

## **APPG on Leasehold and Commonhold Reform**

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By way of introduction I should explain what the British Property Federation is. We are the trade association for the large-scale property investment sector - predominantly pension fund investors and companies that hold property for its income. Our members interests in today's topic are varied. We have the Great Estates of London in membership, who are generally well-respected as good stewards of leasehold estates. We have one or two large funds that are starting to dip their toes into investment in retirement housing. And we have one or two funds who invest in ground rent portfolios.

So far as development is concerned, we have none of the major house builders in membership, certainly south of border. Our members, however, do provide flats for sale as part of large mixed-use regeneration schemes - think of King's Cross or Cabot Circus in Bristol or First Street in Manchester. That mixed-use story is something I will return to in my remarks later.

We also are the main proponents for the nascent Build-to-Rent sector, which is mainly outside the scope of our conversations today. Although looking back at the 2002 Act BPF was successful in averting at least one disaster and ensuring the original drafting was amended to ensure commonhold didn't restrict sub-letting, which would have further stunted the growth of commonhold, if had been given an otherwise fair wind.

I joined the Federation on 22nd May 2002, three weeks after the 2002 Act gained Royal Assent. When I arrived on my first day, my inheritance from my predecessor Richard Lambert, was about eight box files on the Act sitting proudly on my desk. Richard, being a former Select Committee clerk, was nothing if not meticulous. Unfortunately, most of my inheritance got shredded in an office move about six years ago! However, I saved a few BPF documents for posterity and I'll draw from those, and my experience of the implementation phase of the 2002 Act, in what I have to say today.

The first thing to stress is just how long commonhold has been coming, which is long before 2002. It featured in the manifestos of the winning party in the 1987, 92, 97 and 2001 general elections. It can be traced back to a Law Commission report in 1987. Draft legislation was prepared as long back as 1988, and the Government issued a consultation document in November 1990. More than 1,000 replies were received, and it was proposed that commonhold should be available for all types of land use—whether residential or commercial.

There are far more eminent people here to comment on the detail of the 2002 Act than I, but clearly the fact we still have not seen commonhold delivered to any great extent, suggests that it is not just the result of technical deficiencies in the legislation, but more fundamental flaws in implementation. Therefore, if we do not want to see history repeat itself, the current interest in commonhold must look beyond just tweaking the legislation to iron out those flaws and weigh the scales in favour of it.

My experience of implementation of the 2002 Act was that promotion of commonhold was sub-optimal. Learning the lessons therefore.

Far more effort needs to be expended on ensuring that lenders and conveyancers are familiar with the tenure and their systems ready to transact it from day one. That won't be easy. Lenders for example, tend to only invest in upgrading their systems once they can see demand.

There clearly also has to be greater incentive or disincentive on developers to favour the creation of commonhold over leasehold and therefore using fiscal measures or sunsetting the use of leasehold on new developments are fair questions to consider.

Public bodies can also far better support the roll out of commonhold. For example, the Homes and Communities Agency could be making the use of commonhold a condition for the use of its support, across its programmes. That will mean, however, commonhold has to work for a mix of affordable tenures, which are usually delivered as part of wider developments these days.

I spent four years sitting on a Residents' Management Committee and I am honest enough to admit we were clueless and it was only through the fortune of employing a good property manager that we functioned as a body properly. If commonhold is to become the dominant tenure for flats, where far more flat owners are managing their blocks, it will require more effort to be expended on educational outreach, to ensure commonholders are equipped to do so professionally. A topic of conversation in

preparing the Bill back in 2001/2002 was also whether there should be better access to alternative dispute resolution where disputes arise, which I support.

I wanted to limit my final remarks to mixed use. May 2002 was not only monumental for the Act, but was also the month that the ODPM was created. Lord Prescott was passionate about an urban renaissance and planning policy over the past 15 years has encouraged intensive use of brownfield sites through mixed-use development. If you think about somewhere like King's Cross it will require several billion pounds of investment to deliver, and those investing in it will be doing so for decades. The stewardship of the buildings and estate is therefore vital to them, so that the development looks as good, if not better, in 20 or 50 years time, as it does today. This is therefore not just an issue of what is an equitable means of owning property, but what will underpin or undermine stewardship and therefore investment.

From my inheritance, there was significant enthusiasm on the part of the sector and Government back in discussions on the 2002 Act, that commonhold could provide a more efficient, effective and equitable way of putting in place those arrangements for mixed-use developments. Referring to a briefing note of my predecessor, he states:

*"The British Property Federation supports the introduction of commonhold, believing a new tenure option will offer advantages to the property industry and benefits to its customers. Attention has focussed primarily on the advantages of commonhold in relation to residential property. However, commonhold will also apply to the commercial property sector, where it will again offer advantages, particularly in a mixed-use setting."*

And if you look back as far as the 1987 report, it always envisaged commonhold applying to commercial property in those circumstances.

I believe in Australia that they have a specific community strata for such mixed-use scenarios and I am keen to hear more about that from our guest today.

I also know from working on several projects with the Law Commission that often simply modernising the law isn't sufficient grounds to get all of Government behind its projects and showing that they also contribute to the economic objectives of Government can be helpful. It seems to me that delivering a better way of holding mixed-use property would be an additional and well-supported reason for making commonhold work.

In conclusion, the BPF will seek to be constructive contributors to any new efforts to revive commonhold. If it is the subject of a Law Commission project as part of its 13th programme of law reform, I hope the Commission's brief will be sufficiently broad in remit, and resources, so that it can consider broad issues of implementation and not just the flaws in the legislation. I hope it will also look at what commonhold has to offer the commercial sector, and mixed-use, as well as a more modern means of flat ownership.