Consensus Business Group

Clive Betts MP
Chair
Housing, Communities and Local Government Select Committee
House of Commons
London
SW1A 0AA

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(By E-Mail: officeofclivebettsmp@parliament.uk)

Dear Mr Betts

Oral evidence: Leasehold Reform, HC 1468, Monday, 04 February

Consensus Business Group is a leading institutional freeholder owning freeholds representing 239,000 homes and asset managing on behalf of other institutional freeholders' freeholds representing 122,000 homes. In total we manage freeholds representing 361,000 thousand homes in the private residential sector. As such we have extensive experience and knowledge of the sector and would like to make this available to the Select Committee to assist it in its deliberations.

I observed with interest the Oral Hearing with the Minister for Housing on 04 February but concerned to note several misunderstandings of how the sector operates and the extensive statutory protections already in place to safeguard leaseholders. I can understand that in the context of a dynamic live hearing, what may appear as a misunderstanding of the facts by participants could simply be a consequence of the difficulty of being precise in such a setting. However, given the importance of the Select Committee's work in scrutinising MHCLG's proposed reforms to the leasehold sector, I consider it necessary and hope it will be helpful to set out the apparent errors and the likely consequences if policy and ultimately legislation is formulated on them. I reference each point to the numbering helpfully provided in the transcript.

1) **Q477** – Chairman, Clive Betts MP commented that leaseholders have no say over property management. This is not the case:

   a) Developments are sometimes set up by developers with Residents Management Companies (RMC's) responsible for management.
   b) We encourage the formation of Residents Associations (RA's) which we find are effective in monitoring leaseholder satisfaction and identifying issues we need to address.
   c) Leaseholders already have the statutory right to acquire the Right to Manage (RTM) from their freeholder enabling them to assume the management of their development on a 'no fault basis'
   d) Individual leaseholders, if they consider service charge costs are unreasonable or that they have not been consulted as set down by statute, can apply to the First-tier Tribunal (Property Chamber), (the FTT), seeking to have the cost determined and if successful, the cost is reduced or disallowed in which case the freeholder is obliged to pay any shortfall in the service charge reserves.
   e) In practice, we are alerted to leaseholder unhappiness with their property management by their complaining directly to us. When this occurs, we investigate and where necessary, take action (which can and frequently does result in the replacement of the property manager in consultation with leaseholders).

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2) **Q478** – The Minister commented that permission fees should not exist. Residents need to understand that they are living in a community and that rules are set out in the lease to determine how that community should and should not operate for the benefit of all. Abolishing leaseholders' obligation to seek consent as required under the covenants in their leases would enable them to do whatever they wanted, regardless of the impact of their conduct upon others.

Leases invariably include covenants which freeholders are obliged to comply with and, if necessary, enforce. There is established case law confirming this and evidencing the penalties imposed on freeholders if they fail to do so. Permission fees are payable as a freeholder needs to consider each application for consent, whatever its nature, in order to ensure that the permission sought complies with the lease terms and does not cause any damage or nuisance to the development or other leaseholders.

Covenants vary widely from lease to lease due to the differing dynamics of a development and the original developer's desire to ensure that a development runs smoothly. Developers have experience in what problems leaseholders may encounter and seek to provide within the lease covenants a mechanism for addressing them. For example, matters such as the keeping of pets (high numbers of dogs in multi occupied dwellings can cause issues such as fouling, noise or safety) or building alterations (which can alter the appearance of buildings or affect their structural integrity) may be an issue. It is in the interest of all leaseholders that such matters are regulated to provide good estate management. In our experience, it is for this reason, rather than for revenue generation, that developers incorporate consent requirements into leases. The Freeholder, in the knowledge that requests for consents ignored or not given proper thought could constitute a breach of their obligations under the lease and cause discontent amongst other residents, must carefully consider each request or face risk of action being taken against them.

In following such processes, the freeholder will incur costs in considering the application and potentially penalties if they make the wrong decisions. Permission fees represent the consideration that the freeholder receives for its necessary work.

3) **Q501 and Q503** – the Minister responded to a comment by Kevin Hollinrake MP that freeholders would not be interested in acquiring a freehold bearing only a £10 ground rent, by saying that not all freeholders monetise ground rents and cites Peabody as an example.

I cannot of course speak for Peabody but note that it is a charitable body active in the development of 'affordable housing'. I would expect that given their purpose, they would not see a £10 ground rent as a disincentive for developing such housing. However, I would be surprised if they were prepared to acquire private sector freeholds which would involve the acceptance of significant responsibilities and the provision of stewardship in return for a nominal ground rent which does not even cover the cost of its collection.

However, it can be expected that while there would be buyers of private sector freeholds bearing such a low ground rent, it would not be institutional freeholders but others interested in securing the management contract or other short-term profit. This will not be to the advantage of leaseholders.

4) **Q539** – Mr TS Dhesi MP – references complaints of uncapped service charges, which seem indisputable, do not provide a service and are imposed without consultation. Taking each allegation in turn:

a) Uncapped – In our experience, few leases impose a cap on service charges for the simple reason that over the term of the lease it is impossible to accurately identify what the cap should be given the uncertainty presented by obsolescence, repairs and maintenance. It is highly likely that if such a cap existed then at some point service

charge funds would be insufficient to meet the running costs of the development, leading to its insolvency. Any problem of unexpected and large cash calls upon leaseholders can be, and usually are, minimised by professional property managers drawing up plans for and subsequently undertaking cyclical repairs, replacement and maintenance. Ideally (but not always) the lease should enable the build-up of reserve funds to undertake any major works.

b) Indisputable – From the context I assume that the criticism is that it is hard or impossible for leaseholders to dispute that a service charge demand is necessary. This is incorrect as leaseholders can and frequently do exercise their right to make an application to the FTT for a determination as to the reasonableness of a service charge.

c) Do not provide a service – If this is the case, then again it would constitute adequate grounds for challenge under the statutory protections already afforded to leaseholders as noted above. It would be helpful to understand any evidence presented to the Select Committee that supports the statement that statutory protections are inadequate.

d) Imposed without consultation – Statutory protections already in place require that costs over a certain level must be subject to leaseholder consultation. Is it suggested that the existing protections are inadequate?

5) **Q545** – Helen Hayes MP – refers to high one-off bills imposed with little consultation and short time frames. Any such event is likely to be a consequence of poor property management, where proper cyclical maintenance has not been performed over many years. In our experience this is likely to be because the freeholder concerned is not an institutional freeholder (such leaseholders place importance on their stewardship function and will have extensive experience in the sector) or where leaseholders control management through an RMC or RTM company. In any event statutory protections are in place to prevent such abuses namely under section 20 of the Landlord and Tennant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002).

6) **Q575** – Deputy Director for Leasehold, Commonhold and Rentcharges, Ministry of Housing, Communities and Local Government, Lakhbir Hans states that the Government is considering banning restrictive covenants. I have explained earlier in this letter that restrictive covenants are imposed because developers consider them important for the future enjoyment by leaseholders of their homes (for example a frequently encountered breach is where leaseholders seek to or install without consent hard wooden floors which increase the noise pollution suffered by the leaseholder living beneath). I would urge Ministers and the Government to understand the unintended consequences for leaseholders if restrictive covenants were banned and what alternative measures they propose to replace them. In our experience, as explained above, there are important reasons why restrictive covenants are necessary in the interest of good estate management and for the protection of residents.

7) **Q602** – the Minister observes that she is not aware of professional freeholders threatening to exit the market if enfranchisement is made cheaper.

It is understandable that individual professional freeholders may not directly threaten to exit the market given that such public statements could adversely affect them. However, we and other institutional freeholders know that an inevitable consequence of reducing enfranchisement premiums is that business risk will increase because income from rents can be expected to reduce due to a higher rate of enfranchisement as existing leaseholders seek to cash in on a windfall profit following the reduction in compensation they are required to pay to their freeholder. The reduced compensation will also be insufficient to repay any debt borrowed against future rents or acquire new freeholds to replace the lost rental income.

Existing freeholders face the real prospect of incurring losses and this coupled with the threat of legislating on future freeholds to reduce ground rents to a peppercorn is a significant disincentive for professional freeholders to remain in the market. New entrants are unlikely to have the long-term view of institutional freeholders or be committed to their principle of stewardship.

I hope that the Select Committee finds the explanations provided above helpful in understanding the reasons for measures in place within leases and which respondents to the call for evidence have complained about.

If the Select Committee would like to visit our operation, I am sure they will find it helpful in furthering their understanding of the important stewardship function we provide as responsible institutional freeholders.

Yours sincerely

W K Procter
CEO - CBG