

Gordon Brown need look little further than his native Scotland for a sensible approach to ending feudalism. The Abolition of Feudal Tenure (Scotland) Act finally brought to a close its feudal system of land tenure. On 28 November 2004, all vassals (yes, many Scottish home owners were still described as such!) living on land controlled by their feudal superiors would own their land outright. The payment of feu duties (equivalent to ground rent) was abolished, after the payment of a modest amount of compensation by the vassal.

Last year, the Scottish Law Commission has proposed the conversion of the few remaining long leases in Scotland (estimated at just over 13,000) into outright ownership. The Commission notes that one of the disadvantages of long leases is that the landlord can, in certain circumstances, terminate the lease without compensation. This hideously punitive situation persists for the three million leaseholders living in England and Wales. Take note Gordon.

Meanwhile in the Republic of Ireland, the Landlord and Tenant (Ground Rents) Act 1978 abolished the right of landlords to create new leases for residential dwellings and charge ground rent. For those leases that remain, Ireland's land registry operates the ground rent purchase scheme, which allows leaseholders to transfer to outright ownership for a reasonable sum calculated on a simple formula.

If there is more than 15 years to run on a lease, the compensation paid to the landlord represents the capitalisation of the annual ground rent assessed by reference to the yield on the most recent long-term

government bond. If there is less than 15 years to run on the lease, then additional compensation representing just a fraction of the reversionary value of the property is also payable. Nor do leaseholders in Ireland have to pay marriage value in order to acquire their freeholds either.

FPPRA supports leasehold

Writing in the summer edition of the newsletter of the Federation of Private Residents Association (FPPRA), Richard Williams, its vice-chairman, says that the government should make it easier for leaseholders to transfer to commonhold tenure. The process of transferring could hardly be more difficult, requiring as it does the unanimous approval of all parties with an interest in the entire building. So far, no existing leaseholders have been able to make this transfer, and none probably ever will unless the law is changed.

Curiously, however, Mr Williams argues that developers building new blocks of flats should not be compelled to adopt commonhold tenure, but should be free to carry on building new leasehold homes as now.

CARL takes the opposite view on this issue: all new developments should be commonhold. Why should we want to force still more home owners through the misery of the leasehold system? Surely prevention is always better than cure. Once new leasehold properties become consigned to history in this way, it will be easier to consign the whole of the residential leasehold system to the dustbin.

FROM THE ARCHIVE

Our press release issued in January 2001 identified the ten key flaws in the government's draft of the Commonhold and Leasehold Reform Bill : -

1. Leaseholders will still be in possession of a wasting asset and will have to pay the landlord a windfall profit in order to enfranchise
2. Commonhold – the new form of property tenure – will remain a distant and unattainable goal for most existing leaseholders
3. Even if leaseholders exercise the right to manage, landlords will still effectively be in control of the building
4. The complicated and bureaucratic body of company law will be used to govern commonhold associations and right to manage companies
5. Challenging excessive service charges will still involve the costly and lengthy tribunal proceedings
6. Landlords will still be able to hide their true identities behind offshore companies
7. No measures are proposed to ensure service charge funds paid by leaseholders are held securely
8. The activities of managing agents will remain unregulated
9. The problems of leaseholders with defective leases will remain
10. Those who own ex local authority flats will not be able to exercise the right to manage

NEW LEADER ... NEW HOUSING POLICIES?

Gordon Brown declared in his acceptance speech as leader of the Labour Party that housing will be the leading priority of his government – and the housing minister will in future attend cabinet meetings. As well as making housing more affordable, the government will need to address the problem that more and more 'home owners' are being forced into inferior forms of tenure, notably leasehold ownership and – even worse – shared leasehold. This may be very profitable for landlords, but it turns out to be a nightmare for the leaseholders.

The Blair government – of which Mr Brown was a prominent member – promised that the Commonhold and Leasehold Reform Act, which reached the statute book in 2002, would transform the lives of leaseholders. Ministers said it would not only offer leaseholders a superior form of tenure, but would also make it easier and cheaper for them to buy their freeholds, to take over the management of their blocks, and to challenge excessive service charge demands.

The Act has failed on all counts. CARL told the government that its legislation would not help leaseholders even before it was introduced into parliament. In our press release issued on 21 August 2000, when the draft legislation was published, CARL said: "the government has missed an opportunity to alter the balance of power between leaseholders and landlords. This latest measure merely tinkers at the edges and fails to give leaseholders the means to own their own homes."

In that press release we criticised the government for going back on its commitment to abolish marriage value, the biggest single obstacle to leasehold enfranchisement. We criticised the government for denying leaseholders the right to transfer to commonhold, and for making the 'right to manage'

unnecessarily bureaucratic. We also said that it was unhelpful to extend the use of the "cumbersome and unpredictable" leasehold valuation tribunals, rather than simplify the dispute resolution process.

As a consequence, the government now faces the wrath of the country's three million leaseholders, whom it has let down very badly. So, too, do the Conservatives, who walked through the lobbies with the majority of Labour MPs to vote in favour of the key provisions of the Act. On the other hand, the Liberal Democrat MPs, together with some Labour rebels, had the foresight to vote against the government on the key divisions in the House of Commons.

CARL held a successful rally in central London on 12 May to mark the fifth anniversary of the Commonhold and Leasehold Reform Act. This was the first step in our campaign to overturn this legislation and produce something that will help leaseholders, rather than leave them enslaved and entrapped.



Barry Gardiner MP speaking at CARL's May conference at the New Players Theatre. CARL Committee member Anna Brownlow chaired the meeting (story page 2)

RALLY AT THE PLAYERS THEATRE

CARL took to the west end stage for the first time, holding a rally in London's Players Theatre to mark the failings of the Commonhold and Leasehold Reform Act – exactly five years after the legislation reached the statute book. We achieved record attendance for a CARL event.

Our keynote speaker was Barry Gardiner, Labour MP for Brent North, and long-standing campaigner for leasehold reform. In his speech, Barry acknowledged that the legislation had not achieved the bold aims set by the Labour Party in its policy statement 'An End to Feudalism', which was published over ten years ago when in opposition.

He reflected on the speech he had made five years earlier in the House of Commons criticising the government's proposed legislation. In that speech he listed the principal aims of the legislation, and set some very modest targets for it to achieve. In that speech he said : -

"The first of those aims is to encourage the growth of commonhold for new-build flats and conversions to flats. If more than 60 per cent of new-build flats in the next five years are commonhold, and leasehold withers as ministers predict, I will be delighted to eat my words."

"The second aim is to enable existing leaseholders to transfer through to commonhold associations and gain the benefits of an inalienable title to their home. If even 10% of right-to-enfranchise companies succeed in effecting that transfer. I shall rejoice at my own folly for ever doubting ministers and their civil servants."

"The Bill's third aim is to enable existing leaseholders to throw off the yoke of landlords' managing agents and avail themselves of the no-fault right to manage. If only 10% of current residents associations successfully establish themselves as right-to-manage companies, I will be astounded by the Bill's success."

"The fourth aim is to enable existing leaseholders to enfranchise more easily. In that respect, my threshold drops lower still, to a mere 5 per cent increase in the number of leasehold blocks that are able to enfranchise. I would be prepared to acknowledge that as a real success for the Bill"

Barry concluded that it gave him no pleasure to see that these extremely modest ambitions for the legislation had come nowhere near being achieved. To take just two examples from Barry's targets, far from 60 per cent of new flats being commonhold during the first five year, well under 0.1 per cent of new flats have been commonhold – all the rest were leasehold. In addition, far from 10 per cent of leaseholders transferring to commonhold, absolutely none have done so.

He suggested that we encourage our MPs to ask parliamentary questions pressing the minister of housing, Yvette Cooper, to acknowledge the extent to which the Act had failed to meet its objectives. Barry also felt that our campaign needed to be more broadly focused in the context of a wider reform of the whole system of land tenure.

The other speaker at our Players Theatre rally was Tony Essien, who is principal legal adviser at the Leasehold Advisory Service (LEASE). His speech focused on the controversial consultation process over major works in blocks of flats. Tony answered the numerous questions in his usual informative manner.

Interestingly, Tony agrees with CARL that 'marriage value' should not form part of the price of the freehold or the lease extension. In his view the freehold price should consist of compensation just for the loss of ground rent and the reversionary value.

We did try to get speakers from other political parties. To their shame, none of the Conservative or Liberal Democrat MPs we invited came to speak, including Michael Gove and Jacqui Lait for the Conservatives, Simon Hughes and Andrew Stunell for the Liberal Democrats.

OFT and Anchor Trust

The Office of Fair Trading (OFT) has forced Anchor Trust, the largest not-for-profit provider of housing for the elderly in England, to change the terms of its leases because they breached unfair contract terms. The existing leases imposed unreasonable costs for repairs to the property, and gave Anchor the right to end the lease without reference to the need to obtain a court order first (see www.oft.gov.uk/news/press).

MEMBERSHIP

The Leaseholder aims to keep leaseholders up-to-date with legal developments, as well as spearheading our campaign to abolish the discredited medieval leasehold system. Join CARL so that we can speak from a position of even greater strength. Please return the enclosed membership form and your subscription. Existing members should have received your membership cards.

Help extend the campaign to end the misery caused by the leasehold system. Let us know if you want more copies of The Leaseholder for your neighbours. Write to your MP about your leasehold problems and tell him/her about CARL. Committee members are ready to discuss your issues with MPs in Westminster.

WHERE THE LEGISLATION HAS FAILED

- The introduction of commonhold tenure has proved a complete flop. Less than a dozen commonhold developments have been registered over the past five years; by contrast over 250,000 new leasehold homes were built in the same period. The leasehold system is far more profitable to developers than commonhold, because of the rich pickings to be made from leaseholders.
- No existing leaseholders have been able to transfer from leasehold to commonhold, because the Government has effectively blocked all such transfers. No transfer can take place unless each and every party with an interest in the building agrees – including all the leaseholders, their mortgage lenders and the landlord. It would be easier for a leaseholder to win the London marathon than to transfer from leasehold to commonhold.
- Service charges have increased much more rapidly than inflation – and worse is to come. Many ex-council tenants on low incomes, and who exercised the right to buy, have received bills well in excess of £10,000 each for major works on their blocks – often to put right building defects present prior to the leaseholders exercising the right to buy.
- The cost of buying the freehold has increased so far beyond its market price, that this move is now completely prohibitive for the majority of leaseholders. Recent tribunal decisions have pushed up the cost of freeholds to a multiple of their level only a few years ago.
- Hardly any leaseholders have been able to exercise the right to manage, because of the tortuous procedure involved, and the requirement to comply with the complexities of company law. Just over a hundred right to manage companies are currently active.

CONSULTATION NOT DISPENSATION

The eight greater London councils that suffered defeat earlier this year at the hands of the leasehold valuation tribunal have decided to withdraw their appeal to the Lands Tribunal (see our front page story in The Leaseholder, Spring 2007). These councils, which formed the London Area Procurement Network (LAPN), were seeking to by-pass the consultation process and carry out £1.5 billion in building work at blocks of flats – without allowing leaseholders any say in the matter.

HAROLD BEBBINGTON

Older readers will remember Harold Bebbington, the target of the Evening Standard's 'nightmare landlords' campaign over ten years ago. In a recent case before the leasehold valuation tribunal, Bebbington was forced to concede the appointment of a manager by the leaseholders of the block – Denmark Mansion in London's Coldharbour Lane. The tribunal referred to the "myriad management failings" at the block over the past five years – nothing new there then! Bebbington didn't even bother to attend the tribunal hearing. Over ten years ago the courts helped Bebbington to forfeit home owners' leases in the block for non-payment of service charges. His accountants, Spofforths were subsequently fined £3,000 for signing inaccurate service charge certificates.

The Abolish Leasehold petition is on the edge of the "top ten" in the housing section on the Prime Minister's petition site – this is out of a total of over 250 petitions in that section. Although our petition has over 500 signatories, we need to move it higher up the list. If you have not already signed the petition, please do so without delay. If you have already signed, please try and persuade your friends, relatives and neighbours to do so now. This is the link : - <http://petitions.pm.gov.uk/UnfairLeasehold/>