

Unmesh Desai AM

**London Assembly Member for City and East
Chair of the Housing Committee**



**City Hall
The Queen's Walk
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Sadiq Khan
Mayor of London
(via email)

12 March 2020

Dear Sadiq,

London Assembly Housing Committee review of leasehold in London

Over the past months, the Housing Committee has examined the issues facing leaseholders and the potential for reform in the sector. We heard from a panel of experts on the topic, including a barrister with experience of leasehold disputes and representatives from the Leasehold Knowledge Partnership. Through our investigation, we have identified a number of interventions which could improve support for London's leaseholders.

Leasehold, in contrast to freehold, provides time-limited permission to occupy the property and control is shared with the freeholder (also referred to as the landlord). The leasehold tenure has been subject to considerable criticism over many years. This is largely a result of onerous terms imposed in the lease document which governs the relationship between the leaseholder and the landlord. This includes high fees for ground rent, excessive permission fees for the leaseholder to make changes in the property, and arbitrary restrictions such as the prohibition of pets. Other controversies have included the imposition of excessive service charges (which the leaseholder pays for the costs of the day-to-day management and maintenance of leasehold blocks), costs for major repairs, and the burden imposed by the existence of forfeiture which, where the leaseholder has breached terms of the lease, enables the landlord to bring the lease to an end and take back the property without recompense for the financial investment of the leaseholder. Some leaseholders are also initially unaware that lenders are unwilling to provide mortgages for leases of less than 80 years, and costly lease extension processes are often required.

The issues facing leaseholders disproportionately affect Londoners. In 2018, around 24 per cent of residential property transactions in England and Wales were leasehold. Because almost all flats sell as leasehold, leasehold transactions tend to be more common in London, where 57 per cent of transactions were leasehold in 2018.¹

National Government reform programme

Owing to the issues outlined above, the need for reform of leasehold is widely accepted. Legislative reform is the main solution, so responsibility largely rests with Government. The Government and other bodies, including the Law Commission, Select Committees, and the Competition and Markets Authority (CMA), are undertaking work on reviewing and reforming the tenure.

The Government has outlined plans to improve practices for future leases, for example, by banning leasehold for new-build houses and restricting future ground rents to a peppercorn rent of £0, and has published an industry pledge, which voluntarily commits developers to help existing leaseholders with onerous ground rent terms in their lease agreements.² However, the Committee believes that existing leaseholders need the Government to implement more concrete solutions to onerous terms. This could take the form of, for example, retrospective legislation to amend onerous terms in existing leases (coupled with compensation for freeholders).³

Commonhold is an alternative to leasehold and allows for the freehold ownership of flats in larger developments. During our Committee meeting in February, we heard that a move to using commonhold is the best way to ensure flat owners are protected from the issues associated with leasehold. However, commonhold is presently only used in a small number of developments. The Law Commission is currently reviewing how to improve the law relating to commonhold with a goal of increasing its uptake.⁴ The panel in February told us that one of the main barriers to commonhold uptake is the difficulty of using it in mixed-use developments.

You note in your new London Plan that *“Planning for mixed-use developments in all parts of London will spread the success of London’s economy and create stronger communities where everyone feels welcome.”*⁵ Given the importance of mixed-use planning in London, it is essential that any successful reform of commonhold ensures it is viable for mixed-use developments.

¹ House of Commons Research Briefing – Leasehold and commonhold reform, 31 December 2019, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8047>

² Ibid.

³ As recommended by the Housing, Communities and Local Government Committee: Leasehold Reform, House of Commons, March 2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1468/1468.pdf>

⁴ Commonhold project, Law Commission, <https://www.lawcom.gov.uk/project/commonhold/>

⁵ The London Plan, Intend to Publish, December 2019 https://www.london.gov.uk/sites/default/files/intend_to_publish_-_clean.pdf

The Law Commission's work will also consider how to make commonhold effective for shared ownership homes, which are currently delivered exclusively as leasehold. Your commitment to affordable housing delivery is comprised of delivering 116,000 affordable housing starts by 2022. 50 per cent of these homes will be shared ownership or London Living Rent.⁶ As shared ownership forms a significant part of London's affordable housing delivery, it is your responsibility as Mayor to ensure shared owners do not continue to be subject to the issues associated with leasehold.

The Committee appreciates your efforts in lobbying Government for reform of the leasehold sector and urges you to continue to drive forward the interests of London's leaseholders.

Recommendations

- 1. The Mayor should continue to lobby national Government to take concrete action, over and above voluntary deals with developers, to ensure that existing leaseholders benefit from remedies as a result of any reform in the leasehold sector.*
- 2. Once the Law Commission's recommendations for reform of commonhold are published, the Mayor should advocate that the Government implement any recommendations which will enable the use of commonhold for mixed-use developments and shared ownership homes.*

The Mayor should report to the Assembly on the progress of his lobbying in relation to leasehold by December 2020.

Engagement with the housebuilding industry

A 2016 online survey of over 1,200 leaseholders conducted by the Leasehold Advisory Service (LEASE) found that 57 per cent of leaseholders who responded said they regretted buying a leasehold property.⁷ However, the figure could be even higher - NAEA Propertymark (formerly National Association of Estate Agents) published a report in September 2018 which claimed that 94 per cent of leasehold homeowners who took part in their survey regretted buying a leasehold.⁸

A transition away from leasehold to commonhold (subsequent to legislative improvements to commonhold) could ultimately be the answer to resolving leasehold dissatisfaction. However, until commonhold legislation is reformed, leasehold will still be the ownership model for flats in London.

⁶ London Housing Strategy, May 2018, GLA

https://www.london.gov.uk/sites/default/files/2018_lhs_london_housing_strategy.pdf

⁷ National Leasehold Survey 2016, Leasehold Advisory Service <https://www.lease-advice.org/news-item/national-leasehold-survey-2016-report/>

⁸ Leasehold: A Life Sentence, NAEA Propertymark, September 2018

<https://www.naea.co.uk/media/1047279/propertymark-leasehold-report.pdf>

It is welcome that you are producing your Guide for Leaseholders, which assists leaseholders to know what they are signing up for and to be wary of lease terms that could be potentially onerous. The Committee believes that even more could be done to improve transparency in the industry. For example, a recent Select Committee review of leasehold recommended that *"The Government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property, the length of any lease, the ground rent and any permission fees."*⁹ In advance of national Government action, we recommend the use of such a document in London.

Residential management companies give leaseholders a stake in the company that manages their block. Our panel expressed the view that establishing residential management companies in new developments from the start would improve fairness in fees for leaseholders, such as service charges.

Recommendation

3. *The Mayor should work with London's housebuilding industry and local borough councils to:
 - a. *Encourage developers and councils to provide potential buyers with a copy of the lease early in the purchase process and before the potential buyer has made any commitment to the purchase. A key features document should also outline those elements of the lease which are most likely to cause later dissatisfaction among leaseholders: the length of the lease (including the fact that it would have to be extended should it approach 80 years), the ground rent, permission fees, and any key restrictions on the lease such as owning pets or subletting; and*
 - b. *Explore the possibility of developers building with residential management companies in place.**
4. *The Mayor should ensure that any private sale, or affordable home ownership home, that is listed on the Homes for Londoners portal includes a key features document and/or explains the key features of the lease mentioned above.*

The Mayor should report to the Assembly on his progress by December 2020.

Understanding London's leasehold sector

The Committee feels strongly that comprehensive, contemporaneous data on London's housing mix is essential to ensuring effective policy and planning for the future. Currently, the Ministry of Housing, Communities and Local Government (MHCLG) produces experimental statistics on the number of leasehold residential properties in England, however, this is not provided at a sub-national level. Previously, you stated you will work

⁹ Housing, Communities and Local Government Committee: Leasehold Reform, House of Commons, March 2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1468/1468.pdf>

with MHCLG to seek this data at a regional level.¹⁰ This matter needs to be pursued as a matter of priority. Given the upcoming reforms to leasehold, it is essential that London's government has a clear picture of the extent and distribution of leasehold across the city so that any reforms can be effectively responded to and implemented.

Recommendation

5. *The Mayor should, as a matter of priority, work with MHCLG to ensure data is available on the number and distribution of leasehold across London. If MHCLG is unable to provide this information, the Mayor should ensure that the GLA begins producing and publishing this data by December 2020.*

I would be grateful to receive a response to our findings and recommendations by **7 August 2020**. Please also send your response by email to the Committee Services Manager, Fiona Bywaters (Fiona.Bywaters@london.gov.uk).

Yours sincerely,



Unmesh Desai AM

Chair of the Housing Committee

¹⁰ Questions to the Mayor 2019/9190, May 2019, <https://www.london.gov.uk/questions/2019/9190>