

Ground rent and estate rentcharge reform



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Ground rent - background

- The context
 - Historically – fixed sum and/or peppercorn
 - Developers became greedy
 - Two transactions for every unit built
 - Secure investment for ground rent investors
 - Ground rents doubling every 10 years
 - Consequential effect on enfranchisement valuation
 - Capitalise the rent & marriage value

Ground rent proposals (1)

- Thin, very thin.
- Expecting a bill which will abolish ground rents for leases granted in the future
- Wider changes are bound up in the enfranchisement reforms which the Law Commission has reported on
- 11 January 2021: Housing Secretary Robert Jenrick: *“we will bring forward legislation in the upcoming session to set future ground rents to zero. This will be the first part of seminal two-part legislation to implement reforms in this Parliament”*.
- *“The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value.”*

Ground rent proposals (2)

- *“I am confirming that the Government will give leaseholders of all types of property the same right to extend their lease as often as they wish, at zero ground rent, for a term of 990 years ...”*
- Buy out ground rent: *“We will also enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.”*
- Bad news for LLs & ground rent investors

Questions / issues for the future

- Future leases → legislation to have retrospective effect? Exchange / completion?
- What is the legal definition of “ground rent”?
- To which properties should the legislation apply?
- Just get round the changes by manipulating the service charge? (Arnold v Britton [2015] UKSC 36)

Estate rentcharge

- Means of ensuring payment towards areas of common benefit by freeholders
- “estate rentcharge ... means ... a rentcharge created for the purpose— (b) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.”
- Section 121 of the LPA 1925
- Roberts and others v Lawton and others [2016] UKUT 395 (TCC)

Reform (1)

- December 2017: *DCLG: Tackling unfair practices in the leasehold market: Summary of consultation responses and Government response*: the government stated that, in relation to England, it will “ensure that, where a freeholder pays a rentcharge, the rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.” (paragraph 81).
- October 2018: Government paper announced intention to: “create a regime for freeholders which provides that maintenance charges must be reasonably incurred and that services provided are of a reasonable standard. We will also replicate consultation requirements and obligations on the provider of services to provide information to the freeholder. Finally we will provide freeholders with the ability to challenge the reasonableness of the charges they are required to pay towards the maintenance of communal areas and facilities at the First-tier Tribunal.”

Reform (2)

- June 2019 – Government committed to:
 - *“Equal rights for freeholders: we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987).”*
 - *“Right to Manage for freeholders: we will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported to the Government (on their review of Right to Manage for leaseholders) as part of creating greater parity between leaseholders and residential freeholders.”*

Thank you for listening

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