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The British Property Federation

1. The BPF represents the commercial real estate sector – an industry with a market value of £1,662bn which contributed more than £94bn to the economy in 2014. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The UK's commercial real estate sector contributes about 5.4% of GDP, and directly employs 1 million people, or 6.8% of the labour force. It provides the nation's built environment and is diversifying from its core investment in the nation's offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, residential and increasingly through Build to Rent investment in new housing.
3. We are pleased to respond to consultation on implementing reforms to the leasehold system in England and look forward to working further with the Department to ensure that implementation of the reforms is done in a fair and constructive manner, not only for consumers but also for the industry.

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?

4. The media attention around unfair practices within the leasehold sector will certainly mean that a ban on all new leasehold houses will seem attractive to some and would support the view that, where a house can be sold as a freehold, it should be done so. However, we feel that a ban through legislation would be an unnecessarily blunt instrument to apply to a problem which can largely be dealt with through industry self-regulation.
5. There are circumstances where either the property owner or a buyer would prefer to sell/buy a leasehold interest of greater than 21 years and therefore a long lease but possibly at 30 or 40 years, at a lower price; or where both the owner and buyer agree a long leasehold interest with a low initial premium but higher ground rents which would make the house affordable to occupiers who are unable or unwilling to commit significant capital to purchase of a freehold.

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?

6. Home owners already have the First Tier Tribunal (FTT) to seek redress and we would suggest that this remains the primary source for consumers instead of creating a new body. However, for the FTT to be truly effective, we would advocate that the process of putting forward a case for resolution is made simpler and cheaper, and for there to be an assurance that one party cannot prolong the process by unnecessarily seeking more time. One solution could be to address the limited resources available to the FTT to enable it to work as efficiently possible and to provide greater information to leaseholders on how to bring a case forward for resolution.

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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.

7. Despite the existing legal definition of a 'house' being set out in the Leasehold Reform Act 1967, it has been evident from several high-profile court cases in recent years, that this definition for enfranchisement purposes is by no means clear cut. We are aware that the Law Commission will already be considering the definition of a house as part of their consultation on enfranchisement and as such we would strongly recommend that any definition is universally adopted. At the very least, the definition of a house should be restrictive, clearly defined and should not be applied to mixed use properties or buildings divided into flats.

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?

8. Not applicable to the BPF.

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

9. No.

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

10. Yes.

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

11. Not applicable to the BPF.

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.

12. Not applicable to the BPF.

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?

13. Not applicable to the BPF.

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

14. Yes. The document correctly notes that to not include newly created freeholds would create a two-tier system whereby leaseholders and enfranchised owners would operate independently of each other. In addition to this, freeholders would be able to benefit from the services of the scheme without having to contribute to it, this would ultimately make the scheme unviable as only a percentage would be contributing into it, but all would be taking advantage of it. We therefore agree that the existing legislation be amended to include newly created freeholds within existing estate management schemes.

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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?

15. Leasehold structuring is an important component of development viability overall and without it, many schemes would potentially be unviable. Leasehold tenure can provide well managed and maintained estates and this is particularly significant with regards to estates of special architectural or historical interest where only a leasehold structure can ensure that these sensitive areas are managed and run accordingly.
16. What is needed is greater availability of information for purchasers so that they can be confident in what they are buying and its long term financial obligations. This could take many forms including a statement of key terms or summary of the lease which could be made available at the start of the purchasing process. This would ensure that purchasers have all the financial information available to them ensuring that they are fully aware of the overall cost of the purchase of a leasehold property.

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?

17. No. We believe that grandfathering provisions will be required in three separate circumstances, so that developers and housebuilders are not prejudiced in relation to legal agreements that were already in place before the date of the relevant government announcement. These types of provision are standard whenever a law is changed, to ensure that existing contracts can be honoured. They are found in Finance Acts whenever the rates of Stamp Duty Land Tax increase.
18. A provision is needed that will allow a lease of a house to be granted by a developer to a leaseholder where a contract to grant the lease was already exchanged before 22 December 2017. It is quite likely that there are many such contracts, where the developer agreed with leaseholders to build new houses and the houses were bought off-plan.
19. It is already agreed that a developer will be allowed to sell leasehold houses where the developer itself has only a lease that was granted before 22 December 2017. However, it is also necessary to have a provision that will allow the developer to sell leasehold houses where the developer itself has a lease granted after the new legislation comes into effect, but there was already an agreement to grant the lease in place between the freeholder and the developer before 22 December 2017.
20. The consultation document refers to the registration of an assignment of a lease in the circumstances set out in paragraphs 2.42 and 2.43. The restriction on the assignment of an existing lease was not mentioned in the original statement in December 2017 and could severely affect developers who have acquired development land by way of the assignment of an existing lease after 21 December 2017. If the Government's policy on this has changed, we would propose that for assignments of existing leases, the cut-off date should be 15 October 2018 (the date of the announcement of the change of policy) not 21 December 2017. There should also be a grandfathering provision that exempts any assignment of an existing lease pursuant to a contract between the seller and the developer entered before 15 October 2018.

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?

21. We have always maintained our support for reasonable ground rents but firmly believed that Government's approach to banning or setting rents at a peppercorn was too stringent and would unsettle the market. We

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are aware that setting the ground rent at a level that is acceptable to the industry and wider public has been a challenge and we do appreciate that much debate has gone into what is an acceptable sum.

22. Ground rent income, whilst it must be proportionate and not onerous, is critical to assist the viability of developments and we do not believe that the proposed rate of £10pa is a reasonable sum to allow the industry to develop and operate effectively. Ground rent income provides a secure investment for many pension funds and institutional investors, helping them to match liabilities and, more importantly, provide an absolute incentive for appropriate building management by a professional landlord. The absence of this income would very likely result in not only responsible landlords and investors exiting the market and leaving the door open to speculative investors who would be focused on raising revenue rather than service delivery and leading to the expansion of poorly managed buildings; but also limiting consumer choice which is at odds to Government's key aims and policies to increase housing for all those who need it.
23. Further to the above, setting a ground rent as low as £10pa could produce a negative valuation for the long leaseholder once costs of disposal (assignment) are considered and this potentially could impact asset liquidity and in turn the quality of management offered.
24. Ground rent structures also have a critical impact on the viability and provision of Build to Rent (BTR) developments. The economics of BTR are extremely challenging compared to Build-to-Sell, as most BTR developers and operators aim to provide good quality apartments at a reasonable rent for the long term. Therefore, by continuing to allow the developers to create ground rent structures at a sensible ground rent level, it allows those developers to sell the freehold early on in order to release equity and reduce the overall cost of the new buildings, therefore ensuring that BTR apartments can remain affordable to a broader cross-section of the population. The important point to note is that in the case of the BTR developments, the leaseholder who pays the ground rent to the freeholder is not an individual owner or tenant, but large sophisticated institutional investors who will only accept reasonable terms in the first place.
25. Ground rent/leasehold structures provide longstanding freeholders with a mechanism for releasing sites where they do not want to part with the freehold, so, where the land is part of a wider estate or where a freehold disposal is not viable for tax reasons. In these cases, the creation of a leasehold interest with a meaningful ground rent can have benefits for both parties; an income stream may be more desirable than a capital receipt for the vendor and the cashflow advantages for the developer are self-evident. By their very nature, leasehold structures are designed for the long term and therefore introducing measures to protect the viability of BTR developments may require long term BTR covenants to ensure concessions are not abused.
26. In relation to a more acceptable alternative, there is no silver bullet, and this does require further consideration across the industry. The alternative to a notional sum could be a ground rent that is linked to a percentage of the existing capital vacant value of the property or a ground rent that is related to and increases in line with, RPI or CPI.

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

27. Not applicable to the BPF.

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

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28. Not applicable to the BPF.

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?

29. We believe that ground rents should reflect the type of housing to which they pertain. In the case of retirement villages, units (houses and flats) are sold on a leasehold basis and management fees and event fees are used to provide and maintain the additional estate wide services that make it an attractive place to live and to encourage older people to move in and free up family housing. The services and security required for retirement villages will be different to those of ordinary housing developments, the residents of retirement villages will have greater needs, requiring different levels of services and as such the costs will be reflective of this. Ground rents should therefore be set accordingly to ensure that retirement villages are able to maintain the services that they can offer to their residents.

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.

30. Please see our comment above.

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

31. Yes.

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?

32. No.

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

33. Yes.

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

34. A grandfathering provision will be needed that will allow a lease with a ground rent in excess of £10 pa to be granted by a developer to a leaseholder where a contract to grant the lease was already exchanged before 22 December 2017. It is quite likely that there are many such contracts, where the developer agreed with leaseholders to build new houses or flats with a rent higher than £10 pa, and those houses or flats were bought off-plan. It would be contradictory if the developer was not permitted to honour such a contract.

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?

35. Yes. Freeholders should be given the right to change service management as required. These changes should be reasonable and proportionate and using the FTT as a form of redress, should ensure that this is achieved.

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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?

36. Not applicable to the BPF

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

37. The information should mirror the timescales already set out in the GDPR legislation and be set at 20 working days.

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

38. We do not believe that there should be a set fee. The fees should be reasonable and proportionate to the type of information being requested.

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?

39. See our comment above.

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