the value implications of drafting leases in such a way that they are more attractive to an incoming ground rent investor while not detracting from the value of the long leasehold properties that they are intending to sell." [2]
12. It is our understanding that many of the deals with investment companies to sell on the freeholds were agreed before new developments were started. The planned onward sale of the freeholds was never mentioned to consumers, by either the salespeople or the conveyancing solicitors, despite this being common practice. Costs to buy freeholds and make alterations to properties increase exorbitantly when these onward sales take place, yet the NLC cannot find any evidence that any due diligence was performed by developers to ensure that no customer detriment would result from the sale, nor did any developer take any pro-active approach to ensure that customers would be made aware of the increase in costs.
13. There is no right of first refusal when a freehold is sold on a house. In theory, there is a right of first refusal on flats, but loopholes exist that are exploited [3]
14. Many freeholds are sold offshore to shell companies and in these cases it is impossible for leaseholders to know who ultimately owns the freehold of their home.
15. A number of developers introduced onerous ground rents that double every 10 years. Taylor Wimpey appear to be the biggest offenders, but NLC members who bought from Countrywide and Persimmon also have doubling ground rents. We have seen NLC members who have ground rents that are a percentage of property value.
16. Some mortgage lenders define onerous ground rents as any ground rent that doubles or exceeds 0.1% of the property value. As more lenders adopt similar criteria, a huge chunk

of the UK housing market becomes unsellable and unmortgageable with associated falls in property value.

17. Many leaseholders also have service charges and/or estate management fees. They have seen these fees rise way in excess of inflation and were often misled about the nature and increases in these fees at the point of sale. It is difficult for them to challenge the fees.
18. The First Tier Tribunal system is off putting for many leaseholders, who fear the costs and legal jargon. There are concerns about the impartiality of the FTT. Some NLC members have had experience of this first hand. ^{[4][5]}
19. Charities that own freeholds can have quite unique circumstances and be problematic. ^[6]
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20. Leasehold abuses are perceived to be a relatively recent issue, but many leaseholders have been suffering at the hands of their leaseholders for years. Lease extensions can be complex and costly, and many leaseholders accept informal lease extensions without being aware of the alternatives.
21. Enfranchisement and lease extensions are hugely complex and costly. It is tempting for the leaseholder to think that by cutting out the middle man and dealing directly with the freeholder will be the most cost effective way to go. This can have disastrous consequences. We recommend that the Committee read Louie Burns' eBook (The Leaseholder's Simple Guide to Leasehold) for an irreverent and insightful look into this area. ^[8]
22. Retirement properties are unique in a number of ways; most importantly because of the potential vulnerability of their elderly consumers. Not only have a number of NLC members moved into retirement properties unaware of the ongoing costs of living there but were also unaware of the large amounts retained by the developers when their property is sold. With an aging population and the increasing pressure on social care and the NHS, this cannot continue. Whilst all retirement developers will have a business model that needs to be funded, it needs to be done in a transparent way. Ground rent is a charge for nothing; it's not a charge for a service. It is disingenuous for retirement developers to say ground rent funds shared services and it's confusing for consumers. If a charge funds shared services, it's a service charge. No wonder people are confused, and the elderly more so.
23. Government must stay strong in the face of strong lobbying from the industry. The spider's web of leasehold law that has evolved over time has given freeholders opportunities to find loopholes and exploit leaseholders. Any exemptions from zero ground rents leaves room for further loopholes to be created. The retirement sector is vociferous in arguing a ground rent ban, implying that they are required to fund services. Their business models may require income to support shared services, but this should be done via collection of a service charge to ensure transparency and clarity for these particularly vulnerable consumers.
24. The NLC has concerns about the use of private lobbying by the developers and freeholders. Any representation to those in positions of influence must be balanced.

Views on Ground Rent Reform Bill

25. The NLC believes leasehold houses should be abolished and commonhold should replace leasehold for flats. The abolition of ground rent is an important first step to achieve this. The next piece of legislation must help existing homes and follow promptly.
26. The NLC welcomes the work being done by DLUHC and the Law Commission on leasehold reform.
27. Excepted leases – the NLC broadly supports the exceptions listed whilst noting that exceptions should be kept to an absolute minimum and care should be taken to ensure that the drafting of this Bill does not inadvertently allow loopholes to be exploited by unscrupulous developers and freeholders.
28. Excepted leases – whilst noting that Community Housing is an exception, the NLC supports all efforts to prevent leasehold abuses witnessed in the private sector becoming commonplace in Community Housing projects.
29. Permitted rent – NLC fully supports the introduction of a peppercorn ground rent and is delighted that those drafting the Bill have understood the difference between this and a monetary value (no matter how small the monetary value may be, e.g., £10). Please note we were disappointed that LEASE argued against the move to peppercorn given they are supposed to be funded to be on the side of the leaseholder.
30. Shared Ownership Leases - NLC supports all efforts to prevent leasehold abuses witnessed in the private sector becoming commonplace in shared ownership. Ground rent is a charge for no service and the NLC would welcome the abolition of ground rents in shared ownership, whilst maintaining the financial viability of shared ownership schemes through other, more transparent, cost mechanisms.
31. Permitted rent on lease extension: NLC supports introduction of a peppercorn for new leases and would draw the Committee's attention to the fact that educated leaseholders will extend leases (in effect the replacement leases) before marriage value applies – hence, lease extensions are taking place at least 80 years prior to the end of the current lease term. Those leaseholders who cannot afford a statutory lease extension (that reduces ground rent to a peppercorn) and progress with an informal lease extension are unlikely to see a change to the existing ground rent terms in their lifetime. We believe informal lease extensions should be banned. Allowing informal lease extensions to continue allows freeholders to re write leases and increase the ground rent multipliers, thus keeping the Ground Rent a lucrative source of income. We believe this is against what the government are trying to create in terms of a sunset clause on leasehold. Lease extension is a complex area and much more education is needed to support existing leaseholders.
32. NLC support the duty to inform tenants of this Act, to ensure that existing leaseholders can make an informed choice before extending their lease.
33. NLC would encourage the use of **high** financial penalties for breaches, to ensure that developers and freeholders are encouraged to take their obligations seriously. Ground rent revenue streams are lucrative, and NLC has evidence of many developers and

freeholders acting in ways that are unscrupulous and morally questionable. Enforcement of these penalties must be simple.

34. NLC supports the recovery of prohibited rent and the payment of interest on prohibited rent.
35. Whilst in theory this Bill gives tenants the option to use Tribunals to recover prohibited rent, NLC has seen few positive outcomes where leaseholders have used the property First Tier Tribunal, and many leaseholders will avoid doing so unless the amounts concerned are material. Freeholders will take calculated risks based on the amounts involved, knowing when the costs and fear of losing (and having to pay more costs) are a disincentive to leaseholders using the Tribunal system. Currently using the FTT is often not financially viable for leaseholders.
36. NLC fully supports the abolition of administration charges for peppercorn rents.
37. NLC is delighted that this Bill applies to Crown land.
38. NLC is disappointed that retirement properties have a longer period to conform with this Act. We have no doubt that strong lobbying from this sector will continue, and Government must be robust in the face of such lobbying. We strongly urge that the current proposed date for compliance across the retirement sector of 1st April 2023 is not extended. The elderly are the most vulnerable of our society, even more so than first time buyers and we must ensure their interests are protected ahead of profit.

References

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3. <http://uk.businessinsider.com/how-uk-builders-use-legal-loophole-to-sell-on-flat-freeholds-2017-8>
4. <https://www.telegraph.co.uk/money/consumer-affairs/leasehold-scandal-freeholder-cost-100000-nothing-could-do/>
5. <https://www.leaseholdknowledge.com/parliament-told-the-property-tribunal-stinks>
6. <https://www.chroniclive.co.uk/news/north-east-news/stunning-houses-newcastles-most-beautiful-13851443>
7. <https://www.leaseholdknowledge.com/national-trust-abandons-ground-rent-rises-of-up-to-8000-a-year-for-its-rural-leaseholders>
8. <https://www.amazon.co.uk/leaseholders-simple-guide-leasehold-ebook/dp/B07DZPFKH6>

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