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LEASEHOLD REFORM MATTERS

A year of major change? Or a year of talk of major change?

On 5 January 2018, the Government published a detailed briefing outline of its “shopping list” for changes to Leasehold and Commonhold tenure (House of Commons library, briefing paper Number 8047).

No leasehold houses in future, easier/cheaper enfranchisement, peppercorn ground rents in all new leases, stop leasehold abuse, easier access for self-management by lessees, in-depth review of Commonhold, possible regulation of managing agents and more. By mid-2018 (before the Parliamentary recess) they want to have published detailed proposals.....and will then have to wait for Parliamentary time!!

The emphasis is on the consumer (the leaseholder) recognising the obligation to be fair to the landlord (assumed to be some external investor). There are some crazy, and some not so crazy ideas around:

- a) There is a private members’ Bill before the House in February proposing that all ground rents be eliminated for a premium to the landlord of ten times the ground rent.
- b) The Court of Appeal has heard and decided the long-awaited case of Trustees of the Sloane Stanley Estate –v- Mundy (2016) UKUT 223(LC). The big issue here was an attempt to get a different way of valuing the 50% marriage value entitlement called the “Parthenia Model”. It has been rejected.
- c) Ground rent valuations are back in the spotlight because institutional investors have been buying at much keener values than the traditional 6% or 7% p.a. But they are only interested in modern blocks with good leases in which somebody else takes on the management role. Jason Mellor of this firm has given expert evidence on behalf of the landlord in a large case on the south coast – Phillip Rainey QC and James Fieldsend were Counsel for the landlord - in January: decision expected late February.
- d) In the meantime, valuers and Tribunals have nothing but uncertainty on the question of marriage value calculations because of the Mundy decision as well as the Mallory –v- Orchidbase Upper Tribunal decision (2016) UKUT 468 (LC). Market evidence is preferred to graphs and the UT questioned whether there should be any real difference between Prime Central London and other graphs! Bruce Maunder Taylor of this firm represented a lessee of an ex-council flat in Tottenham in which the two valuers agreed that if the Nesbitt graph were adopted, a figure of £10,000 would be determined. However, the landlord’s valuer went back 2.8 years to when the lessee had bought the flat, found some long lease comparables at about the same time and produced evidence to support a £40,000 valuation. The FTT determined £36,000 (75 years unexpired at the valuation date). Permission to appeal to the UT has just been granted with the comment that £36,000 was not credible. See attached.
- e) Is any landlord going to have another shot at trying to reduce the Sportelli deferment rate? In February last year, the discount rate applied under the Damages



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Act 1996 was reduced from 2.5% to minus 0.75%. With that, and what now appears to be a longer term fundamental change in yield rates, does the Sportelli rate look a little high? Possibly?

- f) In another Upper Tribunal decision in Sinclair Gardens Investments (2017) UKUT 0494 (LC) adjusting market comparables for the effects of the Act was discussed and a little table given of previous UT decisions (apparently intended to form a small table (mini graph?)) of its own:

Unexpired Term	Adjustment for "Act Rights"	Decision	Reference
41.32	10%	Mundy	(2016) UKUT 0223 (LC)
45	7.50%	Nailrile	(2009) RVR 95
57.68	5.50%	Orchidbase	(2016) UKUT 0468 (LC)
67.49	3.50%	Contactreal	(2017) UKUT 1078 (LC)
66.81	3.50%	Sinclair	(2017) UKUT 0494 (LC)
68.62/68.67	3.50%	Elmbirch	(2017) UKUT 314 (LC)
77.7	2.50%	Sarum Props	(2009) UKUT 188 (LC)

All of this introduces quite a large measure of uncertainty into Leasehold Reform Act valuations just when we thought that a lot of the old issues had settled down. Some of the big landlords with a very straightforward business attitude are taking the view that there is too much uncertainty to negotiate on valuation points: quote a price and stand firm. Lessees find this very frustrating, particularly when they read about one Tribunal decision which is in conflict with another Tribunal decision with similar circumstances.

If the Government proposals can bring some semblance of order or certainty to this area of work, lessees would generally be happy to pay a figure recognised to have been calculated in a fair manner with openness and transparency. It is this increasing air of uncertainty which lessees in particular (but also some of the landlords) do not like.

These are the new problems, the old problems of how you value development hope value, intervening head leasehold interests, non-participating flats, improvements, retained property with or without lease-back rights, continue as they did before.

Good luck to the Government and its advisers but the problems of Leasehold Reform Act valuations are likely to be with us for several years yet, no matter what they decide to do, and when they can fit it in their programme to do it.

BRMT
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