

What is the Future of Ground Rents?

On 9th November 2023 the previous Government launched a consultation on banning or capping ground rents on leasehold properties (the "Consultation") as was outlined in our update on this topic: <https://wslaw.co.uk/blog/the-ground-rent-consultation/>

It was expected that following the completion of the Consultation the ban or cap would be introduced as an amendment to the Leasehold and Freehold Reform Bill.

However, following the calling of the General Election on 22 May 2024, the Government had limited Parliamentary time available before Parliament was dissolved but did nevertheless ensure that the Leasehold and Freehold Reform Bill had its (rather rushed) third reading in the House of Lords. The final amendments were then considered by the House of Commons, leading to it receiving Royal Assent on 24 May 2024.

The Bill did not include the ban or capping of ground rents but there had been a leak to the effect that the Government had wanted to introduce a cap of £250 per annum which would taper over a period of years to nil.

It is not entirely clear whether the failure of the previous Government to introduce this cap was accidental or deliberate - but in any event the issue has been left to be addressed by the incoming Labour Government.

THE PRESENT GOVERNMENT'S POSITION

The Labour Party manifesto stated that

"For far too many leaseholders, the reality of home ownership falls woefully short of the dream they were promised. Labour will act where the Conservatives have failed and finally bring the feudal leasehold system to an end. We will enact the package of Law Commission proposals on leasehold enfranchisement, right to manage and commonhold. We will take further steps to ban new leasehold flats and ensure commonhold is the default tenure. We will tackle unregulated and unaffordable ground rent charges. We will act to bring the injustice of 'fleecehold' private housing estates and unfair maintenance costs to an end."

It is interesting that this does commit the Labour Government to banning or capping existing ground rents and only demonstrates an intention to ensure that ground rents are "affordable".

This could simply mean that the landlord's ability to increase ground rents in the future will be limited but it could also mean that existing ground rents could be capped at say £250 per annum as was previously proposed.

One key consideration for the present Government will be the risk of challenge to such a cap and the potential compensation claims that could be made by landlords.

POTENTIAL COMPENSATION CLAIMS

The previous Government's own impact assessment that accompanied the Consultation stated that if the so-called Legislative Option 1 (reducing existing ground rents to a peppercorn) was implemented the change in asset value that would result from this was estimated at £27.3 billion at present values. This contrasts with an estimated change in asset value of £14.6 billion (PV) for Legislative Option 2 which was a £250 per annum cap. These are clearly significant sums for any Government to contemplate if there is a significant risk of claims for compensation being successfully brought against the Government.

In the Consultation it was stated: *"Regardless of the option taken forward, we would not expect to compensate freeholders for lost revenue, nor do we expect freeholders would be able to capitalise the lost income stream through other means"*.

Again the language used is telling in that it states merely an expectation rather than any view on the entitlement of freeholders to compensation. It is not difficult to construct an argument that the imposition of a ban or cap on existing ground rents would amount to an interference with the right to enjoy property in breach of Protocol 1, Article 1 of the European Convention on Human Rights (which forms part of our domestic law by virtue of the Human Rights Act 1998). There is a caveat to the right to enjoy property which allows deprivation if it is *"in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

It is beyond the scope of this note to venture an opinion as to whether this defence could be successfully raised by the Government.

A POTENTIAL COMPROMISE

At the moment it is difficult to predict whether the Labour Government will or will not impose a ban or cap on existing ground rents. It will be interesting to see if the responses to the Consultation are published. The British Property Federation in its response proposed a solution whereby existing ground rents would be effectively capped by reference to the ground rent originally payable under the lease adjusted for RPI (not exceeding 5% RPI annualised.) This could be seen to be an "affordable" ground rent especially in comparison to those leases that currently provide for doubling at intervals throughout the term of the lease (which still remain unregulated.)

We believe that this solution should be adopted by the new Government if for no other reason than to forestall the lengthy and costly litigation that would inevitably result from a more onerous ban or cap.

If you would like to discuss the contents of this briefing further, please contact:



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This note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.