

The Freeholder's Perspective

Following the extensive work carried out by the Law Commission in 2020, and after ongoing pressure for reform in the leasehold sector, the Government has announced in the King's Speech as at 7th November 2023, a programme of reform in relation to residential leasehold.

To date, the government has held back from answering calls to introduce commonhold/make it mandatory for all new properties, and this is because commonhold is not currently fit for purpose.

Ministerial assurances have been given that the work of the Commonhold Council will continue, but it appears that the current programme of reform will be restricted to existing leaseholds.

Implications for the value of freeholds

The briefing document which accompanied the King's Speech sets out an outline of the government's intentions. (See [The King's Speech background briefing notes.pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/The_King_s_Speech_background_briefing_notes.pdf) (publishing.service.gov.uk). This indicates a firm intention to 'make it cheaper and easier' for existing leaseholders in houses and flats to extend their lease or buy their freehold. These words echo those set out in the Terms of Reference, given to the Law Commission for their 2020 report.

The proposals cover the following:

- ***Increasing the standard lease extension term from 90 years to 990 years.***
- ***Removing the requirement for leaseholders to own their house or flat for two years before they can extend their lease.***
- ***Increasing 25% non-residential threshold for mixed-use property***
Currently premises that have more than 25% used for non-residential purposes do not qualify for collective enfranchisement claims. The proposal is to raise this threshold to 50%. (The same change has been mooted in relation to the Right To Manage).

No more new leasehold houses

In addition, there is a commitment to the banning of the creation of new leasehold houses, which was a previous ministerial pledge back in 2017.

A cap on ground rents

There is also a commitment to cap existing ground rents, and the promise of a consultation on this. This consultation opened on 9th November and is open for six weeks from 9th November 2023. The deadline is 21st December 2023.

No further detail has been provided as to the quantum of any cap that might be applied or whether this would be a fixed-level ceiling, but the consultation document sets out a range of 'options.'

From a freeholder's perspective, the least adverse of these is a cap that would be restricted to a percentage of capital value.

Whilst there is currently no detail as to how this may play out, where this option has been previously discussed, this might be set for instance at say, 0.1% of capital value in line with the general position adopted by lenders.

The consultation sets out a range of options all of which are less than optimal for freeholders. These include capping at a peppercorn (nil), capping at an absolute maximum value, capping at a percentage of property value, capping at the rent paid when the lease was originally granted, and freezing rent at existing levels.

Interested parties should submit responses to the consultation a link to which appears here:
<https://www.gov.uk/government/consultations/modern-leasehold-restricting-ground-rent-for-existing-leases/modern-leasehold-restricting-ground-rent-for-existing-leases>

Banning marriage value?

In the worked examples given at the end of the accompanying notes document, (see attached) there is a suggestion that lease extension for 76-year lease would become significantly cheaper: the premium reducing from £16,000 under the current legislation, to £9,000 once reforms are brought in. One can only infer from this the suggestion that marriage value will be abolished, although the document does not say this in such clear terms.

To quote from page 47 of the fully published text which appears at
[The King's Speech background briefing notes.pdf \(publishing.service.gov.uk\)](#)

- Our reforms will tackle these issues head on:
 - We are making it significantly cheaper for leaseholders to extend their leases. For example, a young first-time buyer in a £250,000 leasehold flat in Birmingham with 76 years left on the lease would currently have to pay around £16,000 to extend the lease plus around £10,000 to cover their costs and the freeholder's costs. Under our reforms, they will now only pay around £9,000 plus their own legal costs for a 990-year extension – a saving of over £10,000.

Similarly, it might be inferred that there is to be a restriction on the recoverability of freeholder costs, although once again this has also not been stated in such direct terms.

Summary

The overall impact for freeholders would be a reduction in both income and also, if enacted, capital value, where reversions are subject to marriage value.

Of course, none of this is currently law, and whilst the other “standard changes” – banning leasehold houses, increasing the lease extension term from 90 to 990 years and removing the two-year ownership criteria – will not of themselves have such a significant or immediate impact on value, these other proposed changes will see a significant phase shift and transfer of value.

Might there be a challenge?

This then leads to the question as to whether such rebalancing of financial interest is at all proportionate and whether it might be susceptible to a Human Rights challenge.

This is perhaps more likely to be more applicable to the question of removing marriage value. In setting out the options for reform, the Law Commission was cautious around the compatibility of any valuation reform with Article 1 Protocol 1 of the First Protocol to the European Convention on Human Rights (ECHR) – which provides for the peaceful enjoyment of property.

There is further discussion in the Law Commission's paper "Leasehold Home Ownership: Buying your freehold or extending your lease" "Report on options to reduce the price payable" (see for instance the discussion at page 111) from the report published on 21 July 2020 (for the full detail see: <https://lawcom.gov.uk/project/leasehold-enfranchisement/>).

At this stage, it is not clear how any such valuation reform would be introduced, and whether it would be as part of this Bill or a subsequent piece of legislation. My own view is that this would sit better within a wider process of reform and that if the government looks to enact something in the short to medium term, there is likely more success in dealing with the "easier" points outlined above, and it may then gauge resistance and also potential impact across the sector by carrying out the consultation in relation to the capping of ground rent.

The current suggestion is that such consultation is carried out in parallel with the production of a draft Bill. Given that we now have the consultation that may mean that we will see a draft bill very soon.

What does all this mean?

At this stage, it is difficult to make significant or firm judgments, and no timescale for the draft Bill is currently to hand.

However, it is possible, looking at the position with the Leasehold Reform (Ground Rent) Act 2022 to suggest that if a 'simple' Bill is proposed this could become law within 12 months and during the remaining term of this parliament. This is of course a personal view and one which might be subject to change once the Department for Levelling up Housing and Communities (DLUHC)'s precise intentions become clear. The timing of any progress would depend on a number of factors, including where the Bill sits in the order of business in parliament and also what it contains – presumably the more 'contentious' its provisions increasing the time it might take to progress.

In addition, how and whether any such Bill would be amended during its passage through parliament is of course another unknown factor.

In terms of predictions, we can see this having an impact on negotiations now but the force and impact of these are likely to be dependent upon the likely timing of any reforms.

Finally, the other unknown fact is the timing of any general election although it is worth noting that all major parties appear to be committed to a programme of reform in this area.

If you would like to discuss any aspect of the above further, please do not hesitate to contact us by emailing leasehold@bishopandsewell.co.uk or by calling 020 7079 2415.

Mark Chick

10th November 2022

This note has been prepared based on the information available at the time of writing and is not a substitute for legal advice. Advice in relation to any particular matter or set of facts will need to be considered on a case by case basis.