

Real Estate  
Case Law Update  
Rosling King LLP



In July 2017 the Government published a consultation document in order to obtain the views on the most needed areas for reform within the leasehold market. Over 6,000 replies were received with leasehold houses and ground rents being the most pressing for reform. There were two headline proposals which arose as a result of the consultation document.

#### The Arguments

Pursuant to Section 14(A) of the Limitation Act 1980 (the “Act”) the period in which a claim must be issued before it is statute barred is either, six years from the date on which the cause of action accrued, or three years from the date on which a claimant has the requisite knowledge to bring the claim.

#### Limiting the sale of new build Leasehold Houses

The Government have previously said that, other than in exceptional circumstances, they cannot see any good reason for new build houses to be sold on a leasehold basis, and their view on this remains the same. The results of the consultation confirm that the Government are planning to bring forward legislation as soon as Parliamentary time allows to prohibit new residential long leases from being granted, be it new build or on existing leasehold houses. However, the Government have indicated that it will still be possible for existing leaseholders to extend their lease or purchase the freehold and the Government intend to consult on proposals to support currently leasehold owners to be able to do this on more favourable terms. The Government have also indicated that they plan to ensure new legislation clearly defines terms such as “new build” and what a “house” is, in order to avoid any unintended consequences and have confirmed that they will work alongside UK Finance more in order to address the misunderstanding of lending criteria which, the results of the consultation flagged, is associated with leasehold properties.

Despite the above, the Government are aware that they will not be in a position to prevent developers building and selling leasehold houses on land that is currently subject to a lease. They will, however, ensure that future legislation contains exemptions in this regard and have confirmed that other exceptions will be considered when the legislation is brought forward, for example if there are particular cases where leasehold houses can be justified, and, if so, to work with sectoral partners to ensure that they are provided on acceptable terms to the consumer.

The Government will, however, ensure that the ban the sale of leasehold houses applies to land that is not subject to an existing lease as at December 2017.

#### Limiting the reservation and increase of ground rents on all new residential leases over 21 years

Overall, the results of the consultation confirmed that anything that affected the value of the property should be classed as onerous. It was also noted that ground rents can become onerous where leases on houses are extended under the 1967 Leasehold Reform Act. Over 40% of the responses given in the consultation stated that there was no justification for

ground rent and no clear reason why these should be any more than a peppercorn, however others cautioned about prohibiting ground rents, indicating that they ensure that the landlords retain an interest in the investment and covered the landlord's costs.

The Government confirmed their concerns that ground rents have risen from historically small sums, to hundreds of pounds per year in many cases. Although no specific proposals to address onerous ground rents have arisen from the results of the consultation, the Government intend to introduce legislation so that, in the future, ground rents on newly established leases of houses and flats are set at a peppercorn, i.e. have zero financial value. This would result in the costs incurred by the landlord for overseeing and appointing a managing agent being recovered through the service charge or a marginally higher sale price, meaning costs are more transparent and reasonable, with a leaseholder having the right to challenge any unfair service charges through the courts.

Following the results of this consultation, the next steps are for the Government to draft the required legislation and for this to then be brought before Parliament to be considered.

It is worth remembering that the outcome of the consultation document are currently only proposals, however, the high profile of leasehold reforms may result in the Government treating this as a priority.

For further information, please contact [Ann Ebberson](#) or the Partner with whom you usually deal.