Main Statement of Case Appendix 6

VIABILITY STATEMENT OF CASE BY RAPLEYS

Planning Appeal by
Jockey Club Racecourses Ltd

FINAL APPEAL STATEMENT OF CASE:

FINANCIAL VIABILITY IN PLANNING SANDOWN PARK RACECOURSE PORTSMOUTH ROAD ESHER KT10 9AJ

Planning Application Reference: 2019/0551
Appeal Reference: to be confirmed

23 March 2020

Our Ref: 18-01839

33 Jermyn Street, London SW1V
0370 777 6292 | info@rapleys.com | rapleys.com
LONDON | BIRMINGHAM | BRISTOL | EDINBURGH | HUNTINGDON | MANCHESTER

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Appendices

1 EXECUTIVE SUMMARY

1.1 This executive summary should not be read in isolation from the main body of the report as set out below.

1.2 It is important to note that Financial Viability Appraisals present a snapshot in time in terms of the evidence that supports them. This Statement of Case is prepared on the basis of the evidence that was submitted to the Council in the February 2019 Financial Viability Assessment (CD: 5.38) and agreed with the Council and their viability consultant mid-2019. This evidence base will be updated in advance of the Inquiry when Proofs of Evidence are submitted so that the Inspector has the most up to date evidence available.

1.3 It should be noted that given current extreme economic uncertainties due to the COVID-19 pandemic, the 20% level of affordable housing that can be viably provided may need to be reviewed at the time of the public inquiry. The Applicant reserves its position at this stage.

1.4 Key Points:

Reason for Refusal 1 states:

The proposed development represents inappropriate development in the Green Belt which would result in definitional harm and actual harm to the openness of the Green Belt and it is not considered that the very special circumstances required to clearly outweigh the harm to the Green Belt and any other harm, including impact on transport (highway and public transport capacity), air quality and **insufficient affordable housing provision**, have been demonstrated in this case. The proposed development by reason of its prominent location would be detrimental to the character and openness of the Green Belt contrary to the requirements of the NPPF (CD: 2.1), Policies CS21 and CS25 of the Elmbridge Core Strategy 2011 (CD: 1.1), Policies DM5, DM7 and DM17 of the Elmbridge Development Management Plan 2015 (CD: 1.2).

Reason for Refusal 3 states:

In the absence of a completed legal agreement, the proposed development fails to secure the necessary contribution towards the affordable housing contrary to the requirements of Policy CS21 of the Elmbridge Core Strategy 2011 and the Developer Contributions SPD 2012 (CD: 3.3).

1.5 We will show through evidence that:

- The proposed scheme is in accordance with Policy CS21: Affordable Housing of the Council's Core Strategy (2011).
- That the proposed provision of 20% affordable housing is the maximum reasonable amount of affordable housing that the scheme can deliver whilst still delivering all of the necessary improvement works to the Racecourse.
- That with the submission of a s.106 agreement, which will confirm the delivery of 64 affordable tenure units (20% of the total number of residential units) in a mix of 46 no. social rent tenure units, 9 no. affordable rent tenure units and 9 no. shared ownership tenure units, together with a viability review mechanism that Reason for Refusal 3 can be satisfied.

1.6 We will demonstrate that the submitted Financial Viability Assessment has been fully scrutinised by the Council and their Viability Consultants, Dixon Searle Partnership (DSP), with whom we had extensive negotiations and that agreement has been reached with the Council that the proposed development would deliver the maximum level of policy compliant affordable housing, while ensuring the viability of the development.

1.7 We provide further evidence to demonstrate the phasing and delivery of the proposed residential sites alongside the racecourse improvements in the form of a Gantt Chart. We expand upon this is **Section 11** below.

2 SCHEDULE OF SUPPLEMENTAL REPORTS

2.1 In forming our opinion of the development viability of the proposed scheme we have sought and relied upon expert opinion from a number of consultants as set out below. We make clear where we have relied upon the opinion of others.

2.2 Attached to the original Financial Viability Assessment (CD: 5.38), dated 21 February 2019, were the following reports, all of which were prepared between December 2018 and February 2019:

- Residential sales values for the proposed residential schemes prepared by Leaders Romans (Estate Agents and Valuers).
- Hotel site value for the proposed hotel scheme prepared by Savills (Chartered Surveyors).
- Build costs for the proposed residential schemes prepared by Calford Seaden (Quantity Surveyors).
- Build costs for proposed racecourse enhancement works prepared by Leslie Clarke (Quantity Surveyors).

2.3 In addition, we refer to in this report the agreed position on the build costs for the proposed race enhancements (CD: 6.61) as agreed between Leslie Clarke (Quantity Surveyors) acting for Jockey Club Racecourse Ltd (JCR) and MWA (Quantity Surveyors) acting for the Local Authority.

2.4 The Appellant has also commissioned a building survey report[1] as a reference document for the purposes of the Planning Appeal to highlight the key issues of disrepair and need for modernisation to meet customer standards to selected parts only of the Racecourse buildings and site.

2.5 Whilst this additional building survey report is primarily intended as a reference document to the identified racecourse improvement works it has been necessary, as a result of the heavy and prolonged periods of rain over the past 4-5 months, to include some additional surveys to parts of the roof of the grandstand and stone steppings forming part of the external spectator terracing. Over the past number of months there have been instances of water ingress to the grandstand and therefore in advance of the Proof of Evidence there will be some additional works incorporated into the Grandstand Improvement Works in order to address these issues. At this stage it is not intended that these works will increase the overall identified costs of improvements as agreed with the Council's cost consultant, MWA and it is anticipated that they will be provided for by a reallocation of the overall contingency allowance and from value engineering of some of the identified improvements works.

2.6 As set out in the Main Statement of Case it is now also proposed that a section of the perimeter fencing along More Lane will be replaced with fencing which will open up views across the racecourse. The cost associated with the new fencing will be updated in advance of the preparation of Proof of Evidence. The additional cost will be allowed for in the same manner as the costs for the roof and steppings through an allocation of the overall contingency sum and value engineering. Again it is not anticipated that these works will increase the overall identified costs as previously agreed with the Council.

[1] Attached at Appendix 2 of the JCR Statement of Case

3 THE APPEAL SITE & PROPOSED SCHEME

3.1 Full details relating to the design and layout of the proposed development can be found in the Design & Access Statement (CD: 6.49). Details relating to the background to the proposals are set out in the Planning Statement of Case (CD: 6.50), the original Financial Viability Assessment and the Officer's Report (CD: 7.2). We do not propose to reiterate all of those details in this Statement of Case.

3.2 As an overview Jockey Club Racecourse Ltd (JCR) is seeking consent for a single hybrid planning application pursuant to the Sandown Park Masterplan Document (CD: 6.48). The only element of the application being sought in detail relates to track widening and bell mouth accesses, whilst the outline elements cover all other parts of the application and include improvements and enhancements to the existing racecourse facilities, car parking and new family / community zone, together with residential development of 318 units, re-provision of a nursery or D1 community use and new hotel, to be delivered across the development sites.

3.3 The scheme proposals derive from the need for substantial investment in the racecourse to secure its future, and the corresponding need for this investment to be funded by facilitating development. A selection of sites will feature course enhancement and rationalisation (Sites A, B, C, D, E1/E2, F and racetrack widening). In addition, there are proposed improvements to the existing pedestrian link from Esher Station to Sandown Park Racecourse. These essential improvement works will be facilitated by the sale of a selection of 5 sites which will deliver a total of 318 residential apartments together with the sale of the land for the hotel, the land for the nursery and the capitalised income received from the proposed café / soft-play centre within the new family enclosure (the Development Land). The masterplan which identifies all of the sites that are the subject of this appeal is attached to the Planning Statement of Case.

4 SUBJECT MATTER OF THE INQUIRY

4.1 A full case history is set out in the Planning Statement of Case. This Statement of Case focuses on the affordable housing aspects of Reason for Refusal 1 as well as the Reason for Refusal 3.

4.2 Reason for Refusal 1 states:

> *The proposed development represents inappropriate development in the Green Belt which would result in definitional harm and actual harm to the openness of the Green Belt and it is not considered that the very special circumstances required to clearly outweigh the harm to the Green Belt and any other harm, including impact on transport (highway and public transport capacity), air quality and* ***insufficient affordable housing provision****, have been demonstrated in this case. The proposed development by reason of its prominent location would be detrimental to the character and openness of the Green Belt contrary to the requirements of the NPPF, Policies CS21 and CS25 of the Elmbridge Core Strategy 2011, Policies DM5, DM7 and DM17 of the Elmbridge Development Management Plan 2015.*

4.3 In addressing the issue of *insufficient affordable housing provision* our evidence will focus on establishing that the proposed 20% affordable housing offer is the maximum reasonable amount of affordable housing that the scheme can viably deliver whilst ensuring that the proposed benefits to the racecourse enhancements are also delivered. We do not consider in our evidence the balancing exercise required to establish the appropriateness of development in the Green Belt nor the consideration of the very special circumstances to outweigh any perceived harm; this is dealt within the Planning evidence.

4.4 The Planning Practice Guidance on Viability states that 'Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return[2]'.

4.5 In order to carry out the viability assessment there are two distinct parts to the process. The first is to consider the impact of affordable housing (and other planning obligations if required) on the proposed development. This involves undertaking a series of development appraisals allowing for different levels of affordable housing. The usual process is to start at a policy compliant position with respect to the target level of affordable house and then reduce this incrementally.

4.6 Once this first exercise is completed the resulting residual land values need to be compared to a benchmark land value to establish the 'viable' position in terms of the maximum reasonable amount of affordable housing that a scheme can deliver.

4.7 The Planning Practice Guidance on Viability (CD: 2.4) defines benchmark land value as follows; 'To define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to fully comply with policy requirements. Landowners and site purchasers should consider policy requirements

[2] Viability Guidance PPG: Paragraph: 010 Reference ID: 10-010-20180724

when agreeing land transactions. This approach is often called 'existing use value plus' (EUV+)'[3].

4.8 In undertaking the viability exercise in relation to the appeal scheme we will set out how we arrived at the residual land value for the proposed scheme and how this accords with the guidance provided by the PPG. We will further set out how this was agreed through negotiations with the Local Authority and their Viability Consultant.

4.9 We will then set out the basis upon which we established the benchmark land value and the need in this case to link this with the costs of the proposed improvement works.

4.10 We will then address Reason for Refusal 3, which states:

> *In the absence of a completed legal agreement, the proposed development fails to secure the necessary contribution towards the affordable housing contrary to the requirements of Policy CS21 of the Elmbridge Core Strategy 2011 and the Developer Contributions SPD 2012.*

4.11 Attached at **Appendix 2** are draft heads of terms for the s.106 Agreement. The details of these terms are set out further in **Section 10** below. The Appellant will be engaging with the LPA in advance of the start of the Inquiry with the intention of presenting an agreed s.106 Agreement which will satisfy Reason for Refusal 3.

[3] Viability Guidance PPG: Paragraph: 013 Reference ID: 10-013-20190509

5 VIABILITY APPROACH

5.1 Details of the methodology and viability guidance that was relied upon in the preparation of the February 2019 Financial Viability Assessment (FVA) is set out in Section 8 on page 12 of that report. There has been no material change in the overall circumstances since the submission of the FVA.

5.2 The applicant has engaged with the Local Authority regarding the necessary upgrades to the existing facilities on Sites A – E in order to deliver the future regeneration and secure the long term future of Sandown Park. It has been clarified that substantial investment in the racecourse is required to maintain the wider economic benefit of the racecourse to the local economy whilst simultaneously safeguarding the greenbelt. The corresponding need for this investment is to be provided by facilitating development on Sites 1 – 5.

5.3 Investment of the costs associated with the racecourse modernisation will allow Sandown Park to maintain market competitiveness and continue to provide facilities that enhance the public experience and local economy whilst delivering much needed housing. As a key leisure destination and employer in Elmbridge, the racecourse modernisation and rationalisation will enable Sandown Park to deliver a wider and enhanced community provision and meet modern customer standards and expectations. The racecourse enhancement will ensure that Sandown Park continues to maintain excellence, safeguard the greenbelt and be able to compete with other sports and leisure destinations around London. Evidence on this latter point is given by another witness.

5.4 The costs of the improvements are required to be met by the release of the Development Land. As the Appellant has made clear, there are no net assets available to carry out these improvement works and the Development Land is only being released in order to fund the improvements. If the receipts from the sale of the Development Land do not cover the cost of undertaking the improvements the Development Land will not be released and no residential development or hotel will come forward and consequently the delivery of the critical improvements and upgrading of Sandown Park Racecourse will be prevented.

5.5 Therefore it is necessary in this case to adopt a benchmark land value that is equivalent to the cost of the improvements works, which after detailed negotiation with the Council's cost consultant have been agreed at **£35.79m**. The applicant has sought to deliver as much affordable housing as is capable across the identified 5 residential sites whilst ensuring land receipts will allow the facilitating works to come forward.

5.6 This approach has been accepted by the Council and set out at the Officer's report at para 9.9.2.2.11:

> *"To establish the appropriate level of affordable housing contribution while ensuring the deliverability of the scheme as a whole and taking into account the fact that the residential development is the enabling development for the delivery of the essential racecourse improvements, the cost of these improvements has been accepted as a benchmark against which the scheme's viability was assessed."*

5.7 It is against this backdrop that the viability assessment was undertaken and it is the Appellant's position that 20% affordable housing represents the maximum reasonable level and that this has been fully tested and agreed with the Council and their viability consultant.

6 PLANNING POLICY

6.1 Full details of National, Regional and Local planning policies are set out in the Planning Statement of Case and we do not repeat those references in this Statement of Case. We do however set out below the relevant local plan policy relative to affordable housing as quoted in the LPA's reasons for refusal.

ELMBRIDGE CORE STRATEGY (2011)

Policy CS21 (Affordable Housing) – requires, ***where viable***, that development resulting in the net gain of 15 or more residential units should provide 40% of the gross number of dwellings on-site as affordable housing. Where exceptionally development is proposed on a greenfield site, at least 50% of the gross number of dwellings should be affordable. Within the supporting text box for this policy, it is confirmed ***that in exceptional circumstances where it is considered that the delivery of affordable housing in accordance with the policy is unviable, this must be demonstrated through a financial appraisal***. If the Council is satisfied that affordable housing cannot be provided in accordance with the policy, it will seek to negotiate an alternative position.

(Emphasis in the text above is our own).

6.2 It is our opinion that the Appellant has complied with Policy CS21 and that it has been demonstrated and accepted by the LPA that the delivery of 64 affordable tenure units, equivalent to 20% of the total residential units, is the maximum viable level of affordable housing that the scheme can deliver whilst ensuring there are sufficient land receipts to fund the improvement works to the Racecourse.

7 STATEMENT OF COMMON GROUND

7.1 In advance of the preparation of the Proof of Evidence for affordable housing and viability we anticipate that the Parties will be able to provide the Inspector with a detailed Statement of Common Ground. Until such time we set out in the section below the inputs to the viability submission and how these were agreed with the Council and their Viability Consultant.

8 BACKGROUND TO NEGOTIATIONS & APPRAISAL INPUTS

8.1 The original Financial Viability Assessment (FVA) was submitted in February 2019 and concluded that 15% affordable housing was the maximum reasonable amount of affordable housing that the scheme could deliver. The Council duly appointed Dixon Searle Partnership (DSP) to act as their Viability Consultant, who reviewed the FVA and reported back to the Council in April 2019[4].

8.2 With regard to the inputs to the development appraisal these were, with the exception of ground rents, generally accepted as reasonable by DSP. All of the details supporting our inputs are set out in the submitted Financial Viability Assessment (FVA). We set out below a summary of the terms that were agreed and then provide more detail on the application of ground rents.

RESIDENTIAL SALE VALUES

8.3 We sought the advice of Leaders Romans in respect of the private sales values for the proposed residential units. They researched comparable evidence for similar schemes in the locality and analysed local market conditions, demographics, local facilities, site conditions, and immediate competition in the surrounding area. Full details of their research is provided within the sales report attached to the original FVA, which concludes that an appropriate average private sales rate across all 5 residential sites is **£676 per sq ft / £7,277 sq m**.

8.4 DSP state at para 3.1.27 of their report that 'The comparisons above indicate that the FVA assumptions, which work out on average at £7,277/m^2 are approximately 20% above average sales values for flats in Esher, as viewed currently, and therefore in our view represent a not unreasonable estimate of development value in the circumstances (assuming the scheme details come forward as currently proposed in outline).'

8.5 We therefore adopted a rate of £676 per sq ft / £7,277 sq m.

AFFORDABLE HOUSING VALUES

8.6 We adopted the following average affordable housing values in our appraisals:

- Social Rent Av. £175 per sq ft
- Affordable Rent Av. £215 per sq ft
- Shared Ownership Av. £480 per sq ft

8.7 DSP reviewed these values and the assumptions that underpinned them and commented that in respect of the social rent and affordable rent values the assumptions made were not unreasonable overall[5].

8.8 In terms of the shared ownership values they commented that these were 'toward the upper end of the values expected for units with this level of initial share, therefore we have not queried this further[6]'.

8.9 We therefore adopted the above affordable housing values in our appraisal.

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[4] Dixon Searle Report, April 2019 (DSP19029KO) – CD: 7.6.
[5] Dixon Searle Report, April 2019 para 3.1.33
[6] Dixon Searle Report, April 2019 para 3.1.35

NURSERY VALUATION

8.10 We assumed that the land for the proposed nursery will be acquired by a nursery developer/operator for £1,050,000 and adopted this anticipated land value receipt in our appraisals. The area of the new nursery site is 0.18 HA/0.44 acres. This is an equivalent rate of £2.39m per acre.

8.11 DSP comments that whilst 'no supporting evidence has been provided with regard to this value. However, in our view this is very unlikely to have been under-estimated – a positive view has been taken from what we can see, based on experience and amounting to revenue equivalent to c. £6m/Ha[7]'.

8.12 **We therefore adopted the above land value in our appraisals.**

HOTEL VALUATION

8.13 We sought the advice of Savills with respect to the value of the land for the proposed hotel. They provided a report that was attached to the original FVA. This concluded that a site value of £2,473,000 was appropriate.

8.14 DSP reviewed the Savills report and concluded that 'Overall we consider the value attributed to the land with planning permission for a hotel to be a not unreasonable assumption[8]'.

8.15 **We therefore adopted this value in our appraisals.**

FAMILY/COMMUNITY ZONE SOFTPLAY CAFÉ

8.16 The family/community zone will be provided as benefit to the local community and JCR will not charge local residents to use this area outside of race days (when access will be included within the wider entrance fee).

The family/community zone will provide a 'soft play' café for families and young children as part of the enhancement and rationalisation works to Site C. The proposed soft play and café measures 700 sq m/7,539 sq ft and we have assumed that it will be delivered as shell and core by JCR and then leased to an operator. We carried out research on comparable rental information and liaised with our Investment Team regarding likely yield levels.

8.17 In light of this we assumed a rent of £15 per sq ft and applied a yield of 7%. This equates to an investment value of £1,500,000 after allowing for purchaser costs of 6%.

8.18 DSP reviewed these assumptions and concluded 'compared with rents on similar facilities, the rental assumption above is at the upper end of achievable rents for this type of business, reflecting the location, and again overall we do not consider these to be unreasonable assumptions[9].

8.19 **We therefore adopted these values in our appraisals.**

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[7] Dixon Searle Report, April 2019 para 3.1.38
[8] Dixon Searle Report, April 2019 para 3.1.44
[9] Dixon Searle Report, April 2019 para 3.1.47

RESIDENTIAL CONSTRUCTION COSTS

8.20 A full cost plan for the residential sites was provided by Calford Seaden (Quantity Surveyors) and attached to the original FVA with a full breakdown of Calford Seaden's cost assumptions.

8.21 This was reviewed by DSP who state that 'Overall, in our view the build cost is toward the upper end of the range that may be expected for this type of housing – which considering the location, the potential market, and the projected sales values is probably not unreasonable. However, we would recommend that the Council is satisfied that the development will be delivered to the proposed standards and all relevant requirements commensurate to both the policies and the values estimates[10]'.

8.22 We therefore adopt these costs in our appraisals.

PROFESSIONAL FEES

8.23 We adopted professional fees at 8%. This was made up of an allowance with the Calford Seaden cost plan together with an additional allowance for fees that fall outside those identified in the cost plan. This split is set out in the original FVA (page 23).

This was reviewed by DSP who state 'an allowance has been made for professional fees at 8% of total build costs. This is within the typical range in our experience. As explained in the FVA, the submitted appraisal includes rates of roughly 3% for fees to allow for the fees already included within the build cost – avoiding overlapping of allowances'[11].

8.24 **We therefore adopt these fees in our appraisals**

S.106 FINANCIAL CONTRIBUTIONS

8.25 Due to the limited information available at the time of the submission, we adopted the following allowances to cover indicative costs associated with S106 and S278 contributions:

- S106 Contribution – £3,000 per unit
- S278 Contribution - £1,500 per unit

8.26 This is equal to an allowance of £954,000 for S106 and £477,000 to cover S278 works, a total of £1,431,000.

8.27 DSP state in their review that these assumptions are 'within the range we would expect' however, they 'recommend the Council verifies the correct amount of contribution that are applicable'[12].

8.28 Since the submission of the planning application, further works have been carried out by Rapleys planning team and Elmbridge Borough Council in relation to the S106 and S278 contributions. The following have now been identified as requirements with their estimated costs:

[10] Dixon Searle Report, April 2019 para 3.1.68
[11] Dixon Searle Report, April 2019 para 3.1.70
[12] Dixon Searle Report, April 2019 para 3.4.77

S106 Contribution

- Surrey County Council Requirements:
  - Station Improvements - £300,000
  - Travel Plan Auditing - £6,150
- EBC/SWT Response:
  - Contribution to Habitat Enhancement at Littleworth Common – TBC

S278 Contribution

- Surrey County Council Requirements for Sustainable Transport Improvements:
  - Widening Lower Green Road - £500,000
  - Improvements to Bus Stops (More Lane) - £150,000
  - Improvements to Bus Stops (Lower Green Rad) - £8,000
  - Pedestrian Crossing Points (Portsmouth Road) - £200,000
  - Crossing Point (Station Road & Station) - £200,000
  - Footway Improvements to More Lane - £100,000

8.29 This is a total of £1,464,150 in contributions for both s.106 and s.278 works. This is an increase of £33,150 from the submission. To ensure accuracy in our reporting we have adopted the updated assumptions within our appraisals, however the impact of an additional £33,150 is not material to the outcome of the viability exercise.

8.30 The above s.106 and s.278 costs will be refined and updated as part of the finalising the s.106 Agreement and if there are any amendments these will be incorporated into the final evidence base presented to the Inspector within the Proof of Evidence.

COMMUNITY INFRASTRUCTURE LEVY (CIL)

8.31 We made an allowance for CIL in the initial submission appraisals which included indexation and existing floorspace credit. It is also anticipated that the affordable housing will be exempt from CIL. We allowed for a payment of £3,671,564 in our appraisal of the 20% affordable housing scheme.

8.32 DSP stated in their review that the assumptions are 'within the range we would expect', however, they recommended 'the Council verifies the correct amount of contributions that are applicable'[13].

8.33 Due to the time that has lapsed since the original submission was carried out, the CIL payments will be subject to further indexation. We have carried out updated analysis of the indicative CIL payment anticipated at the scheme at today's date (Q1 2020).

8.34 The charging rate for Elmbridge Borough Council for residential dwellings is £125 per sqm/£11.61 per sq ft. When subject to indexation, this equates to £184 per sq m/£17.11 per sq ft.

8.35 We therefore include the updated CIL payment of £4,159,000 in our appraisals.

[13] Dixon Searle Report, April 2019 para 3.4.77

ACQUISITION AND PREPARATION COSTS

8.36 We have made an allowance for Stamp Duty Land Tax at the appropriate rate and assumed agent's fees of 1.0% and legal fees of 0.50%.

8.37 We made a further allowance for planning costs at £50,000 per residential site inclusive of the applicable local authority planning fee, which equates to a total of £250,000.

8.38 DSP in their review state that 'we would normally expect this to be covered by the percentage estimate for professional fees relating to construction, however when added to the 8% on construction costs included for fees the total is still within expected parameters'[14].

8.39 **We therefore have included this within our appraisals.**

MARKETING COSTS

8.40 We assumed the following fees for the residential units:

- 2.5% agency and marketing fee.
- 1.0% agency and marketing fee for affordable units.
- £600 per private unit legal fee.
- £400 per affordable unit legal fee.

8.41 DSP reviewed this and comments that 'for the residential element of the proposal, the FVA has assumed 2.5% sales agent's fee on the private units and 1% on the affordable, and legal fees of £600/unit for the private units and £400/unit for the affordable. The agents' fees are higher than some seen. However overall the agents' and legal fees are within expected parameters[15].

8.42 **These have therefore been adopted in the development appraisals.**

FINANCE

8.43 We have included finance costs at 6% inclusive of arrangement fees and a debit rate of 0.75%.

8.44 DSP reviewed this and commented that 'the assumed rate of 6.0% including all fees is within the range typically seen in the current market and we have not amended this rate in our appraisal[16]'.

8.45 These have therefore been adopted in the development appraisals.

TIMESCALES AND PHASING

8.46 For the purpose of viability testing we assumed that the residential development sites are being phased and delivered on the following basis. Please note that this is an indicative phasing schedule and could be subject to change:

[14] Dixon Searle Report, April 2019 para 3.1.59
[15] Dixon Searle Report, April 2019 para 3.1.71
[16] Dixon Searle Report, April 2019 para 3.1.51

Phase	Site	Start Date	End Date	Duration
Phase 1	Site 3 – Construction	February 2019	January 2021	24 months
Phase 1	Site 3 – Sales	August 2020	July 2021	12 months
Phase 2a	Site 1 – Construction	February 2021	March 2022	14 months
Phase 2a	Site 1 – Sales	April 2022	June 2022	3 months
Phase 2b	Site 2 – Construction	February 2021	October 2022	21 months
Phase 2b	Site 2 – Sales	November 2022	November 2022	1 month
Phase 2c	Commercial – Sales	November 2022	November 2022	1 month
Phase 3	Site 5 – Construction	November 2022	August 2024	22 months
Phase 3	Site 5 – Sales	February 2024	January 2025	12 months
Phase 4	Site 4 – Construction	September 2024	July 2026	23 months
Phase 4	Site 4 – Sales	February 2026	January 2027	12 months
Total Project (including overlapping stages)		**February 2019**	**February 2027**	**96 months**

8.47 DSP have reviewed this initial phasing plan that informed the viability appraisals. They comment as follows:

> 'The timing of the individual sites is within typical parameters, and we do not consider the proposed sales period for each scheme to be unreasonable. The phasing is described as being subject to change and may depend on factors such as the need to maintain the operation of the racecourse whilst works are carried out and the need to avoid flooding the market with too many flats being completed at one time. Aside from these issues, the sites are discrete and could potentially be started and delivered more closely together (concurrently to a greater extent), so there could be potential to see a different sequencing and to shorten the project period and achieve further overall savings. Such an approach would be likely to improve the flow of available enabling funds, on the basis that these are released as the various scheme elements progress (the approach that seems to be assumed). However, in balance with this we would accept that to a degree the market conditions and "absorption rate" achieved as the scheme progresses will have an influence on the subsequent phases (sites coming forward).
>
> Nevertheless, in our view the Council needs to be mindful of the outline nature of the main value generating elements at this stage. Viewed in conjunction with the lengthy overall assumed timings, it may well be appropriate to consider that ultimately the scheme details could vary from those currently being assumed. In this context, in any event some consideration of review mechanisms – revisiting viability subsequently, and potentially more than once, could be appropriate should the support for affordable housing and other matters fall short when viewed at the outset. In this case, later stage

review(s) could also be informed by the evolving picture of actual values and costs as this progresses[17]'.

8.48 It is to be noted that since these values and costs were assessed and agreed by Council officers and their viability consultants in mid-2019, many have altered due to factors such as inflation and house price movement, as is inevitable over time. They will be reconsidered by us before the public inquiry so that up-to-date figures can be included in our evidence to ensure that the Inspector has accurate information upon which to base their decision. It is further to be noted that the figures will be reconsidered for agreement with the Council, in accordance with the review mechanism within the s.106 agreement.

8.49 In terms of the concerns they raise regarding review mechanisms we set out further details in this regard further down where we discuss the viability review mechanism that is being proposed in the s.106 Agreement.

PROFIT

8.50 In our development appraisals we adopted a developer's return at 17.5% on the Gross Development Value (GDV) for all private sale units. We assessed profit on any affordable tenure units at 6% on GDV and we assessed profit at 15% on GDV for any commercial elements of the proposed scheme.

8.51 DSP have reviewed this assumption and state 'we consider the profit assumptions applied to be reasonable in this case'[18].

8.52 **We have therefore adopted these profit rates in our appraisals.**

GROUND RENTS

8.53 The application of ground rents within the development appraisals was one area that was not agreed between the Parties; however we believe this is capable of resolution and will form part of the s.106 negotiations.

8.54 It is our position that it is no longer appropriate to apply ground rents to the sale of flats within the assessment of Gross Development Value. We adopt this approach in response to the Government's proposed ban on the sale of leasehold houses and on outlawing ground rents in new residential long leases.

8.55 Whilst no draft legislation has yet been published, the government has provided us with its most detailed explanation yet of its proposals to ban the sale of leasehold houses and ground rents in new residential leases. These proposals apply to properties in England only[19].

8.56 Ground rents in new leases of flats (and, where permitted, leases of houses) granted after the legislation takes effect will be set at a peppercorn, which effectively means that ground rents will be outlawed completely. The consultation paper suggested a cap of £10 per annum but the government has reverted to its original proposal of a peppercorn. Any ground rent that is reserved in a lease granted after the ban takes effect will not be recoverable by the

[17] Dixon Searle Report, April 2019 paras 3.1.55 & 3.1.56
[18] Dixon Searle Report, April 2019 para 3.1.83
[19] "Implementing reforms to the leasehold system in England: summary of consultation responses and government response" Ref: ISBN 978-1-4098-5483-8 (Appendix 4)

landlord; if tenants pay it in error, they will be able to recover it. Additionally, landlords who charge rent when they should not do so will be liable to a civil penalty of up to £5,000.

8.57 We fully anticipate that by the time the flats that are the subject of this Appeal are to be built and sold they will not be subject to a ground rent charge. As such we feel it is inappropriate to include the value of ground rents in my assessment of the Gross Development Value.

8.58 DSP adopt a different approach and continue to apply ground rents in their development appraisal modelling.

8.59 Notwithstanding that we do not believe ground rents will be charged on the proposed private flats the Appellant recognises that the LPA and DSP have concerns that the proposed legislation may not be enacted, in which case ground rents should be reflected in the assessment of gross development value.

8.60 The Appellant therefore set out in the **Post-Consultation Supplemental Statement**[20] a revised affordable housing offer to the LPA which seeks to protect the Council's position should the charging of grounds remain in force but also protects the Applicant's position should they become prohibited.

8.61 DSP's advice to the Council is that with the inclusion of ground rents the scheme can deliver 20% affordable housing with a surplus of £1,360,792. With the exclusion of ground rents the scheme would have a deficit of £222,739 at 20% affordable housing (i.e. the scheme could not quite deliver 20% affordable as there would be a £222,739 deficit).

8.62 Therefore if the scheme delivers 20% affordable housing and ground rents are abolished they would in effect be overproviding affordable housing by £222,739 (the amount of the deficit). Therefore if the scheme delivers 20% affordable housing there needs to be an adjustment to the surplus to reflect the impact of not charging ground rents. This would be the difference between £1,360,792 and -£222,739, which is £1,138,053. On the basis that that ground rents are only charged in relation to private sales units and not on any affordable units, this equates to a sum of £4,480.52 per private unit[21].

8.63 This will be picked up in the viability review mechanisms within the s.106 agreement, so that if ground rents are still being charged when the proposed private flats are sold there will be an additional payment towards affordable housing of £4,480.52 per private unit.

8.64 This protects the LPA in the event that ground rents are charged but if they have been abolished they are not to be included in the viability review mechanism. It is our opinion that this is a reasonable position to take.

COSTS OF THE IMPROVEMENTS WORKS

8.65 The costs of the Improvement Works have been the subject of extensive scrutiny by the Council, DSP and the Council's Cost Consultant, Martin Warren Associates (MWA). This has resulted in an agreed position between the Parties that the costs of the Improvement is **£35,792,503.65** (say £35,790,000). This is set out in the final cost plan comparison exercise (CD: 6.61).

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[20] Core Document 6.47, pages 14-16

[21] 318 residential units in total. 20% affordable housing means that there are 254 private units. £1,138,053 / 254 = £4,480.52 per private unit.

8.66 It is against these costs that the viability exercise has been determined.

8.67 As set out in the Executive Summary the Appellant has also commissioned a building survey report as a reference document for the purposes of the Planning Appeal to highlight the key issues of disrepair and need for modernisation to meet customer standards to selected parts only of the Racecourse buildings and site. The survey revealed that there is a requirement for some additional works to be incorporated into the Grandstand Improvement Works in order to prevent water ingress. In addition, a section of the perimeter fencing along More Lane will be replaced with fencing which will open up views across the racecourse. It is not anticipated that either of these works will increase the overall identified costs as previously agreed with the Council.

9 VIABILITY APPRAISALS

9.1 Taking all of the above factors into account we have carried out development appraisals of the site to arrive at the following residual land values. The full viability appraisal can be found at **Appendix 2**.

9.2 A summary of the updated viability position at 20% affordable housing against the agreed benchmark can be found below:

Affordable Housing Position	Residual Land Value	Benchmark Land Value	Surplus / Deficit
20% Affordable Housing	£35,099,000	£35,790,000	-£691,000*

9.3 The table above shows that at 20% affordable housing, against a benchmark land value of £35,790,000 there is a marginal deficit of £691,000 (this is less than a 2% variance). This is a result of an increase in CIL charging since the original viability appraisals were undertaken.

9.4 As stated above, it is important to note that Financial Viability Appraisals present a snapshot in time in terms of the evidence that supports them. This Statement of Case is prepared on the basis of the evidence that was submitted to the Council in the February 2019 Financial Viability Assessment and agreed with them and their viability consultant mid-2019. At this stage the only input that has been varied is the CIL payment based on Elmbridge's CIL charging indexation for 2020. The evidence base will be updated in advance of the Inquiry when Proofs of Evidence are submitted so that the Inspector has the most up to date evidence available.

10 AFFORDABLE HOUSING DELIVERY & REVIEW MECHANSIM

10.1 Reason for Refusal 3 states:

- In the absence of a completed legal agreement, the proposed development fails to secure the necessary contribution towards the affordable housing contrary to the requirements of Policy CS21 of the Elmbridge Core Strategy 2011 and the Developer Contributions SPD 2012.

10.2 Attached at **Appendix 1** are draft heads of terms for a s.106 Agreement. With respect to affordable housing it confirms the following:

- To provide 20% of the total number of residential units as on-site affordable housing, to be provided entirely on Sites 1 and 2. This has previously been agreed in principle with the Council.

- To occupy no more than 165 private units, equivalent to 65% of the total number of private units until all affordable housing units have been made available.

- There is a mechanism to protect the Council in the event that Site 3 is commenced and there is either a delay in delivery of the affordable tenure units on Sites 1 and 2 or no further residential development takes place.

- There is both an early and late stage review mechanism which will be drafted in accordance with the Elmbridge Local Plan: Development Contributions Supplementary Planning Document (Draft for consultation from 7th January to 4th February 2020) (CD: 3.45). These reviews will ensure that the proposed development delivers the maximum viable quantum of affordable housing and financial contributions whilst ensuring the delivery of the proposed racecourse improvements.

10.3 These terms along with the agreed contributions to Esher Railway Station, agreement to enter into a Community Use Agreement and a payment towards the Littleworth Common Management Plan will be negotiated with the Council prior to the commencement of the Inquiry in order to overcome Reason for Refusal 3.

11 INDICATIVE PHASING PLAN

11.1 In order to deliver the improvements to Sandown Park Racecourse it is necessary for JCR to be in receipt of funds from the sale of the residential Sites. It is therefore proposed that the following indicative dynamic phasing plan be adopted, with any changes being first agreed with the LPA.

Residential: Market - Affordable	Improvement and Related Works to Sandown Park Racecourse
Sale & start of delivery of Site 3	
Sale & start of delivery of Site 4	New stabling and associated facilities including new racing staff accommodation (Site A) and groundworks for Sites 1 & 2 Refurbishment and internal upgrades to the grandstand Racetrack Improvements (Site E1 and E2) Improved centre of the course car parking (Site D)
Delivery of Affordable Housing On Sites 1 & 2	
	Realignment of the internal roads and parking layout to the front of the site (along Portsmouth Road) (Site F) A new 150 bed hotel (Site B)
Sale & start of delivery of Site 5	
	New Family Zone to Centre of Racecourse (Site C)

11.2 The table above provides an indicative phasing schedule that outlines the necessary land sales (left column) needed to provide funding for the various improvements listed within the right column. We have attached an indicative Gantt Chart at **Appendix 3**, which has been prepared by Angus Irvine MRICS[22] that shows how both the residential sites and racecourse improvement works could be delivered. The Gantt Chart provides a worst case scenario in terms of total project length and it may be possible to build out some of the residential land parcels concurrently which would reduce the total project length. The top section of the Gantt Chart shows the residential development phases being brought forward by a developer(/s) with the indicative timeline for received land payments. Each site has incorporated into its timeline; a reserved matters application period, construction period, sales period and anticipated land payment stage. The bottom section of the Gantt Chart shows the expected racecourse improvements timeline following on from the anticipated land receipts. The amount of works available will be determined by the amount of monies received. At this stage the indicative Gantt Chart is subject to amendments as the developer(s) may commercially decide to

[22] Partner & Head of Development Services Group at Rapleys LLP

commence with a different site at the beginning or may commit to start on site on all sites at once.

11.3 There is a difference between the indicative phasing plan outlined in the Gantt Chart and that which is modelled in the Financial Viability Assessments (FVA). This is due to the need to ensure that the FVA appraisals are produced on the assumption that the sites are being brought forward based on a continuous linear delivery model. This is a hypothetical model upon which viability appraisals are carried out. It assumes that when one residential site construction phase finishes the next site will begin with no downtime in construction between the phases. In the 'real world' there are many commercial reasons why this may not happen both positive and negative; market conditions, trying to avoid saturation of the market, internal finance reasons etc. The Gantt Chart is representative of the 'real world' and is provided in order to give the Inspector a visual representation of the potential phasing and delivery of the residential sites alongside the racecourse improvements.

11.4 For the sake of completeness we have also modelled the viability appraisals based on the timeline as set out in the Gantt Chart. Our modelling demonstrates that this alternative timeline does not materially affect the viability position. When we undertake an update of the current evidence within the Proof of Evidence, in advance of the Inquiry, we will provide the appraisals and analysis of the difference between these two timelines. We will be able to demonstrate the change of assumption in terms of the timelines has a nominal impact on the viability position.

12 CONCLUSION

12.1 We believe that the evidence presented overcomes the two reasons for refusal in respect of affordable housing. In addition, it is important to note that the provision of 20% affordable housing has already been agreed as reasonable with the Council and their viability consultant.

12.2 Increasing the delivery of affordable housing above the current viable position of 20% would put into jeopardy the delivery of the racecourse improvements which are at the heart of this application.

12.3 Viability testing is by its nature a snapshot in time of a scheme's ability to deliver affordable housing and s.106 financial contributions whilst still providing for a suitable benchmark land value. In advance of the Inquiry the Appellant will provide a full update of the evidence relied upon in assessing the financial viability of the scheme. This will be submitted as part of the Proof of Evidence.

12.4 It should be noted that given current extreme economic uncertainties due to the COVID-19 pandemic, the 20% level of affordable housing that can be viably provided may need to be reviewed at the time of the public inquiry. The Applicant reserves its position at this stage.

12.5 The proposals include upwards only viability review mechanisms which will, subject to viability testing, allow the development to deliver additional affordable housing whilst still delivering the racecourse improvements.

12.6 Taking all the above into account and the evidence as presented it is our opinion that the scheme as proposed is in accordance with Policy CS21: Affordable Housing of the Council's Core Strategy (2011).

Appendix 1

DRAFT HEADS OF TERMS OF SECTION 106 AGREEMENT

JOCKEY CLUB RACECOURSES LIMITED

SECTION 106 PLANNING OBLIGATIONS

DRAFT HEADS OF TERMS

Subject to the Planning Inspector concluding that all proposed planning obligations are CIL Regulation 122 compliant:

1 AFFORDABLE HOUSING

Based on current financial modelling, obligation to provide 20% of the total number of residential units as on-site affordable housing, to be provided entirely on Sites 1 and 2.
NB It should be noted that given current extreme economic uncertainties due to the COVID-19 pandemic, the 20% level of affordable housing that can be viably provided may need to be reviewed at the time of the public inquiry. The Applicant reserves its position at this stage.

The proposed provision currently comprises a total of 64 flats in the following mix:

Social rented sector	46 units (72%)
Affordable rented sector	9 units (14%)
Shared Ownership	9 units (14%)
TOTAL = 64 units	

Delivery/restrictions:

1) No more than 165 private units to be occupied until all affordable housing units have been made available;

2) If no works have commenced on Sites 1 and 2 prior to 24 months from completion of Site 3, a financial sum equating to 20% of the units delivered on Site 3 (up to a maximum of 23 units) shall be paid to the Council to be held in a ring fenced account

3) If within a period of 12 months from the date of such payment,

   a) development has commenced on Sites 1 and 2, the Council shall release such funds to the payee; or

   b) development has not commenced on Sites 1 and 2 the Council may retain such funds as a contribution in lieu of on-site affordable housing for Site 3, 15 affordable housing units will be required on Site 2 and Site 1 may be used for market housing (equating to a provision of 72 affordable housing units)

Affordable Housing Review Mechanism:

1) Early Stage Review:

   To be carried out in the event the ground works for Site 3 have not completed by the date which is 30 months from the grant of planning permission.

2) Late Stage Review:

To be carried out when 75% of the residential units have been sold/leased with any identified surplus being paid as a contribution towards off site affordable housing and, together with onsite affordable housing provided, to be capped at 40%.

Affordable Housing Providers

The following Elmbridge Preferred Affordable Housing Providers (Registered Providers) shall be approached initially with a view to agreeing the delivery of affordable housing on the relevant Sites:

- A2D
- Crown Simmons
- Metropolitan Thames Valley Housing
- PA Housing

2 PHASING / FUNDING

a) A Phasing Plan to be agreed to regulate the delivery of improvement to Sandown Park Racecourse such that no works are required to be done unless and until JCR is in receipt of sufficient funds from the disposal of land assets.
b) 20% of the proceeds of sale for the residential element of the development to be held in an escrow account for draw down by JCR in accordance with terms to be agreed with the Council for the phased delivery of the improvement works.

3 ESHER RAILWAY STATION

A payment to the Council of £300,000 contribution towards enhancements to Esher Railway Station to improve accessibility and step free access.

4 COMMUNITY USE AGREEMENT

To enter into a Community Use Agreement relating to the use of the Family Enclosure and Community Use Facility to enable local families, the wider community and disabled persons to experience horseracing and associated attractions (on race days) and recreation and sporting activities (on non- race days) in a way which is affordable and accessible within specified hours and days.

5 LITTLEWORTH COMMON MANAGEMENT

To pay the Council a £4,450 contribution towards a Management Plan of Littleworth Common to include the procurement of a habitat survey;

Subject to the outcome of the habitat survey to pay financial contribution (up to an agreed cap) towards the mitigation of identified detrimental impacts on Littleworth Common.

6 MISCELLANEOUS

Specific obligations to bind specific areas of land and liability for breach to bind respective Owners of such identified areas.

Appendix 2

DEVELOPMENT APPRAISALS

Proposed Scheme - Sites 1 - 5
20% Affordable Housing
calfordseaden Timings

Sandown Park Racecourse
Portsmouth Road
Esher
KT10 9AJ

Development Appraisal
Rapleys
10 March 2020

APPRAISAL SUMMARY — RAPLEYS

Proposed Scheme - Sites 1 - 5
20% Affordable Housing

Appraisal Summary for Merged Phases 1 2 3 4 5 6

Currency in £

REVENUE

Sales Valuation	**Units**	**ft²**	**Sales Rate ft²**	**Unit Price**	**Gross Sales**
Site 3 - Private	114	84,450	700.36	518,816	59,145,000
Site 1 - AH	15	10,750	258.78	185,462	2,781,928
Site 2 - AH	49	40,250	254.33	208,911	10,236,651
Site 5 - Private	68	46,600	660.09	452,353	30,760,000
Site 4 - Private	72	61,440	684.81	584,375	42,075,000
Totals	**318**	**243,490**			**144,998,579**

Rental Area Summary	**Units**	**ft²**	**Rent Rate ft²**	**Initial MRV/Unit**	**Net Rent at Sale**	**Initial MRV**
Family Enclosure Cafe	1	7,534	15.00	113,010	113,010	113,010
Totals	**1**	**7,534**			**113,010**	**113,010**

Investment Valuation

Family Enclosure Cafe					
Current Rent	113,010	YP @	7.0000%	14.2857	1,614,429
Total Investment Valuation					**1,614,429**

GROSS DEVELOPMENT VALUE			**146,613,008**
Purchaser's Costs		(99,933)	
Effective Purchaser's Costs Rate	6.19%		(99,933)
NET DEVELOPMENT VALUE			**146,513,074**
Additional Revenue			
Hotel Land Value		2,470,000	
Nursery Land Value		1,050,000	
			3,520,000
NET REALISATION			**150,033,074**
OUTLAY			
ACQUISITION COSTS			
Residualised Price		37,871,478	
Residualised Price (Negative land)		(2,772,949)	
			35,098,529
Stamp Duty		1,851,574	
Effective Stamp Duty Rate	4.89%		
Agent Fee	1.00%	378,715	
Legal Fee	0.50%	189,357	
Town Planning		250,000	
			2,669,646

CONSTRUCTION COSTS

Construction	**ft²**	**Build Rate ft²**	**Cost**
Site 3 - Private	105,563	216.05	22,806,516
Site 1 - AH	13,438	211.20	2,837,968
Site 2 - AH	50,313	215.27	10,830,996
Site 5 - Private	58,250	222.14	12,939,422
Site 4 - Private	76,800	231.06	17,745,723
Totals	**311,897 ft²**		**67,160,625**
Contingency		5.00%	3,358,031
Site 3 - Elmbridge CIL			1,866,638
S106 - Station Improvements			300,000
S106 - Travel Plan Auditing			6,150
S278 - Widening Lower Green Road			500,000
S278 - Improv. to Bus Stops More Ln			150,000
S278 - Improv. to Bus Stops LG Road			8,000
S278 - Pedestrian Crossing Ports Rd			200,000
S278 - Crossing Point (Station)			200,000
S278 - Footway Improvment (Station)			100,000

Proposed Scheme - Sites 1 - 5
20% Affordable Housing

Site 5 - Elmbridge CIL			1,113,433	
Site 4 - Elmbridge CIL			1,178,929	
				76,141,806
PROFESSIONAL FEES				
Professional Fees - Site 3		3.00%	718,405	
Professional Fees - Site 1		2.00%	59,597	
Professional Fees - Site 2		2.50%	284,314	
Professional Fees - Site 5		2.50%	339,660	
Professional Fees - Site 4		2.50%	465,825	
				1,867,801
MARKETING & LETTING				
Letting Agent Fee		10.00%	11,301	
Letting Legal Fee		3.00%	3,390	
				14,691
DISPOSAL FEES				
Sales Agent Fee - Private		2.50%	3,299,500	
Sales Agent Fee - AH		1.00%	130,186	
Sales Legal Fee - Private	254 un	600.00 /un	152,400	
Sales Legal Fee - AH	64 un	400.00 /un	25,600	
				3,607,686
FINANCE				
Debit Rate 6.000%, Credit Rate 0.750% (Nominal)				
Total Finance Cost				3,652,819
TOTAL COSTS				**123,052,979**
PROFIT				
				26,980,096

Performance Measures	
Profit on Cost%	21.93%
Profit on GDV%	18.40%
Profit on NDV%	18.41%
Development Yield% (on Rent)	0.09%
Equivalent Yield% (Nominal)	7.00%
Equivalent Yield% (True)	7.32%
IRR	21.90%
Rent Cover	238 yrs 9 mths
Profit Erosion (finance rate 6.000)	3 yrs 4 mths

Appendix 3

DEVELOPMENT GANTT CHART

Sandown Park Racecourse

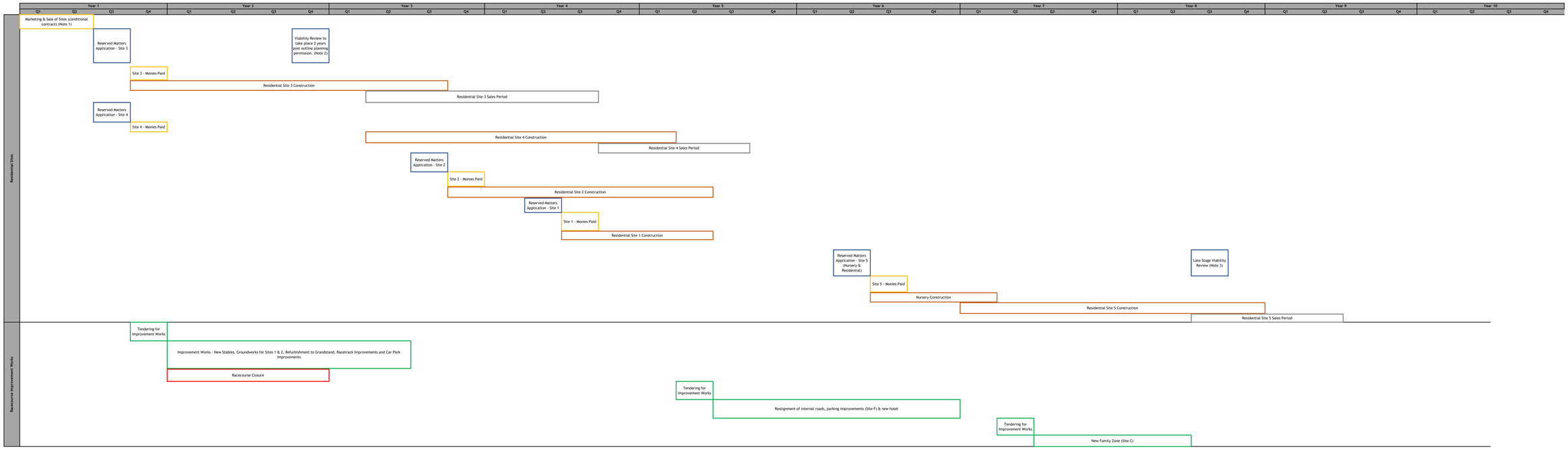
Indicative Phasing Plan

Created by Angus Irvine PGDip MSc MRICS

Key:

- **Planning**
- **Residential Construction**
- **Residential Sales**
- **Improvement Works**
- **Racecourse Closure**
- **Marketing / Site Sale Information**

Site	Private	Affordable	
Site 1		15	
Site 2		49	
Site 3	114		
Site 4	72		
Site 5	68		
Total	**254**	**64**	**318**



Notes

Note 1 We expect the contract to be conditional on the grant of reserved matters - this is when the money for the sites will be paid.

Note 2 The early stage review will only trigger if the site has no been sufficiently progressed. The details of what constitutes sufficient progression needs to be negotiated in the s106.

Note 3 This needs to be discussed further. The draft SPD says late stage review at 75 of private sales. This is unit 190 across our 5 sites. This will be the 4th flat to be sold in Site 5. However the LPA may wish to see Late Stage Reviews at 75% sale of each private site (3, 4 and 5)

Based on:

Leslie Clarke construction estimates, sales rates of 6-9 units per month

Indicative site work timescales (these need to be confirmed)

Appendix 4

“IMPLEMENTING REFORMS TO THE LEASEHOLD SYSTEM IN ENGLAND: SUMMARY OF CONSULTATION RESPONSES AND GOVERNMENT RESPONSE”

Ministry of Housing,
Communities &
Local Government

Implementing reforms to the leasehold system in England

Summary of consultation responses and Government response

June 2019
Ministry of Housing, Communities and Local Government

This document/publication is also available on our website at www.gov.uk/mhclg

If you have any enquiries regarding this document/publication, complete the form at http://forms.communities.gov.uk/ or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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June 2019

ISBN: 978-1-4098-5483-8

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Ministerial Foreword

Last year, I asked for people's views on how we should implement our plans to tackle exploitative practices in the leasehold sector. Leases that are unjustified, include onerous terms or unfair conditions, or put corporate profit over consumer protection have no place in today's housing market. Since then, I have met leaseholders, developers and others within the sector. I have listened carefully to those who have suggested how the leasehold and commonhold market could be improved – so it is fair to the homeowner, and effective in delivering new homes across the country.

I am grateful to all those who responded to our technical consultation. Over 1,200 people or organisations got in touch to help shape our plans and tell us how they should work in practice, and we will use your evidence to inform how we draft the necessary legislation.

As a result, unless there are exceptional circumstances, all new houses will be sold on a freehold basis. Your responses to our consultation have helped me to clarify how we can ensure the delivery of freehold houses, and how we can ensure redress is quickly provided if something goes wrong.

Your views have also enabled me to refine our plans to ensure no monetary value is attached to future ground rents. Rather than a financial cap of £10 per year, I intend to fully restrict ground rents in newly established leases of houses and flats to a peppercorn – zero financial value. Consumers see no clear benefit from ground rents. I want to ensure that consumers only pay for services that they receive, so ground rents on newly established leases should be set at £0.

I know that the process of buying or selling a home can be stressful, time-consuming and costly for buyers and sellers alike – and even more so if that property is leasehold. I am going to make this easier, so people can make the biggest purchase of their lives with confidence, with transparency and fairness at every stage for leaseholders and freeholders alike.

Having read and listened to your views on the future of leasehold, it is clearer to me than ever before that Government needs to take urgent action to reset the system. I will do so, delivering on our manifesto pledge to crack down on unfair practices in leasehold and revitalising the leasehold and commonhold market so everyone can choose the home that's right for them.

Rt Hon James Brokenshire MP
Secretary of State for Housing, Communities and Local Government

1. Introduction

1.1 The Government is committed to promoting fairness and transparency for leaseholders and freeholders and ensuring that consumers are protected from abuse and poor service. Latest figures show that in 2016-17, there were an estimated 4.3 million leasehold dwellings in England, equating to 18% of the English housing stock. Two thirds (67%, 2.9 million) of these properties were flats and one third (33%,1.4 million) were houses.[1] Leasehold is a major tenure and for many people supports communal living and the effective management of buildings.

1.2 However, problems exist within the leasehold market. These include new build houses being sold as leasehold, where there is no obvious reason for them not to be sold as freehold. We have also seen many ground rents rising from traditionally nominal or peppercorn levels to more than 0.1% of the property's value, and with short ground rent review periods where the amounts double, and where the consumer receives no return or value for their payments. This contrasts with payment of service charges which support the maintenance and repair of buildings or associated shared spaces or infrastructure.

1.3 The Government is intent on addressing these issues, and in December 2017, we pledged to end unfair leasehold practices. Our consultation, *Tackling unfair practices in the leasehold market*, set out a package of measures which included proposals to ban the unjustified use of leasehold for new houses and to reduce ground rents on newly established leases of houses and flats to a peppercorn (zero financial value).[2]

1.4 In October 2018, we published a further technical consultation, *Implementing reforms to the leasehold system in England*, asking for views on the detail of the implementation of these proposals, including consideration of circumstances where exemptions may be necessary.[3] The consultation also outlined measures to improve how leasehold properties are bought and sold, and promoted fairness for freeholders with proposals to ensure that the charges that freeholders may pay towards the maintenance of communal areas are fairer and more transparent.

1.5 This report summarises the views we heard and how we intend to progress. We will bring forward legislation as soon as Parliamentary time allows to enact these measures.

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[1] MHCLG, Estimating the number of leasehold dwellings in England, 2016 to 2017, see: https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2016-to-2017

[2] MHCLG, Tackling unfair practices in the leasehold market: a consultation, see: https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market

[3] MHCLG, Implementing reforms to the leasehold system in England: a consultation, see: https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system

1.6 However, our work will not stop there. We have already begun to address some of the wider issues in the market. This includes establishing a working group of housing experts chaired by Lord Best to look at raising standards across the entire property agent sector so homebuyers, sellers, tenants, landlords and leaseholders receive the best service possible.[4] This will include advising on the regulation and the introduction of mandatory qualifications for all property agents so tenants, homebuyers and sellers can be confident they are getting a professional service and are being charged fairly. The working group will also consider under what circumstances leaseholder and freeholder fees and charges are justified, and if they should be capped or banned. This includes the use of restrictive covenants, leasehold restrictions, administration charges and other charges placed on properties.

1.7 We are also improving support and advice available to leaseholders. We have been working with Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them if things do go wrong.[5] We have also produced a *How to Lease* guide to help those living in a leasehold property or who are thinking of buying one.[6] The Government has also included specific information on buying and selling leasehold properties within its *How to Buy* and *How to Sell* guides which we have recently published.[7] We have also announced that we will extend mandatory membership to a redress scheme, beyond managing agents, to all freeholders of leasehold properties[8] and we continue to work with industry to help existing leaseholders with onerous ground rent review terms.

1.8 We are putting pressure on developers who have sold onerous leases, including those that double more frequently than every 20 years, to provide support for current leaseholders. Some developers have introduced schemes to assist individuals with onerous leases which is welcome, but these must go further and faster. To facilitate this process, the Government announced a *Public Pledge for Leaseholders*. This contains a commitment by freeholders to identify any existing leases within their portfolio which contain ground rents that double more frequently than every 20 years. They have also committed to contact the relevant leaseholders and offer to vary their leases.[9]

1.9 We are also working closely with the Law Commission on their 13th Programme of Law Reform, which includes reinvigorating commonhold as an alternative to

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[4] Regulation of Property Agents working group, see: https://www.gov.uk/government/groups/regulation-of-property-agents-working-group
[5] Trading Standards, Leasehold redress guidance for consumers, see: https://en.powys.gov.uk/article/7263/Guidance-for-consumers-seeking-redress-for-leasehold-matters
[6] MHCLG, How to Lease guide, see: https://www.gov.uk/government/publications/how-to-lease
[7] MHCLG, How to Buy and How to Sell guides, see: https://www.gov.uk/government/publications/how-to-buy-a-home and https://www.gov.uk/government/publications/how-to-sell-a-home
[8] MHCLG, Strengthening consumer redress in the housing market: summary of responses to the consultation and Government response, see: https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing
[9] MHCLG, Leaseholder Pledge, see: https://www.gov.uk/government/publications/leaseholder-pledge

leasehold ownership;[10] reviewing Right to Manage legislation to make it easier for leaseholders to take control over the management of their buildings;[11] and reforming the enfranchisement process, to make buying a freehold or extending a lease easier, faster, fairer and cheaper.[12] Government has also made it easier to form Recognised Tenants' Associations. Recognised Tenants' Associations have legal standing and empower leaseholders to further hold their freeholder to account.[13]

Consultation process and responses

1.10 Our public consultation *Implementing reforms to the leasehold system in England* ran for six weeks from 15 October to 26 November 2018. The consultation received 1,237 responses; 1,038 via an online survey and 199 via email and post.

1.11 Of those responding to the online survey providing background information, 1,029 respondents said they were private individuals and 208 identified themselves as replying to the consultation on behalf of an organisation. Responses received from organisations were from a mixture including legal firms, representation groups, managing agents, investors and developers. A full breakdown of respondents and responses to questions can be found at **Annex A**.

1.12 This report summarises respondents' views by considering comments made in relation to each of the questions included in the consultation document. It also sets out the Government's proposed response in each case.

Summary of Government response

1.13 The Government in this response sets out the following positions with regards to the forthcoming legislation:

Implementing the ban on the unjustified use of new leases for houses:

- Enforcement and redress: following legislation it will not be permissible for applicants to apply to register a non-compliant residential long lease on a house with HM Land Registry. If a lease is found to be contrary to the ban, the consumer will be entitled to zero cost enfranchisement as means of redress – (pages 10-12).

- Definition of house: the ban will apply to residential long leases (over 21 years) for new build houses or existing freehold houses. "Houses" will be

[10] Law Commission, Commonhold, see: https://www.lawcom.gov.uk/project/commonhold/
[11] Law Commission, Right to Manage, see: https://www.lawcom.gov.uk/project/right-to-manage/
[12] Law Commission, Enfranchisement, see: https://www.lawcom.gov.uk/project/leasehold-enfranchisement/
[13] MHCLG, Recognising resident's associations and their powers to request information about tenants, see: https://www.gov.uk/government/consultations/recognising-residents-associations-and-their-power-to-request-information-about-tenants

defined for the purpose of the ban as single dwellings, and self-contained buildings or parts of buildings (structurally detached or vertically divided) – (pages 13-14).

- Acceptable to the consumer: exemptions provided to the ban should have their ground rents restricted (as per the future ground rent policy). We will also bring forward a Right of First Refusal which will protect leaseholders in exempted properties as well as existing leasehold house owners by notifying them of a landlord's intention to sell their freehold and give them first refusal to buy it – (pages 15-17).

- Exemptions from the ban: will be provided for shared ownership properties and community-led development as well as inalienable National Trust land and excepted sites on Crown land. Exemptions will also be provided for retirement properties as well as financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease – (pages 17-21).

- Implementation: there will be no transitional period following legislation. Owners of leasehold land at the date of the December 2017 announcement will continue to be able to develop leasehold houses unaffected by the ban – but this retrospective application will not extend to those that did not own the land as of that date (including those with options on the land) – (pages 21-23).

Implementing the reduction of future ground rents to a peppercorn (zero financial value):

- Reducing the level of ground rents: the Government will legislate to restrict ground rents to a peppercorn (zero financial value) in future leases. Future ground rents must have zero financial value (£0) rather than be capped at £10 per annum (as proposed in the consultation) – (pages 24-25).

- Exemptions from the reduction: will be provided for retirement properties and community-led developments, as proposed in the consultation. Exemptions will also be provided for financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease. An exemption will not be provided for shared ownership properties – (pages 26-33).

- Mixed-use and replacement leases: mixed-use leases will be excluded from the legislation and ground rent can continue to be charged where a single lease covers both commercial and residential property. For replacement leases, the reduction of future ground rents will only apply to the newly extended part of the lease – (pages 29-32).

- Implementation: there will be no transitional period after the legislation has come into force. We believe that by the time the legislation comes

into force our proposals will have been in the public domain long enough for the sector to prepare for the changes – (pages 33-34).

- Enforcement and redress: other than any exempted properties, leases with ground rents above a peppercorn (zero financial value) will be unenforceable in law. We will also give leaseholders the right to apply to the First-tier Tribunal to seek a refund for any incorrectly paid ground rent and any associated costs, with no time limitations. We will give the Courts the power to impose a civil fine on freeholders who have set ground rents contrary to the legislation – (pages 34-35).

Implementing measures to ensure that charges that freeholders pay towards the maintenance of communal areas are fairer and more transparent:

- Equal rights for freeholders: we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987) – (pages 36-38).

- Right to Manage for freeholders: we will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported to the Government (on their review of Right to Manage for leaseholders) as part of creating greater parity between leaseholders and residential freeholders – (pages 38-39).

Implementing measures to improve how leasehold properties are sold:

- Deadline to provide information: the Government believes that setting a turnaround time of no more than 15 working days to provide leasehold information to a prospective buyer would be appropriate and we will bring forward legislation to make this a statutory requirement – (pages 40-41).

- Maximum fee for information: we will set a maximum fee of £200+VAT for producing leasehold information to prospective buyers in the form of a leasehold property enquiry (LPE1) pack. Despite this cap, we will still expect freeholders and managing agents to charge a fee which reflects the reasonable cost of providing this information below the cap – (page 41-43).

2. Implementing the ban on the unjustified use of new leases for houses

Enforcement and redress

Question 1: Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses?

Question 2: Do you have any views on how to provide appropriate redress for the homeowners should (a) a long lease be incorrectly granted upon a house? (Question 2b is summarised in section 3)

Summary of responses

2.1 In the consultation the proposed mechanism for prohibiting unjustified new residential long leases from being granted on houses was that following the legislation, and subject to any exemptions provided, it would not be permissible to apply to register a non-compliant residential long lease with HM Land Registry.

2.2 We also stated that if, contrary to the proposed legislation, a new residential long lease was incorrectly granted on a house, the homeowner should be able to have the freehold transferred to them at the earliest possible opportunity with the minimum of cost and disruption to them.

2.3 Many respondents took the opportunity to reiterate their support for the ban. Some called for leasehold to be abolished altogether and where properties could not be provided as freehold, commonhold be used as an alternative tenure. However, others argued that leasehold could provide a useful function to support multiple ownership or manage complex sites, so long as it was not abused to generate an income stream through excessive ground rents, enfranchisement or lease extensions.

2.4 There was support for the use of land registration to support the enforcement of the ban. Some were keen to ensure that this did not place burdens on HM Land Registry or lead to delays in registrations. HM Land Registry's role should not be to police or inspect developments. To minimise administration, some respondents suggested the use of prescribed clauses within leases to certify compliance with the ban or for those making a registration to declare compliance.

2.5 A small number of respondents called for other bodies such as estate agents, lenders and conveyancers to help enforce the ban and ensure that consumers were appropriately informed and protected. Others thought there could be a role for the planning system to restrict development of new leasehold houses.

2.6 If a consumer incorrectly acquired a leasehold house contrary to the ban, there was a strong desire to ensure that the correct party was held to account and that the consumer received swift and effective remedy. The majority of respondents considered that it should be the responsibility of the developer to ensure that they were bringing a compliant property to market. A small number of respondents called for developers to be fined, but most thought that they should just be liable for rectifying the situation by providing the consumer with the freehold of the property that they should have originally acquired.

2.7 One in five respondents suggested that developers should provide compensation and one in six suggested that there should be an automatic right for the homeowner to enfranchise without the payment of a premium – and indeed for any additional legal costs to be borne by the developer. Enlargement, under Section 153 of the Law of Property Act 1925, was considered another possible mechanism for consumers to acquire their freehold.[14] It was suggested that enfranchisement could more easily be used as a process to help replicate any necessary obligations contained within the lease in a transfer to a freehold structure.

2.8 A small number of respondents thought that redress should be provided through either the First-tier Tribunal, the Courts or via an ombudsman type service to assess whether a long lease had been incorrectly granted on the house. Some respondents argued that there should be no time limit imposed on seeking appropriate remedy as the discovery of an incorrectly granted lease could occur long after the initial sales transaction was made.

Government response

2.9 Outside of any exemptions, following the legislation we wish to stop new leasehold houses coming onto the market. However, if a consumer acquires a leasehold house, which contravenes the ban, we have stated that the consumer should be remedied by having the freehold title transferred to them with minimum cost and disruption to them.

2.10 The numbers of new-build leasehold houses coming onto the market has already dramatically reduced in advance of legislation (2% of new build houses were registered as leasehold in Quarter 4 2018 compared to 17% in Quarter 1 2017).[15]

2.11 Only very small numbers of leasehold houses are likely to reach the market post legislation, limited to exempted properties (see pages 17-21) or development by owners of leasehold land where the land was held prior to the date of the 21 December 2017 announcement (see paragraph 2.57). The vast majority of cases are likely to be straight forward and uncomplicated. To aid

[14] Law of Property Act 1925, see: http://www.legislation.gov.uk/ukpga/Geo5/15-16/20/contents
[15] MHCLG analysis of HM Land Registry Price Paid Data, see: https://www.gov.uk/government/statistical-data-sets/price-paid-data-downloads

this, we will seek to ensure that any exemptions are carefully expressed and that the definition of “house” for the purpose of the ban is workable and effective (see pages 13-14).

2.12 Nevertheless, some disputes may still arise, and it is possible that consumers may by accident or design by an unscrupulous developer, purchase a leasehold house contrary to the ban. During the sales and conveyancing process, exchange of monies will likely take place before a property is registered. We agree that the onus should be on the developer to ensure that the property is marketed correctly and that they should be liable to put things right and provide the freehold to the consumer that they should have acquired from the outset.

2.13 The effect of the legislation to enforce the ban could be to make void any leases which contravene the ban. However, this would have the effect of making the asset the consumer has paid for, and may be living in, into something that does not legally exist. It may result in limited options for redress (particularly if the consumer wishes to keep the property) as a void contract is unenforceable in law. This could cause significant harm and distress to any consumers, however few, this might apply to. Also, should a void lease be accidentally registered with HM Land Registry, this could expose HM Land Registry to liability to pay indemnity to a person suffering any loss as a result.

2.14 An alternative to making leases void is to allow them to continue to be valid. The applicant seeking registration at HM Land Registry will need to declare that they have a lease compliant with the legislation (the consumer or solicitor/conveyancer acting upon their behalf), but ultimately **if the lease is found to be contrary to the ban following a sale, the legislation will set out that the consumer will be entitled to zero cost enfranchisement as a means of redress.**

2.15 We think this would drive developer behaviour to market the property appropriately in the first place. Failure to do so would make the developer liable to pay the consumer’s costs of enfranchisement (both the premium and legal costs). This may include compensating a third party if they did not themselves own the freehold. Enfranchisement also allows for the transfer of any necessary obligations set out in the incorrect lease to be replicated in a freehold arrangement in the usual way. **We propose there should be no time limit, in case disputes arise in the future well past the point of sale or for subsequent owners.**

2.16 Many respondents thought that requiring developers to pay the costs of putting right a contravention to the ban (by providing the freehold to the consumer) was sanction enough. The volume of non-compliant leases is likely to be low and the level of any fine on its own (beyond paying for enfranchisement) is unlikely to be a strong deterrent. There was not a compelling call for a civil penalty for contravention of the leasehold house ban through the consultation, but we think it could send out a strong message to developers and provide assurance to consumers. **We will within the**

legislation be providing enabling powers to the Secretary of State to make regulations around civil penalties, with potential for higher penalties for repeat offenders, should they be required in future.

Definition of a house

Question 3: To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

Summary of responses

2.17 It is important that there is an effective definition of house for the purpose of the leasehold house ban. We wish to ensure that a definition minimises ambiguity and opportunity for error or evasion.

2.18 There was general agreement that the definition of house in the Leasehold Reform Act 1967 was not fit for the purpose of the ban. Many respondents highlighted useful components of a definition which are also under consideration by the Law Commission as they seek to define properties capable of enfranchisement – as part of their review of enfranchisement legislation.[16] A strong case was made for consistency between the definition of house for the purpose of the ban and the definition of a house in the context of the Law Commission's work on enfranchisement – as both policies respectively determine which kind of properties should either be freehold from the outset or are capable of becoming freehold in the future.

2.19 Suggestions of components of a definition included a building used solely as a residential building, a single dwelling or unit, or even having your own front door. Other suggestions included a house having to include a ground level floor or be vertically, rather than horizontally, divided from neighbouring properties, or simply put, not a flat.

2.20 In particular, there have been calls for houses constructed over other structures, such as an underground car park, not to be included within the definition. There are significant complexities with regards to freehold properties that are built over or under another property or structure, known as "flying freeholds".

2.21 Enforcing positive covenants is a key concern. As flying freeholds are structurally interdependent, the failure of certain owners to repair their property could cause significant damage to other owners' properties. Once a freehold property has been sold for the first time, subsequent owners will not generally be under an obligation to repair their property. These types of arrangements are supported by very few mortgage lenders. Even if a lender

[16] Law Commission, Leasehold enfranchisement, see: https://www.lawcom.gov.uk/project/leasehold-enfranchisement/

will lend, there is no guarantee that a future lender will do so, potentially leaving the property blighted. For these reasons, the Law Commission's recent enfranchisement consultation proposed that such properties should not be considered appropriate for enfranchisement (becoming freehold).

Government response

2.22 We are grateful for the contributions and suggestions provided by respondents to the consultation. **A fully worked up legal definition will be provided in draft regulations as part of a forthcoming Bill, but we set out here what we consider to be the key components of a definition of a "house" for the purpose of the ban.** In particular, we agree that the definition of a house should not include properties that are above or below (horizontally divided) another property or associated structure (e.g. such as an underground car park).

2.23 Some respondents have suggested that an unintended consequence of the ban could be to prevent rebuilding or replacement of existing leasehold houses (e.g. as a result of fire). The rebuild of an existing house will not in itself require the grant of a new lease and therefore would not be affected by the ban.

2.24 The ban will apply to new, residential long leases (over 21 years) for new build or existing freehold houses. We consulted on the key components required to define a "house" for the purposes of the ban.

2.25 A "house" – for the purpose of the leasehold house ban will be based upon the following components of a definition:

a) building "built or erected structure with a significant degree of permanence, which can be said to change the physical character of the land";
b) single dwelling or unit of living accommodation (i.e. one house) – with or without appurtenant property; and
c) self-contained "building" of part of a "building":

   i. a building is self-contained if it is structurally detached (stands alone, can be redeveloped independently);
   ii. a part of a building is self-contained if it is vertically divided (does not sit above or below another structure); the structure of the building must be such that the part in question could be redeveloped independently of the remainder of the building (e.g. a house constructed above a communal underground car park would not be considered a house for the purpose of the ban).

Acceptable terms to the consumer

Question 4: With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed?

Question 5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

Summary of responses

2.26 The Government wants to ensure that any changes made do not have an adverse impact on supply or the long-term sustainability of shared facilities, structures and open spaces – and we are prepared to listen where evidence is provided that demonstrates practical challenges to delivering houses on a freehold basis. We are also clear that any exemptions provided need to be on acceptable terms to the consumer. As a minimum we suggested that exemptions from the ban should be covered by the related legislation to restrict future ground rents to a peppercorn (zero financial value) (see section 3). The majority of respondents to the consultation agreed.

2.27 Two-thirds of respondents thought that no further conditions were required, beyond the application of restrictions on ground rents, to properties exempted from the ban. However, a range of other issues were raised. There were calls for greater transparency and information provided about leasehold properties for prospective buyers. Others thought that there should be restrictions on the use of covenants or administration or permission fees associated with leasehold houses exempt from the ban – as well as for existing leasehold houses and existing and new leasehold flats.

2.28 A small number of respondents called for minimum lease terms of 250 or 999 years for any exempted houses – seeking to provide the effect of a virtual freehold, where a lease extension or enfranchisement would not be necessary for the foreseeable future.

2.29 There was also a call for a Right of First Refusal to apply to house lessees to prevent sales of freehold to third parties without the knowledge of the leaseholders or opportunity for them to buy the freehold ahead of a third party. Fewer than 1 in 10 respondents thought there should be no exemptions at all in any circumstances – most advocating the use of commonhold where freehold was not possible.

Government response

2.30 **Government remains of the view that any exemptions provided must be provided on acceptable terms to the consumer.** We also remain of the view that as a minimum, properties that are exempted from the leasehold house ban should have their ground rents restricted (as per the future ground rent policy – see section 3).

2.31 We do agree with respondents that clearer information should be provided to prospective buyers so that they make an informed decision when buying a leasehold property. Last year the Government published its *How to Lease* guide to provide information to both existing and prospective leaseholders.[17] The Government has also included specific information on buying and selling leasehold properties within its *How to Buy* and *How to Sell* guides.[18]

2.32 The Government also recognises general concerns raised about the transparency of service charges and the use of covenants and permission fees. It was for these reasons that we stated in our consultation response document *Protecting consumers in the letting and managing agent market*[19] that the *Regulation of Property Agents* working group chaired by Lord Best would be asked to consider standards around service charges and use of covenants, administration charges and permission fees. The *Regulation of Property Agents* working group is expected to report back to Ministers later this summer.[20] The Government will consider recommendations made by the *Regulation of Property Agents* working group alongside those made by the Select Committee on leasehold and freehold fees and charges and consult as necessary.

2.33 We are yet to be convinced of the merit of a minimum lease term as a condition for an exempted leasehold house. It is common practice for developers to provide reasonable length leases on houses, which are also often required by mortgage lenders. We will keep this issue under review as the Law Commission finalise their work on enfranchisement, which also considers issues around lease extensions.

2.34 A key concern of leasehold campaign groups has been the onward sale of freeholds to third parties. In the December 2017 response we stated that we would consider introducing a Right of First Refusal for house lessees (to buy their freehold).[21] This is also recommended by the recent Select Committee report on leasehold reform. **For the small number of leasehold houses that do come onto the market following the ban we will ensure they are protected from both financial ground rents and also from the sale of their freeholds to third parties without their knowledge, by extending the**

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[17] MHCLG, How to Lease guide, see: https://www.gov.uk/government/publications/how-to-lease
[18] MHCLG, How to Buy and How to Sell guides, see: https://www.gov.uk/government/publications/how-to-buy-a-home and https://www.gov.uk/government/publications/how-to-sell-a-home
[19] MHCLG, Protecting consumers in the letting and managing agent market, see: https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence
[20] Regulation of Property Agents: Working Group, see: https://www.gov.uk/government/groups/regulation-of-property-agents-working-group
[21] MHCLG, Tackling unfair practices in the leasehold market: consultation paper and government response, see: https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market

Right of First Refusal to these leasehold house owners. This right will also apply to existing leasehold house owners.

2.35 Introducing the Right of First Refusal for leasehold house owners will help to rebalance power between freeholders and leaseholders, provide parity with the rights of leasehold flat owners and improve transparency so that sales of freeholds cannot be sold behind leaseholders' backs. As part of this work we will consider the need to address legal loopholes within the existing Right of First Refusal for flat lessees, as identified by the Select Committee, and whether these loopholes could also affect house lessees. [22]

Exemptions

Question 6: Do you agree that there should be an exemption for shared ownership houses?

Question 7: Do you agree there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

Question 8: We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption.

Question 9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land?

Summary of responses

2.36 In the consultation we stated that there should be exemptions from the leasehold house ban for shared ownership properties and community-led housing. In both these cases, ownership is required by two parties and is best facilitated via a lease. We also said this should be the case for inalienable National Trust land and excepted sites on Crown land. In these cases, where freehold development is not possible, a ban would restrict any form of residential development.

2.37 Just under half (48%) of respondents supported an exemption for community-led housing developments – and slightly fewer agreed with the need for an exemption for shared ownership houses (43%). Just over half (56%) of respondents agreed that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land.

[22] HCLG Committee, Leasehold Reform Inquiry, see: https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries/parliament-2017/leasehold-reform-17-19/

2.38 Many individual respondents and leasehold campaign groups were not in favour of leasehold in any circumstances (often advocating commonhold as an alternative). However, continued use of leasehold for houses in exceptional circumstances was supported by many professional groups such as developers and legal respondents.

2.39 Few respondents provided a view on the components of a definition for community-led housing. Respondents in favour of an exemption for community-led housing suggested that a suitable definition should ensure that it covered Community Land Trusts, cohousing and cooperative housing developments – and also leave room for further innovation in the sector. Key components of a definition suggested by respondents include principles that community-led housing should be: not-for-profit organisations, be accessible for local residents in perpetuity, be for the benefit of the wider community and provide affordable housing.

Government response

2.40 **Government remains of the view that there should be an exemption from the ban for shared ownership properties and community-led housing. We also remain of the view that there should be an exemption from the ban for inalienable National Trust land and excepted sites on Crown land.**

2.41 We are grateful for suggestions of the components for a definition of community-led housing for the purpose of an exemption from the ban. We will continue to work with the community-led housing sector to develop a legal definition for regulations in future legislation.

Question 10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

Summary of responses

2.42 In some existing Garden Cities and some other forms of development, estate management schemes have been established (under the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993[23]) to allow obligations set out in leases to be maintained on properties after the freehold has been acquired. This enables the landlord of the estate to maintain the same management arrangements for both leaseholders and freeholders as part of a single management regime. The existing legislation however, only allows for the transfer of obligations in an existing long lease

[23] An estate management scheme is a scheme that regulates the use or appearance of a property that iswithin a specified area. They allow the landlord to retain some management control over properties, amenities and common areas, where the freehold has been sold to leaseholders. These schemes were made under Section 19 of the Leasehold Reform Act 1967, or under Chapter 4 or Section 93 of the Leasehold Reform, Housing and Urban Development Act 1993 (LEASE, see: https://www.leaseadvice.org/faq/estate-management-scheme-ems/).

which has been enfranchised. Consequently, the legislation does not allow a newly created freehold to be included in the existing estate management regime. This could create complicated two-tier arrangements, with one estate management regime for leaseholders and enfranchised freeholders and another management regime for newly created freeholds. A solution proposed in the consultation was to amend the existing legislation and permit the inclusion of a newly created freehold within an existing estate management scheme.

2.43 Almost nine out of ten (87%) respondents agreed with our proposals and thought that the law should be amended. Some respondents agreed with the proposal but stressed that such freeholders – and freeholders in general on private and mixed tenure estates – should be given the same rights as leaseholders to challenge charges such as estate rent charges. This already forms part of the Government's leasehold reform programme proposals (see section 4).

Government response

2.44 The Government will, as part of bringing forward legislation for the ban, amend the existing legislation and **permit the inclusion of a newly created freehold within an existing estate management scheme**.

Question 11: Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals?

Summary of responses

2.45 In the consultation, we asked for any further examples of practical challenges why houses could not be provided on a freehold basis and where the use of long leases could therefore be justified. In particular, we asked for views on the need for an exemption for retirement villages. Fewer than one in ten (124) respondents answered this question. However, a range of calls for specific exemptions were provided.

2.46 Representatives of retirement housing developers/operators have called for an exemption for retirement villages. They suggest leasehold on such schemes is justified and the ban would negatively affect new as well as existing supply. Here houses do not stand alone, they are part of a wider institution with extensive communal facilities and packages of support care and hospitality services. Event fees are also commonly used in retirement villages which require the use of a lease.

2.47 The sector suggests that there would be complexities and risks associated with operating two-tier arrangements on their sites (freehold for houses and leasehold for flats). Risks arise as it can be problematic to enforce positive covenants (a promise to do something or pay monies in relation to the provision or maintenance of facilities and services) against subsequent owners of a property within a freehold arrangement.

2.48 Without an exemption, developers suggest that they would not develop new houses as part of future retirement schemes if they were subject to the ban. Few new build houses would likely be affected as the majority of properties on such developments are flats – but this would act to the detriment of consumer choice.

2.49 There are also concerns for some existing stock as some schemes operate buy-back arrangements, where a new lease is generated for every re-sale which would be prevented by the ban. We also note that the recent Select Committee report on leasehold reform also concluded that leasehold was an appropriate tenure for this kind of housing.[24]

2.50 The consultation has also highlighted several financial products that rely on the use of a lease that could be negatively affected by the ban. These include home reversion plans (equity release), home purchase plans (lifetime leases and Islamic/Sharia compliant finance). Concerns were also raised suggesting that use of leasehold could be justified where development takes place on complex sites such as above an underground car park (note we have addressed this issue within the proposed definition of a house – see page 13).

Government response

2.51 On balance, we feel there is merit in concerns raised about banning the use of leases in retirement properties, not least as such properties are part of a wider communal setting. The Government has also recently announced support for the Law Commission's recommendations on the use of event fees, which recommends their continued use alongside improved transparency and consumer protections.[25] The Government is committed to supporting the development of housing for older people to help them live independently in their own homes. **We will provide an exemption from the ban for retirement properties.**

2.52 It is not the intention of the policy to affect lease-based financial products (home reversion plans - equity release, home purchase plans - lifetime leases and Islamic/Sharia compliant finance), so long as they do not provide a loophole from which to evade the ban. For both home reversion and home purchase plans the provider acquires the freehold and the consumer has a non-assignable lifetime lease. Because these leases are not assignable to another party there is no risk of such leasehold houses coming onto the open market. These products help people release capital from their homes or help them to buy a home and are for the sole use of an individual consumer. **We will provide an exemption from the ban for these financial products.**

2.53 Some land owners, such as local authorities, have stated that they would wish to retain the ability to use building leases. These can be employed by land

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[24] HCLG Committee, Leasehold Reform Inquiry, see: https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries/parliament-2017/leasehold-reform-17-19/

[25] MHCLG, see: https://www.gov.uk/government/news/james-brokenshire-announces-industry-pledge-to-crack-down-on-toxic-leasehold-deals

owners to support the development of land in a timely manner. The granting of a building lease does not however mean that houses built by a developer must be sold to the consumer on a leasehold basis. **We remain of the view that so long as, at the end, consumers can buy houses on a freehold basis, we see no problem with the continued use of building leases.**

2.54 We highlighted in the consultation that some stakeholders have queried whether the proposed ban on the granting of residential long leases for houses will also apply to agricultural tenancies. **We remain of the view that it is not our intention for these reforms to apply to agricultural tenancies which are governed by the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995.** Farm businesses and agricultural landlords negotiate length of tenure to suit their business needs and it is intended that this should continue, as longer-term leases can help ensure farmers have security to invest in their business over time.

Implementation and retrospective application

Question 12: Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses?

Summary of responses

2.55 By the time the legislation comes into force, the Government's commitment to banning the unjustified use of new leasehold interests in houses will have been in the public domain for several years. The consultation proposed therefore to consider that this should provide enough lead-in time for developers and sales teams to plan ahead to ensure that the sales and registrations of leasehold houses are completed in advance of the new legislation taking effect. A clear majority of respondents agreed.

2.56 However, a small number of those who responded to this question suggested that grandfathering provisions should be provided to enable those who have pre-existing contractual arrangements or planning permissions to continue with the development of leasehold houses. These respondents suggest that a small number of these could be land owners and developers that have entered into a legal agreement (options, development agreements or pre-emption rights) to acquire and build on land prior to the December 2017 announcement but who did not at that time own the land. In such cases there is usually a legal agreement between a developer and a landowner giving them the right to buy land at a certain point in the future, often triggered when planning permission is granted.

2.57 In the consultation the Government restated its position with regards to retrospectivity. We believe that if a house can be built and sold as freehold then it should be. Where land is subject to a lease it will not be possible to build freehold houses. That is why as part of our 21 December 2017 announcement, we stated that any leasehold land held on or before that date would not be subject to the proposed leasehold ban. On such land, long

leases will be able to be granted on houses as they were prior to the proposed ban.

2.58 A small number of respondents suggested that that date from which the retrospective element should commence should be the date of the October 2018 technical consultation rather than the original December 2017 announcement.

Government response

2.59 **The Government remains of the view that there should be no transitional period for the ban following the commencement of legislation.**

2.60 **We remain of the view, as expressed in the original consultation, that it will remain possible to grant long leases on houses before the new legislation takes effect, as the legislation to underpin the ban will not yet be in force. But subject to any exemptions, following our proposed legislation coming into force, the ban on the granting of long leases for houses will apply to:**

- **i. any land currently held only as freehold (i.e. with no leasehold also on the title) regardless of when the freehold title was acquired; and**
- **ii. any leasehold land acquired from 22 December 2017 onwards.**

2.61 The ban also will apply to assignments of leasehold land once the legislation is in force, if a house or houses have been developed on that land after the legislation comes into force.

2.62 The Government believes that houses developed on freehold land should be provided on a freehold basis. We also believe that the proposed restrictions should be placed on new leases granted or assigned on land following our 21 December 2017 announcement so that land is not acquired for the purpose of circumventing the proposed ban.

2.63 We do not agree that there is a strong case to providing an exemption for option agreements entered into prior to December 2017. This would likely introduce significant complexity and risk confusion and disputes arising as to whether a house was compliant with the ban or not. Ultimately, options are entirely that – optional, and it is the choice of the buyer to exercise that right or not.

2.64 We understand that it is very rare in practice for land options to be on a leasehold (rather than a freehold) basis. Should an option agreement be affected by a change in legislation, it would be unlikely that the developer could not get hold of the freeholder and change the terms of the option to acquire the freehold. If a freeholder is absent or unknown, this could ultimately cause problems for a subsequent consumer acquiring a leasehold house on the site.

2.65 The purchase of land or buildings normally occurs over several stages. Firstly, the parties exchange contracts. Then the sale completes, either through transfer of the title or through the lease being granted. Finally, the legal ownership of the purchaser is registered at HM Land Registry.

2.66 **We remain of the view that for the purposes of banning the unjustified use of leasehold houses, the key date should be completion, that is, the grant of the lease.** One of the objectives for the retrospective element of the policy is to prevent developers from stockpiling leasehold land in advance of the legislation, in order to evade the ban and bring forward leasehold houses after the legislation. This objective would be undermined by any exemption to allow contracts to be exchanged before the legislation but completed after the ban comes into force.

2.67 Finally, the Government believes that the information provided in the October 2018 consultation on retrospectivity merely sets out what was clear in the 21 December 2017 announcement. December 2017 remains an adequate date for the retrospection to start as Government clearly signalled its intention to legislate on this matter.

3. Implementing the reduction of future ground rents to a nominal value

Reducing the level of ground rents

Question 13: Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value?

Summary of responses

3.1 In the consultation, the Government's view was that as a long lease is a tenancy, it is necessary for leaseholders to pay consideration in the form of ground rent. However, it would not be fair for them to be required to pay economic rents at levels which are solely designed to serve the commercial purposes of the developer and any future investors.

3.2 The Government's thinking at the time was that the actual amount of ground rent payable must be specified in legislation, applying to all new leasehold properties, regardless of their actual value. We therefore proposed making £10 (ten pounds) per annum a standard cap for future ground rents and sought views on that proposal.

3.3 This question by far generated the most responses, with a small majority agreeing with our proposal to cap ground rents in newly created leases at £10 per annum. Of those who agreed, there were no detailed comments other than a small number saying that a £10 cap was fair, nominal or that it reflected the existing rules for ground rents set under Right to Buy.

3.4 Of those who provided additional comments (68% of respondents to this question), the majority thought that ground rent should be reduced to a peppercorn (zero financial value). Most gave this response as they believed that leaseholders receive no tangible benefit from paying ground rent; a smaller proportion argued for ground rents to be abolished all together on the basis that they believed that leasehold as a tenure should no longer exist.

3.5 Developers and investors were in support of a cap, but most argued that an economic ground rent was required to provide an incentive for professional landlords to operate in the leasehold market. Some suggested ground rents should be regulated with maximum starting rents fixed between £200 and £250 per annum or as fixed percentage of the price of the property, for example 0.1% following the Nationwide building societies' lending criteria cap. These respondents believed that it was essential that such rents could rise in accordance with inflation in order that they retain a real value in future years.

3.6 The same respondents in favour of economic ground rents thought that a £10 cap would result in less qualified landlords taking over the running of leasehold blocks, thus resulting in lower standards of their maintenance. It was suggested

that such arrangements would adversely impact the long-term stewardship of leasehold developments. The long-term asset management of blocks of flats through the provision of adequate reserves to deal with major capital works, would no longer be available.

3.7 A number of investors thought that the proposal seemed contrary to the Hackitt Review's focus on clear lines of responsibility for this type of building, and the role of a "duty holder" to carry the responsibility for the maintenance and safety of larger buildings and their residents.[26] They thought that on the one hand, the Government was adding additional burden onto landlords, yet at the same time, removing any material income stream.

Government response

3.8 Although long leaseholders pay a premium when they buy their properties, unlike freeholders they do not own them outright and their ownership is for a set period of time. For that reason, ground rent is generally paid as an acknowledgment that they are not the ultimate owner. The Government wants to ensure that consumers only pay for services that they receive and gain material benefits from. We proposed a monetary cap of £10 for ground rents on future leases to provide certainty and reduce the scope for potential abuse. We also believed that it would become a peppercorn (zero financial value) over time, which made it compatible with the commitment we made in our response to *Tackling unfair practices in the leasehold market*.[27]

3.9 However, the Government recognises the concerns that leaseholders have over the proposal to introduce a monetary cap of £10. We know that many respondents argued that even a small financial value could be capitalised, which would leave the door open for leaseholders to be exploited in the future.

3.10 With this in mind, **the Government will legislate to restrict ground rents to a peppercorn (zero financial value) in future leases**. This means that no monetary value can be charged (£0).

3.11 We have analysed the responses of freeholders who wish to retain an economic ground rent in detail. While we are clear that it is essential that leasehold blocks are effectively managed to a good standard and that this continues in the future, we stand by our position set out in the consultation that we do not believe ground rent income is necessary to provide this. Ground rent is unconnected with any maintenance obligation and allows freeholders who wish to engage in supervision to do so if they wish, but without any accountability if they do not. The costs of management and supervision are generally recoverable under the

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[26] MHCLG, Independent Review of Building Regulations and Fire Safety: Hackitt Review, see: https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review

[27] MHCLG, Tackling unfair practices in the leasehold market: summary of consultation responses and government response, see: https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market

leases from residential leaseholders through the service charge. It is therefore possible for any stewardship functions to be paid for via the service charge.

Shared ownership

Question 14: Are you aware of separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

Summary of responses

3.12 A shared ownership lease is, by definition, owned in shared equity (i.e. partly owned by the tenant with the remainder retained by the landlord). Whilst the part of the tenant's equity secures their long-term ownership, rent is payable for the landlord's retained equity (until it is fully bought out).

3.13 We understood that there may be some shared ownership leases which require the leaseholder to pay both a rent for the landlord's retained equity and additionally a ground rent and we asked for evidence of this practice.

3.14 The majority of respondents to this question were not aware of a separate ground rent being charged in addition to rent on retained equity in shared ownership leases.

3.15 However, we did receive some evidence from local authorities and housing associations who do charge an additional ground rent in these shared ownership leases. One local authority told us that in some shared ownership properties, they charge annual ground rents of up to £300 which also double periodically. They were not able to provide a justification for this charge. A housing association respondent argued that ground rent income from shared ownership properties was useful to them to fund the building of further affordable homes.

3.16 Overall, most respondents had not come across the double charging of rents and ground rents in shared ownership properties. However, a small number of examples were cited – so it's clear this practice can and does happen. Where it does, annual ground rents charged have been quoted as ranging between £100 and £500.

Government response

3.17 The consultation exercise did not provide the Government the evidence to exempt shared ownership leases from the ground rents policy. While in the vast majority of cases ground rents are not charged in the first place, in the small number of cases where they are, no valid justification was given for charging shared ownership leaseholders ground rents. This means that ground rents on newly established shared ownership leases following the legislation will have no financial value. However, **the legislation will clarify that the policy will not**

affect the payment of rent for the landlord's retained equity in shared ownership leases.

Community-led housing

Question 15: Do you represent a community-led housing provider which does not rely on ground rent income?

If so, what alternative methods of funding have proved successful and could be replicated elsewhere?

Summary of responses

3.18 The Government's understanding as set out in the consultation was that ground rent income in community-led housing is not used for development for profit, nor is there any question of selling the freehold to raise profits. Rather, the leasehold system is seen by developers of some community-led housing as enabling the retention of control over, and management of, their stock in order to ensure it remains affordable housing in the long-term.

3.19 We used the consultation to gather evidence of how alternative methods have been successful in raising revenue to support the day-to-day running of community land trusts.

3.20 Only a very small number of respondents (1%) represented a community-led housing provider which did not rely on ground rent income. Those who did rely on ground rent income argued that it is used to cover the role of developers as stewards of the land. This work takes the form of wider community engagement, governance and development of future initiatives.

3.21 Some respondents argued that community levies, like the Strata system used in Australia and a number of other countries, were successful and could be replicated in our leasehold reform proposals.[28]

Government response

3.22 We did not receive enough evidence to suggest that alternative funding schemes would be feasible for community-led housing schemes. Although some respondents did argue that the Strata system was successful in other countries, they did not explain how it would work in practice in England. The inability to recover ground rents could therefore threaten the growth of community-led housing, which is an objective of the Government. **To maintain this growth,**

[28] Strata titles allow individual ownership of part of a property (such as a flat), combined with shared ownership in the remainder of the property (called Common Property, such as reception areas, hallways, driveways, and gardens) through a legal entity called the owners corporation or strata company.

the Government will exempt community-led housing schemes from the measure to reduce ground rents to a peppercorn (zero financial value).

Retirement housing

Question 16: Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments?

Question 17: What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.

Summary of responses

3.23 In retirement properties, ground rent income is sometimes used to recover the development costs of the communal facilities contained within. In the consultation document, we explained that these costs cannot be recovered through service charges but were nevertheless charged to leaseholders through ground rents. Developers indicated in their responses that without ground rent income, they would have to increase purchase prices of retirement properties by around £15,000. We therefore consulted on an exemption for retirement properties. In the consultation, we proposed that this exemption be subject to a number of conditions, including offering prospective leaseholders the choice of paying a higher purchase price in exchange for a ground rent at a peppercorn (zero financial value).

3.24 The majority of respondents did not agree that there was a case for higher ground rents in retirement properties. Of those that provided further comments, most believed that leaseholders in retirement properties receive no tangible benefit from paying a ground rent. More respondents argued that the impacts of paying ground rent on older people were more negative than positive.

3.25 The most common negative impacts cited related to the perceived unaffordability of ground rent for older people. For example, many argued that older people could suffer financial hardship and debt – particularly for pensioners on a fixed income where ground rents may increase in cost over time. Another common view was that many retirement properties with high ground rent may depreciate in value and becomes harder to recover the original sale price. Many respondents pointed out that this could be a problem for both the leaseholders or the future executors of the estate.

3.26 The minority of respondents who supported our proposals believed that leaseholders in retirement properties do enjoy positive impacts from paying ground rent. Some respondents argued that communal areas are maintained and developed to a higher standard through the payment of this ground rent (beyond the payment of a service charge for such repair and upkeep). Another view expressed in the consultation was that people often pay a lower purchase price for these properties as developers/freeholders can anticipate a future

income from ground rent. Linked to this, some respondents argued that the ground rent income maintains supply in the retirement sector by funding the cost of future developments, which means that people benefit from greater consumer choice.

Government response

3.27 The Government believes that there is merit in the argument that ground rent is used to fund building costs in retirement developments. As retirement developments are often in central areas of towns and villages close to local amenities, developers must pay a higher price for land. In comparison to a normal leasehold block, there are fewer saleable units in a retirement development. This is because a higher proportion of floor space is needed for the communal areas. Ground rent, therefore, is used by retirement developers to recover this lost income and maintain their ability to invest in future projects.

3.28 One retirement developer told us that the number of sites they have delivered has reduced since our announcement to reduce ground rents in December 2017, which they stated was because they were not including ground rent income in their land purchase viability assessments. This suggests that the supply of retirement developments would be negatively impacted if no exemption is granted to the retirement sector.

3.29 **We will therefore proceed with the proposal to exempt retirement properties from the policy.** This will apply to both newly established leases and existing buildings where a new lease is granted. It will also apply to conversions of existing buildings (for example, conversion of a large existing freehold house into retirement flats with a ground rent). However, this exemption will be subject to the conditions listed in the consultation document. This includes offering prospective leaseholders the choice of paying a higher purchase price in exchange for a ground rent at a peppercorn (zero financial value). These conditions will also apply on re-sale of retirement properties. Some retirement developers rely on the use of event fees and others on ground rents as part of their business models. To avoid the risk of double charging, the retirement ground rent exemption will only apply where event fees are not used.

Mixed-used leases

Question 18: Do you agree with our approach to the treatment of mixed-use leases?

Question 19: Are there any other circumstances in which mixed-use (a) should be within scope of the policy or (b) excluded from the scope of the policy?

Summary of responses

3.30 We proposed that mixed-use leases, which are used for a building comprising of a mix of commercial and residential, for example a shop with a self-contained flat above, would not be subject to the policy. But if a long sub-lease of the flat,

for residential use, were subsequently created, that lease would be subject to the policy and the cap. We consulted on this approach.

3.31 Just over half of respondents agreed with our proposed approach. Some respondents gave views to support this approach, the main justification being that mixed-use leases are complex due to the combination of commercial and residential in a single lease and therefore do need to recover a higher ground rent.

3.32 There was a misunderstanding among some respondents about whether the consultation was referring to mixed-use leases or mixed-use developments. Mixed-use developments, as opposed to mixed-use leases, are sites that consist of a mix of residential leases and commercial leases, with a proportion of the development being commercial space. There was concern that developers would "game the system" by building developments that could be classified as mixed-use, and therefore leaving them able to charge a higher ground rent.

3.33 The proposal however, was only to exclude mixed-use leases. For example, this would mean that a lease of a building comprising a shop with a self-contained flat above would not be subject to the policy. But if a separate long sub-lease of the flat, for residential use, were subsequently created, that lease would be subject to the policy and the cap.

3.34 Respondents also referred to the recent propensity of mixed-use leases especially in regenerated inner parts of major cities and thought it would be unfair for the Government to exclude future leaseholders who live in these types of properties. They argued that mixed-use leases should be within scope of the policy. These responses appear to relate to mixed-use developments, rather than mixed-use leases.

Government response

3.35 **The Government will exclude mixed-use <u>leases</u> from the scope of the ground rents policy.** This means that ground rent can continue to be charged where a single lease covers both commercial and residential elements. However, if a sub-lease is granted on the residential part, that lease will be subject to the policy.

3.36 However, **mixed-use <u>developments</u> will be subject to the policy.** The management and supervision of mixed-use developments is no different to that of single use developments. The costs of management and supervision are generally recoverable under the leases from residential leaseholders through the service charge and from commercial tenants in either the same way or as a part of the rent. The Government does not accept that ground rents are necessary in mixed-use developments.

Replacement leases

Question 20: Do you agree with the circumstances set out above in which a capped ground rent will apply in replacement leases?

Are there any other circumstances in which it should or should not apply? Please explain why.

Summary of responses

3.37 The consultation recommended that voluntary lease extensions, that is those agreed outside the statutory provisions[29] and granted after commencement of the proposed ground rents cap, will be deemed under the legislation to be replacement leases, and sought views on this approach.

3.38 The majority of respondents to this question agreed with our proposal that the ground rent cap should apply to replacement leases. Of those that did not agree, two main themes emerged.

3.39 It was firstly argued that the ground rent cap should not automatically apply when a lease is extended. Respondents believed that this would remove the flexibility of a voluntary lease extension at a higher ground rent, and would also lead to more expensive premiums for lease extensions as freeholders will want to be compensated for the loss of future ground rent due to the cap.

3.40 It was also argued that the variation of ground rent clauses should also give rise to a new lease and therefore be subject to the ground rent cap. Some specifically referred to cases in which doubling ground rents were varied.

Government response

3.41 **As proposed in the consultation the policy will apply to new leases created following a surrender of an existing lease.** The consultation used lease extensions as the main example of this.

3.42 The Government understands that voluntary lease extensions, which include the payment of ground rent, reduce the upfront premium that leaseholders would have to pay through the statutory process. These terms are agreed between the leaseholder and freeholder as an alternative to the statutory process.

3.43 While a voluntary lease extension amounts to a new lease, it is effectively a continuation of the original duration of the lease with an extended period at the end. **For the purposes of implementing our peppercorn (zero financial value) ground rents policy, we will not require ground rents that already exist to be removed from leases when they are voluntarily extended.**

[29] Leasehold Reform Housing and Urban Development Act 1993

3.44 That will avoid the peppercorn ground rent policy having the effect of requiring leaseholders to pay an increased upfront premium when they extend their leases voluntarily. The peppercorn (zero financial value) ground rents policy will only apply to the newly extended part of the lease.

3.45 Therefore, if a lease with 80 years remaining was extended to mean that the new lease was for a term of 120 years, only the final 40 years would be subject to the policy, which would mean a ground rent agreed between the parties could run for the unexpired period of the original lease.

3.46 This essentially means that the unexpired part of the lease (at the time of the extension) will be exempt from the policy. The parties will also be able to agree a new ground rent if they so wish but checks and balances will be introduced in our legislation to ensure that these do not become onerous.

3.47 As proposed in our consultation, **where a variation of a lease is significant, usually limited to an extension of the lease or a change in the property to which it applies, this would amount to a new lease and the peppercorn ground rents policy will apply.** Where a variation to a lease is minor the peppercorn ground rents policy will not apply.

3.48 Alongside the Government's work on leasehold reform, the Law Commission consulted on whether the statutory lease extension process should allow leaseholders to make a choice to continue paying the ground rent in order to reduce the upfront premium. The Law Commission also consulted on the more general question of whether, and if so how, voluntary lease extensions should be prohibited or regulated. We will consider these issues when responding to the Law Commission's forthcoming recommendations on enfranchisement reform.

Other exemptions

Summary of responses

3.49 A number of respondents to the consultation also drew attention to several other areas where they considered an exemption was needed. These included: leases granted through home reversion plans (equity release); home purchase plans (lifetime leases and Islamic/Sharia compliant finance); and developers of low-cost housing.

Government response

3.50 Leases granted through home reversion plans are a type of equity release product which allow consumers to release capital by selling their property to a provider, who in turn takes ownership of the freehold and grants a lifetime lease to the consumer. Under some plans, consumers agree to pay a ground rent for the duration of the lease to release a higher amount. It is not the intention of the policy to affect these lease-based financial products. **We will therefore exempt leases granted through equity release from the policy,** as it is clear that some of these products would not be able to function without ground rents.

3.51 Similarly, an exemption is also needed for home purchase plans which require the payment of a ground rent. An example of this is the Islamic/Sharia compliant finance, in which the lender buys the freehold of the property and grants a non-assignable lease to the consumer. Instead of paying interest on a mortgage, the consumer pays a monthly rent and completes the purchase of the freehold at the end of the lease term. Under this lease agreement, the monthly payment is a ground rent. **These types of purchase plans use ground rents to increase the number of people who can buy their own home, so the Government will exempt them from the policy to reduce ground rents.**

3.52 Some respondents also suggested that an exemption was needed for developers of 'low-cost' housing for first-time buyers with moderate incomes. They argued that ground rent income allowed developers to compete for land, and that they would build significantly fewer affordable homes without this income. However, the Government believes that the majority of developers that use ground rent income to support land acquisition are in the same position. Additionally, the Government is mindful of the particular importance of protecting consumers on lower incomes making their first steps onto the housing ladder. First-time buyers will often have significantly higher mortgage costs than other homeowners and therefore be particularly at risk of financial difficulties from additional ongoing costs such as ground rents. **Therefore, we will not be providing an exemption for developers of 'low-cost' housing.**

Transitional period

Question 21: Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum?

Summary of responses

3.53 In the consultation, the Government proposed that the ground rent policy would not receive a further transitional period after commencement of the legislation. Given the announcement was first made in December 2017, we considered industry to have had sufficient time to adjust prior to implementation. We sought views on this approach.

3.54 Seventy-two percent of respondents agreed that no further transitional period was needed for the ground rent cap. Some believed that the retrospection should apply from the date of the original announcement in December 2017 rather than at the point the proposed legislation takes effect.

3.55 Reponses arguing for a further transitional period were limited. The main reason given was that developers need more time to prepare, particularly those that have started building leasehold properties in the last year or on large sites with a long build-out period. Some developers also said that it would affect the viability of existing sites.

Government response

3.56 The Government is aware that the original announcement to reduce ground rents on future leases was made in December 2017 and Government clearly signalled its intention to legislate on this matter. We are keen to move forward with this policy, and it is clear from the responses to the consultation that consumers are too.

3.57 Therefore, **we will proceed with the proposal made in the consultation paper to not have a transitional period.**

Enforcement and redress

Question 2(b): Do you have any views on how to provide appropriate redress for the home owners should a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect?

Summary of responses

3.58 We also asked respondents how the policy should be enforced if leaseholders are charged ground rent contrary to the legislation. The most frequent relevant response (19%) was that all costs associated with redress and rectifying leases should be borne by developers and/or freeholders.

3.59 One in five respondents argued that freeholders should compensate leaseholders for any ground rent overpayments, with 4% believing that additional fines should be placed on freeholders. A smaller proportion of respondents argued that conveyancers should compensate leaseholders.

3.60 Some respondents suggested that there should be an automatic reduction of the ground rent to £10 or a peppercorn (zero financial value), with others arguing that the policy should be enforced by making the ground rent above the cap or peppercorn (zero financial value) unenforceable or unrecoverable through the courts.

3.61 A further 12% of respondents suggested that the lease should be automatically rescinded and there be a transfer to a freehold tenure at a nominal value which would effectively nullify the ground rent.

Government response

3.62 The Government will legislate so that, subject to any exemptions, any ground rent above a zero value will be unenforceable in law. If a freeholder seeks to charge a ground rent contrary to the legislation the leaseholder should not pay it and the freeholder will have no legal means to recover it. Once the policy comes into force, if leaseholders pay ground rent contrary to the legislation, they should be able to recover it. We also believe that any costs related to this recovery, including court and legal fees, should be borne by freeholders. **To this effect,**

we will give leaseholders the right to apply to the First-tier Tribunal to seek a refund for any incorrectly paid ground rent and any associated costs, with no time limitations.

3.63 We also believe that a further sanction is needed to ensure compliance with the ground rents policy. This is because unscrupulous freeholders may be willing to evade the legislation by charging ground rents if they know that the only penalty is the repayment of rents already collected plus associated costs. As this may represent relatively small amounts, it may not be enough to deter all freeholders from charging ground rents. **We will therefore give the courts the power to impose a civil fine of up to £5,000 per property on freeholders who have charged ground rent contrary to the legislation.** This level of fine aligns with other housing dispute schemes. **We will also provide in legislation enabling powers to the Secretary of State to change the regulations around civil penalities, with potential for higher penalties for repeat offenders, should they be required in future.**

4. Implementing measures to ensure that the charges that freeholders pay towards the maintenance of communal areas are fairer and more transparent

4.1 As part of the response to the consultation *Tackling unfair practices in the leasehold market,* the Government committed to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed tenure estate can access the equivalent rights as leaseholders to challenge their reasonableness.[30]

4.2 To meet this commitment, we suggested providing freeholders with a regime based on the relevant provisions within the Landlord and Tenant Act 1985. These provisions provide the statutory rights enjoyed by leaseholders and are set out in Sections 18-30 of the 1985 Act.

4.3 We proposed to create a regime for freeholders which provided that maintenance charges must be reasonably incurred and that services provided were of a reasonable standard. We would also replicate consultation requirements and obligations on the provider of services to provide information to the freeholder. Freeholders would be given the ability to challenge the reasonableness of the charges they are required to pay towards the maintenance of communal areas and facilities at the First-tier Tribunal.

4.4 We recognised that the requirements of leaseholders and residential freeholders can be different. To ensure that in creating a regime for freeholders we were taking these differences into account, we welcomed views on the following questions.

Question 22: Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement?

If so, what should this look like?

Summary of responses

4.5 The consultation proposed creating an equivalent freeholder right based upon Sections 21 to 24 of the Landlord and Tenant Act 1987. This would allow freeholders to petition the First-tier Tribunal to appoint a manager to carry out obligations contained within a 'management order' issued by the tribunal.

[30] MHCLG, Tackling unfair practices in the leasehold market: summary of consultation responses and government response, see: https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market

Freeholders would benefit from this equivalent right if they were dissatisfied with the level of service provided, perceived charges to be unreasonable or remedial action was not taken within a reasonable period. The Government welcomed views on this way forward.

4.6 A majority (76%) of respondents agreed that residential freeholders should have the right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement. It was suggested that this would enable residential freeholders to have a say in the management of communal services and shared areas.

4.7 Some responses argued in favour of introducing a Right to Manage for residential freeholders. However, others suggested it was too complex and onerous and would prefer a faster mechanism in order to change provider. Other respondents suggested that management of common areas on new-build estates should be adopted by local authorities as council tax should already be covering the cost of maintaining these areas.

4.8 The minority of respondents who disagreed with the proposals argued that third party management companies are a professional service that residents would find difficult to replicate. They thought that if a right to change management were to be permitted, it should only be in the event of unfair charges or negligence by the management company, and only after there had been time to rectify the issues.

4.9 There was support for the First-tier Tribunal as the appropriate forum for resolving freeholder management disputes, although some expressed concerns about the accessibility and costs of the First-tier Tribunal.

Question 23: What will be the impact of these proposals on companies or bodies that provide the long-term management of communal areas and facilities?

Summary of responses

4.10 The Government recognises that there are a range of organisations already undertaking estate management services that could be impacted by freeholders having equivalent rights to leaseholders to challenge charges. These organisations may be providing a range of services covered by estate rent charges and deed of covenant arrangements, to both freeholders and leaseholders. The Government welcomed views on the potential impact of the proposals on their operation.

4.11 A significant portion of respondents used the opportunity to express their general dissatisfactions, providing their own personal experience of property managers and did not provide an answer to the question.

4.12 However, many respondents (49%) argued that these proposals would significantly improve the quality of long-term management of communal areas

by making companies accountable for the provision of services. It was argued that these proposals would help to ensure that fees charged by these companies are competitive, reasonable and transparent.

4.13 A few respondents suggested these proposals would have minimal or no financial or administrative impact since most companies are already providing a good service. Some called for a statutory code of practice to provide a regulatory framework to ensure standards in the provision of such services.

Government response

4.14 Leaseholders have a number of protections and rights which enable them to hold management companies to account. Residential freeholders have no such equivalents even though they may be paying for the same or similar services. **The Government has previously committed to introducing legislation to correct this disparity.**

4.15 The Government recognises the clear answer delivered by consultation responses and remains committed to legislating to address this disparity. **We will legislate to give freeholders equivalent rights to leaseholders to challenge the reasonableness of estate rent charges.** We will achieve this by replicating the relevant provisions within Sections 18-30 of the Landlord and Tenant Act 1985. **This will include a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges based on those rights leaseholders have under Sections 21-24 of the Landlord and Tenant Act 1987.**

4.16 The Government does not consider the impact of these proposals on companies or bodies that provide the long-term management of communal areas and facilities to be such as to preclude the need for addressing the disparity in protections and rights between leaseholders and residential freeholders**.** The majority of respondents supported this point of view and their major concern remains improving the quality of long-term management of communal areas by making companies accountable for the provision of services.

4.17 We note calls for greater regulation of managing agents and statutory codes of practice to set and maintain standards. The Government has already tasked a working group of experts from across the property sector, chaired by Lord Best to advise the Government on a new regulatory framework for property agents.[31]

4.18 The Government also notes the mixed responses relating to a Right to Manage for residential freeholders. Some responses have argued in favour of a Right to Manage, while others have suggested it would be too complex and onerous in a freeholder setting, and they would prefer a quicker mechanism to change

[31] Regulation of Property Agents working group, see: https://www.gov.uk/government/groups/regulation-of-property-agents-working-group

management organisation. The Law Commission is looking to reform Right to Manage to make it easier for leaseholders to exercise this right.[32] **We will consider the implications for introducing a Right to Manage for residential freeholders after the Law Commission has reported, and as part of our wider commitment to create parity between leaseholders and residential freeholders.**

[32] Law Commission, Right to Manage, see: https://www.lawcom.gov.uk/project/right-to-manage/

5. Implementing measures to improve how leasehold properties are sold

5.1 In the consultation document, we recognised that transactions involving leasehold properties can take weeks longer than those involving freehold only, largely due to delays in obtaining information from the freeholder or managing agent.

5.2 In the response to the *Home Buying and Selling Call for Evidence* published in April 2018, 94% of respondents agreed that managing agents and freeholders should be required to respond to enquiries within a fixed time, and 86% agreed that maximum fees should be set for providing this information.

5.3 We asked three questions (Questions 24, 25 and 26) within this consultation which could help us to determine an appropriate fee and timescale.

Reasonable deadline to provide leasehold information

Question 24: What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

Summary of responses

5.4 This was a closed question with no option for open-ended answers. The majority of respondents (58%) suggested that a reasonable deadline for providing information would be less than 10 working days. Next was 10-15 working days at 36%. Lastly, 6% of respondents suggested a deadline of more than 15 working days would be reasonable.

5.5 Of the personal responses to this question, 65% wanted a deadline of less than 10 days; 32% wanted a deadline of 10-15 days and 3% wanted a deadline of more than 15 days. Of the organisational responses to this question, 28% chose less than 10 days; 56% chose 10-15 days and 16% chose more than 15 days.

5.6 Of the management agents that answered this question, 7 respondents chose less than 10 working days, 8 chose less than 10-15 working days, and 3 chose more than 15 days. No law firms chose less than 10 working days, heavily favouring 10-15 days as a deadline. Local authorities and housing associations also favoured 10-15 working days as a deadline.

Government response

5.7 There is a clear appetite from respondents to set a timescale for the turnaround of leasehold information. We note that personal respondents were in overwhelmingly in favour of turnaround time of less than 10 working days, but we are also conscious that responses from organisations, including the people

who would need to provide this information, were more balanced with the majority selecting 10-15 working days as an appropriate turnaround time.

5.8 Considering these responses, the **Government believes that setting a turnaround time of no more than 15 working days would be appropriate** and government will aim to set this in legislation when Parliamentary time allows.

Reasonable maximum fee to provide and update leasehold information

Question 25: What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

Summary of responses

5.9 This was also a closed question. The clear majority (77%) stated that the fee for providing information should be less than £100, while 10% suggested a fee of more than £150 would be reasonable.

5.10 Personal respondents were overwhelmingly in favour of a fee of less than £100 with 86% choosing this option; 7% chose £100, 4% chose £150 and only 3% chose more than £150. Organisational responses showed a different pattern with 44% of organisations choosing more than £150; 27% choosing less than £100, 23% choosing £150 and 6% choosing £100.

5.11 Managing agents were overwhelmingly in favour of a higher cap with 16 choosing more than £150 and just 2 in favour of a cap of £150, with none below that. Most housing associations and law firms also favoured a cap of more than £150, with a few choosing £150 and below.

5.12 Some respondents said that if the Government set a fee, there would need to be a mechanism for adjusting the fee in response to changes in inflation. A number of respondents echoed a recommendation made by the Conveyancing Association in their response, that where responsibilities for providing this information were split between different bodies the consumer should not be charged multiple times.

Question 26: What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

5.13 This question gave a choice of four different fee amounts as well as an open-ended “other” option, which was also often used to give additional information relating to the two previous questions. The majority (67%) said there should be no additional cost to the consumer to update information; 14% said this service should cost less than £25, 13% said between £25-50 and 6% said more than £50 would be a reasonable fee.

5.14 One hundred and fifty-six respondents gave a written response in the "Other" category: 35% of these said no fees should be charged at all; 24% said the fee should vary based on the information requested or the format, for example, paper-heavy, lengthy or legally complex information; 23% gave general open-ended responses that didn't answer the question; 9% said there should be a variable fee depending on the requesting organisation or the property price and 8% gave a figure from £50 to £450 ("more than £50"). One percent said there should be no cap, and a further 1% recommended setting the initial fee high enough to cover further information requests. Many also stated that on most occasions the level of information will be minimal and there should be no additional charge.

5.15 There were 12 organisations that gave a written answer to this consultation question many of which defended higher levels of fees. A common comment was that even if there is no change in the information provided, firms must still need to check that there was no change to be prudent and this comes with a cost.

5.16 Management agents agreed that requests for information outside of the standard leasehold property enquiry information form (LPE1 form) may incur higher costs.[33] Several agents also pointed out that in many cases, re-issuing and checking certain information could well involve the same amount of work as providing it for the first time, especially if a new financial year is involved as there will be new information about service charges and the status of accounts.

5.17 Managing agents and law firms agreed that when information is requested, the response needs to be accurate, legally robust and produced by professionals. They said that capping costs could mean the increased use of junior staff, giving non-committal answers to protect themselves or even missing out the provision of important information.

Government response

5.18 The responses to Questions 25 and 26 show that there is an appetite from consumers for any fees to be set as low as possible, with some respondents suggesting there should be no fees at all and one commenting that these fees were 'legalised extortion'.

5.19 However, organisations and managing agents responded differently, with the clear majority of them selecting a fee greater than £150 for providing leasehold information. One of the leading managing agents suggested that the fee for providing the information for a leasehold pack (LPE1) should be more than £150 but less than £250 +VAT. A number of other organisations also suggested a figure that fell within this range, with some respondents commenting that fees should be higher for London based firms, reflecting their higher costs. There was also a suggestion that costs may need to go up if the Government sets a

[33] LPE1, Leasehold Property Enquiries forms, see: https://www.lawsociety.org.uk/support-services/advice/articles/leasehold-property-enquiries-form/

faster turn-around time. **We will therefore set a maximum fee of £200 +VAT for producing leasehold information in the form of a LPE1 pack.** When setting this fee, we will include a mechanism to ensure that the fee can be amended to reflect changes in inflation.

5.20 Despite the £200 +VAT maximum fee, **the Government will still expect freeholders and managing agents to charge a fee which reflects the reasonable cost of producing this information.** The Government believes that the best way to achieve this outcome is to ensure that consumers can challenge a fee where they feel it is not reasonable. The Government has committed to extending mandatory membership of a redress scheme to all freeholders of leasehold properties which will give consumers a new route to challenge the reasonableness of fees. **The Government will also review the relevant legislation and make any amendments where necessary, to ensure that consumers have the power to challenge unreasonable fees through the First-tier Tribunal.** We will also look to identify and resolve any other potential barriers which stop consumers bringing forward a complaint.

5.21 The Government recognises that there are occasions where leaseholders need to refresh this information, particularly when the purchase spans financial years. We also believe that the charge for this updating should be reasonable and can be less than the original charge for producing the whole pack. **We will therefore set a maximum fee of £50 for updating leasehold information.** When setting this fee, we will include a mechanism to ensure that the fee can be amended to reflect changes in inflation.

Annex A - Breakdown of consultation responses

This Annex details a full analysis of responses to the questions posed in the consultation.

Method of response	
Survey Monkey	1,038
Email	193
Hard copy	6
Total	**1,237**

Viewpoint	**Number of Responses**	**Percentage**
Personal View	1,029	83%
Organisational	208	17%

If you are responding on behalf of your organisation, which of the following best describes your organisation:

Organisation	**Number of Responses**	**Percentage**
Other*	43	21%
Law Firm	32	15%
Representation Groups	26	13%
Management Agent	23	11%
Investor	20	10%
Developer	18	9%
Retirement Sector	17	8%
Housing Association	14	7%
Professional Body	15	7%
Government Body	13	6%
Trade Association	8	4%
Land Owner	5	2%

Some respondents chose more than one type of organisation, for example, "other" and “retirement sector/ representative group”.

*Some respondents mentioned multiple answers in one response and therefore total figures may not tally in each of the following tables.

Responses which amounted to less than 1% have not been included in the analysis below.

Question 1. Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses?

Response	Number of Responses	Percentage
Yes	420	69%
No	193	31%
Total	**613**	
Further qualitative responses	461	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	252	51%
Reiterated support for the ban	72	15%
Support for the abolition of all leasehold houses (no exemptions)	59	12%
Utilise conveyancers/solicitors to implement ban	21	4%
Enforce through HM Land Registry	20	4%
Comments on encouraging the Government to tackle "fleecehold"	20	4%
Empower third parties (HM Land Registry/Courts) to change the title from leasehold to freehold	8	2%
Planning permission restricted to prevent development of leasehold houses	8	2%
Prescribed clauses under the Land Registration Rules 2003	9	2%
Utilise estate agents at point of sale	3	1%
Penalties for house builders/developers to discourage them	4	1%
Feel that enforcing through HM Land Registry lead to delays/ increased resource requirements	6	1%
Unsupportive of the ban	3	1%

Question 2. Do you have any views on how to provide appropriate redress for the home owners should (a) a long lease be incorrectly granted upon a house or (b) a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect?

Response	Number of Responses
a)	483
b)	385

a) A long lease be incorrectly granted upon a house	Number of respondents who mentioned this response	Percentage of respondents
Automatic transfer of freehold at no cost	138	26%
Compensation from developers	124	23%
General response that doesn't answer the question	96	18%
General compensation	67	13%
Transfer to freehold at minimal/reasonable cost	55	10%
Redress via the First-tier Tribunal	20	4%
Compensation from conveyancers	14	3%
Fines for developers	10	2%
Ombudsman service to assess cases	9	2%

b) A long lease be granted at a ground rent in excess of the cap	**Number of respondents who mentioned this response**	**Percentage of respondents**
General response that doesn't answer the question	90	21%
All costs to rectify lease to be paid by developer/landlord	79	19%
Compensation from landlord for overpayment of ground rent	76	18%
Automatic reduction of ground rent to £10 cap	54	13%
Rescind the lease and/or transfer freehold for nominal value	51	12%
Independent/clear redress scheme should be implemented (e.g. ombudsman or tribunal)	26	6%
Automatic reduction of ground rent to a peppercorn	17	4%
Fines placed on landlord	18	4%
Compensation from conveyancer	6	1%
Any ground rent above peppercorn irrecoverable	6	1%
Legal obligation to make ground rent payment only enforceable at capped amount	4	1%

Question 3. To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

Number of Responses	**483**

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	214	41%
A structure intended for residential purposes	73	14%
No shared spaces or communal area within the property	48	9%
Situated on its own plot of land	37	7%
Properties divided vertically and not horizontally	32	6%
The property must have its own entrance	34	6%
Lived in by one family, and not a HMO	33	6%
Content with definition under the Leasehold Reform Act 1967	28	5%
A single building	9	2%
The property must include a ground floor	7	1%
Should be in line with the Law Commission's definition of 'residential unit'	7	1%
Constructed over a basement carpark	3	1%

Question 4. With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed?

Response	Number of Responses	Percentage
Yes	347	59%
No	242	41%
Total	**589**	
Further qualitative responses	310	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	151	49%
Disagree, should be restricted to peppercorn	138	45%
Disagree, higher ground rent needed for housing industry (supply, landlord standards, stewardship etc)	11	4%
Disagree, ground rent should vary in different types of property	7	2%
Disagree, extended leases granted under the Lease Reform Act 1967 should be exempt	3	1%

Question 5. Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

Response	Number of Responses	Percentage
Yes	199	37%
No	335	63%
Total	**534**	
Further qualitative responses	324	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	117	34%
Landlords should not be able to collect permission fees/ require consent for alterations	57	16%
Ground rents should be capped if house exempt	36	10%
If unable to build on land as freehold, occupation of house should only be for rent.	34	10%
Limits on additional fees such as service charges	27	8%
No exemptions whatsoever	23	7%
Transparency of tenure -must be clearly advertised as leasehold at point of sale	20	6%
No restrictive covenants on freehold properties	16	5%
Only long leases to be granted (e.g. minimum 999 or 250)	8	2%
No other conditions	7	2%
General issues voiced about leasehold	4	1%

Question 6. Do you agree that there should be an exemption for shared ownership houses?

Response	Number of Responses	Percentage
Yes	232	43%
No	312	57%
Total	**544**	
Further qualitative responses	315	

If you do not agree, please explain why	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	93	29%
No, support for the implementation of commonhold	81	26%
Support of no exemption for shared ownership	42	13%
General criticism of shared ownership	28	9%
No, service charges and ground rents should be capped	25	8%
No, share of freehold should be given instead	22	7%
Current system is restrictive as financial responsibility for maintenance and upkeep of the property is not shared with the landlord	11	3%
No, implement controls on the use of restrictive covenants	5	2%
Yes, until homeowner staircases 100% and then enfranchise to freeholder	5	2%
Yes, once property is genuine shared ownership tenure	3	1%

Question 7. Do you agree there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

Response	Number of Responses	Percentage
Yes	253	48%
No	276	52%
Total	**529**	
Further qualitative responses	273	

If you do not agree, please explain why	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	117	40%
Could lead to developers abusing the exemption	37	13%
Support of the abolition of Leasehold	37	13%
Commonhold should be used instead	31	11%
Support for no exemptions from the ban	29	10%
Included in consultation without debate	28	9%
Framework of community ownership in perpetuity required	5	2%
Properties should be for rent if freehold cannot be provided	4	1%
The property should be sold back to CLT if disposed	3	1%
Restrictive covenants could achieve continued community ownership	3	1%

Question 8. We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption.

Response	Number of Responses
Answered	162

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	85	25%
Not for profit and in the interests of the local community	36	22%
Affordability restrictions/ community benefit/ help disadvantaged groups	14	9%
Support for the introduction of commonhold on such sites	8	5%
For the benefit of local occupants only	6	4%
Communal space/shared gardens/ shared buildings on site	4	2%
Community involvement in governance of organisation and decision-making processes	4	2%
Support for exemption but peppercorn/ capped ground rent should apply	3	2%
Housing that is allocated on a means tested basis	2	1%

Question 9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land?

Response	Number of Responses	Percentage
Yes	286	56%
No	229	44%
Total	**515**	
Further qualitative responses	253	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	132	50%
No, all the National Trust and Crown should have the same rules as everyone else	38	14%
No, the National Trust have acted badly/abused their charity status	30	11%
No, developments on such land should be for rent only	26	10%
Peppercorn ground rents should be implemented on such land	20	8%
No, their developments should be freehold or not residential	10	4%
No, should be controls through planning restrictions	2	1%
No, houses should be freehold with land covenants	3	1%

Question 10. Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

Response	Number of Responses	Percentage
Yes	467	87%
No	71	13%
Total	**538**	
Further qualitative responses	171	

If you do not agree, please explain why.	Number of respondents who mentioned this in response	Percentage of respondents
General response that doesn't answer the question	84	45%
Proposal will require the implementation of the Law Commission's 2011 work on positive covenants	21	11%
All houses should be converted in full to freehold	17	9%
No, estate management companies are unregulated	14	8%
Councils should adopt public areas	12	7%
Must not create a 2-tier tenure system (existing leaseholders with higher ground rents vs new leaseholders with capped ground rents)	12	7%
No, as it would promote "fleecehold"	11	6%
Estates shouldn't be managed by a 3rd party company	4	2%
Comments in support of commonhold	3	2%
Exemption not required for agricultural land	4	2%
Yes, only if they were subject to the same conditions as those outside of the estate management scheme	2	1%

Question 11. Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals?

Response	Number of Responses	Percentage
Yes	124	22%
No	429	78%
Total	**553**	
Further qualitative responses	159	

If yes, please state what further exemptions may be required and why and if possible provide examples of further evidence.	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	84	50%
Specific rail/ local authority land answer	27	16%
Retirement communities	18	11%
Complex site e.g. carparks underground / infrastructure	12	7%
Protection of historic or architectural value	8	5%
Life tenancy/ equity release/home reversion	6	4%
In the case of compulsory purchase	5	3%
Rural exception sites/affordable housing	3	2%
Public body exemptions	4	2%
Family members granting leases to relatives	1	1%
Freeholder is unknow and therefore only leasehold can be granted	1	1%

Question 12. Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses?

Response	Number of Responses	Percentage
Yes	459	80%
No	113	20%
Total	**572**	
Further qualitative responses	200	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	77	38%
The ban should start immediately	64	32%
The ban should come into effect the commencement date of the legislation	28	14%
Grandfathering provisions required/ Pre-existing contractual agreements or planning permissions that should be honoured after legislation comes into force	26	13%
No, the policy needs further clarification and additional scenarios cited	4	2%
The reforms create a two-tier system	3	1%

Question 13. Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value?

Response	Number of Responses	Percentage
Yes	354	46%
No	412	54%
Total	**766**	
Further qualitative responses	523	

	Number of respondents who mentioned this response	Percentage of respondents
Support of a peppercorn/zero value ground rent - leaseholders receive no benefits from paying ground rent	257	48%
General response that doesn't answer the question	83	15%
Support of a peppercorn/zero value ground rent - as leasehold should not exist	76	14%
Higher ground rent value required to maintain professional landlord standards	40	7%
Support of a peppercorn/zero value ground rent - £10 costly to recover for landlord	33	6%
Higher ground rent value required to attract investment	16	3%
Ground rent should be capped at 0.1% of property's value	16	3%
No amount specified, but against a cap as will create a two-tier system	8	1%
Support of a peppercorn/zero value ground rent peppercorn/zero value - to avoid legal implications	5	1%

Question 14. Are you aware of a separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

Response	Number of Responses	Percentage
Yes	131	20%
No	519	80%
Total	**650**	
Further qualitative responses	163	

	Number of respondents who mentioned this response	Percentage of respondents
Yes, common practice/anecdotal evidence	72	42%
General response that doesn't answer the question	60	35%
Yes, an economic ground rent at more than £100 pa	15	9%
No, not common practice	8	5%
Yes, widespread practice	6	4%
Yes, a low ground rent at less than £100 pa	5	3%
Yes, to keep properties and enfranchisement premiums affordable	3	2%
Yes, to provide for maintenance of communal areas	2	1%

Question 15. Do you represent a community-led housing provider which does not rely on ground rent income?

Response	Number of Responses	Percentage
Yes	7	1%
No	689	99%
Total	**696**	
Further qualitative responses	61	

If so, what alternative methods of funding have proved successful and could be replicated elsewhere?	Number of respondents who mentioned this response	Percentage of respondents
Ground rents cap should also apply to the community-led housing	34	56%
General response that doesn't answer the question	24	40%
Lease management fees/ community levies or look to strata title system implemented in Australia	2	3%
Ground rents need to be retained to enable the stewardship	1	2%

Question 16. Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments?

Response	Number of Responses	Percentage
Yes	119	17%
No	589	83%
Total	**708**	
Further qualitative responses	464	

	Number of respondents who mentioned this response	Percentage of respondents
Disagree, there should be no exemption as leaseholders receive no benefit	136	25%
Disagree, discriminates against elderly/those living in retirement sector who may not be able to afford higher ground rents	117	22%
General response that doesn't answer the question	98	18%
Disagree, costs should be paid through other means (service charges/ premium/ increased purchase price)	99	18%
Agree, higher ground rent ensures maintenance quality and consumer choice	79	15%
Disagree, higher ground rent makes it harder to sell properties	13	2%

Question 17. What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons, and if you think the impacts are negative explain what measures might mitigate them.

Response	Number of Responses
Answered	458

* Some respondents answered both negative and positive impacts and provided multiple examples for either question

Positive Impacts	Number of respondents who mentioned this response	Percentage of respondents
No positive impacts	102	44%
Lower initial purchase price of property	43	19%
General response that doesn't answer the question	37	16%
Better maintenance/development of communal areas	33	14%
Provides incentive for developers to build in this sector	10	4%
Provides certainty/ affordable as opposed to exit fees	6	3%

Negative Impacts	Number of respondents who mentioned this response	Percentage of respondents
Financial detriment to the occupier	258	45%
No tangible benefit is received in exchange for the ground rent	99	17%
Property depreciates in value and difficult to sell in a restricted market	82	14%
General response that doesn't answer the question	74	13%
Can cause stress/worry/confusion if ground rent unaffordable	65	11%

Question 18. Do you agree with our approach to the treatment of mixed-use leases?

Response	Number of Responses	Percentage
Yes	243	51%
No	237	49%
Total	**480**	

Question 19. Are there any other circumstances in which mixed-use (a) should be within scope of the policy or (b) excluded from the scope of the policy?

Response	Number of Responses
Answered	240

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	188	78%
Excluded, mixed-use developments are complex and need higher ground rent income for maintenance/business costs	20	8%
Within scope otherwise developers may use this as a loophole	19	8%
Within scope as many residential flats are in mixed-use blocks	10	4%
Within scope to avoid confusion (definition of mixed-use is unclear)	5	2%

Question 20. Do you agree with the circumstances set out in paragraphs 3.34 to 3.37 in which a capped ground rent will apply in replacement leases?

Response	Number of Responses	Percentage
Yes	346	59%
No	244	41%
Total	**590**	
Further qualitative responses	309	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	164	52%
Agree, no clear reason stated	57	18%
Disagree, leaseholders may benefit from voluntary lease extensions at a higher ground rent	21	7%
Disagree, law on surrender and re-grant of leases too complex	18	6%
Disagree, the cap should be a peppercorn only	20	6%
Disagree, should only apply where onerous lease has been varied	15	5%
Disagree, landlords likely to increase cost of re-grant of lease to compensate for lost ground rent	9	3%
Disagree, no comment made	6	2%
Disagree, should apply where lease has been sold on	4	1%

Question 21. Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum?

Response	Number of Responses	Percentage
Yes	466	72%
No	182	28%
Total	**648**	
Further qualitative responses	276	

	Number of respondents who mentioned this response	Percentage of respondents
Agree, no clear reason stated	156	55%
General response that doesn't answer the question	65	23%
Disagree, no clear reason stated	24	9%
Disagree, developers/sellers need more time to prepare	17	6%
Agree, but should be further retrospective application	11	4%
Agree, developers may use transitional period to find loopholes/ exploit leaseholders	5	1%
Disagree, grandfathering provisions should be implemented	4	1%

Question 22. Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement?

Response	Number of Responses	Percentage
Yes	565	76%
No	182	24%
Total	**747**	
Further qualitative responses	509	

	Number of respondents who mentioned this response	Percentage of respondents
Yes, equivalence of rights/protections as leaseholders	172	28%
Yes, right to choose/change/create Management Companies	131	21%
Expressed leaseholder concerns	76	12%
Local councils should adopt shared areas or roads /Council tax rebate due	49	8%
General response that doesn't answer the question	37	6%
Yes, introduction of a Right to Manage equivalence	30	5%
Support of improved transparency of fees /monthly review/ regulation of the sector	28	5%
Support a free market approach to choosing Managing Agents/Competitive Quotes	16	3%
Introduction of elected management/community committees	18	3%
Abolish management companies	16	3%
Yes, right to appoint a manager (by tribunal)	15	2%
Introduction of an Ombudsman Service/ Dispute resolution	5	1%
Support of Commonhold/Shared communal areas ownership	4	1%
No, Right to Manage is complex	5	1%
No reform required	6	1%

Question 23. What will be the impact of these proposals (paragraphs 4.8 to 4.10) on companies or bodies that provide the long term management of communal areas and facilities?

Response	Number of Responses
Answered	485

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	170	34%
More/ improved transparency/accountability	117	24%
Improved competition/fairer price	89	18%
Better service/efficiency/quality	35	7%
None	29	6%
Minimal administrative and financial burdens	21	4%
Poorer quality of service/rising costs/lower profits	14	3%
Administrative burdens	5	1%
Less abuse of the system by companies	5	1%
More time consuming/ resource intensive	4	1%
Loss of revenue	6	1%

Question 24. What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

Response	Number of Responses	Percentage
Less than 10 working days	412	58%
10-15 working days	253	36%
More than 15 working days	40	6%
Total Responses	**705**	

Question 25. What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

Response	Number of Responses	Percentage
Less than £100	520	77%
£100	49	7%
£150	45	7%
More than £150	65	10%
Total Responses	**679**	

Question 26. What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

Response	Number of Responses	Percentage
No additional cost	454	67%
Less than £25	96	14%
£25-£50	86	13%
More than £50	41	6%
Total Responses	**677**	
Other (please specify)	144	

Other (please specify)	Number of respondents who mentioned this response	Percentage of respondents
No fees should be charged at all	54	35%
Variable fees depending on the complexity/ information requested/ format of information provided	37	24%
General response that doesn't answer the question	36	23%
Variable fees depending on the frequency of information request/ type of organisation/ property price	14	9%
Figure suggested ranging from £50 + VAT to £450 + VAT	12	8%
Initial fee set high enough to cover further information requests	1	1%
No cap on fees (no reform required)	2	1%

Further information – open ended response

Response	Number of Responses
Answered	321

	Number of respondents who mentioned this response	Percentage of respondents
Reform of existing leasehold is required	53	13%
Reform the system to make it easier to enfranchise – extend the lease/ purchase the freehold	53	13%
Onerous ground rent levels/doubling ground rent clauses	41	10%
Fees and deadlines related to the sale of leasehold properties	35	9%
Abolish leasehold for all properties	34	8%
Responder mis-sold leasehold property	34	8%
Unclassified	33	8%
Make estate management fees transparent/ regulated	19	5%
Poor conduct of management companies/freeholders	19	5%
Lack of transparency of service charges	18	4%
Support of commonhold as an alternative/ optional tenure	17	4%
Poor conduct of solicitor/ conveyancer	14	3%
Support of peppercorn rents	10	2%
Specific National Trust leaseholders with lease extension issues	9	2%
Support for exemptions from ban of leasehold houses or ground rents on strategic sites/ lifetime leases/low cost home ownership	6	1%
No exemptions for retirement properties	4	1%