

Report to:	Overview and Scrutiny Committee (Regeneration and Skills)	Date of Meeting:	Tuesday 19 September 2017
Subject:	Leasehold house sales		
Report of:	Head of Regeneration and Housing	Wards Affected:	(All Wards);
Portfolio:	Cabinet Member Communities & Housing		
Is this a Key Decision:	N	Included in Forward Plan:	No
Exempt / Confidential Report:	No		

Summary:

To provide a report on leasehold house sales, as requested at a Meeting of the Council held on 26 January 2017.

Recommendation(s):

- (1) Committee note the report.
- (2) Committee consider supporting a response to the Governments consultation on measures to tackle unfair practices in the leasehold market.
- (3) Committee recommends that when the Council sells it's own land for residential development it considers including provisions that require developers to sell houses on a freehold basis, and amends the Council's Asset Disposal Policy to include this requirement.

Reasons for the Recommendation(s):

Elected Members previously requested information about leasehold property sales in Sefton, and the report attempts to provide information for the Committee to consider.

Alternative Options Considered and Rejected: (including any Risk Implications)
Not applicable

What will it cost and how will it be financed?

(A) Revenue Costs

No costs arising from this report

(B) Capital Costs

No costs arising from this report

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets): None
Legal Implications: None
Equality Implications: There are no equality implications.

Contribution to the Council's Core Purpose:

Protect the most vulnerable: NA
Facilitate confident and resilient communities: NA
Commission, broker and provide core services: NA
Place – leadership and influencer: Responding to the Government consultation may help lead to changes to legislation that should offer greater protection to house purchasers in future
Drivers of change and reform: Responding to the Government consultation may help lead to changes to legislation that should offer greater protection to house purchasers in future
Facilitate sustainable economic prosperity: NA
Greater income for social investment: NA
Cleaner Greener NA

What consultations have taken place on the proposals and when?**(A) Internal Consultations**

The Head of Corporate Resources (FD.4795/17) has been consulted and notes the report indicates no direct financial implications arising for the Council. The Head of Regulation and Compliance (LD4079/17) has been consulted and has no comments on the report.

(B) External Consultations

Contact was made with housing developers who have operated in Sefton over recent years, in order to try to research their approach to leasehold house sales.

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

The following appendices are attached to this report:

Appendix 1– New-build housing sites with a capacity greater than 5 units. Completed between 2007 and 2017 and sold on a leasehold basis.

Appendix 2 – CONSULTATION; Housing White Paper – issued 25th July 2017

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 1.1 At it's meeting of the 27th January, this Overview and Scrutiny Committee considered a report on it's work programme for 2017-18. This included the following;

At a Meeting of the Council held on 26 January 2017 the Council RESOLVED:

That the following Motion be referred to the Overview and Scrutiny Committee (Regeneration and Skills) for consideration:

“This Council is concerned about the alarming rise in the number of new houses sold as leasehold, the time period of the lease and the details of service charges being levied.

This is against a background of more new build properties being sold as leasehold with duration of the leases averaging 150 years, just three generations. This means that unless the lease is purchased at an unknown sum it will then revert to the owners. Buyers in this situation are purchasing a house but with rental conditions.

This Council notes:

1. *the overwhelming preference which most purchasers have for freehold houses rather than leasehold;*
2. *that leasehold properties can carry with them long-term associated costs and charges which are not made sufficiently apparent at point of sale; and*
3. *domestic leases are often as short as 150 years and mortgage lenders are usually unwilling to lend on properties where a lease has fewer than 50 years remaining.*

This Council believes:

1. *all immediate and lifetime fees and charges associated with leasehold properties should always be made much clearer in promotional material; and*
2. *short lease properties can present individuals with significant impediments to enjoying their own home and transferring such homes to future generations.*

This Council resolves:

1. *to write to the Secretary of State for Communities and Local Government expressing concern about the alarmingly rapid rise in new build houses sold as leasehold and the duration and costs associated with the terms of the lease, including service charges;*
2. *to promote information and guidance to leaseholders, including to buy or extend their freehold; the existence of the Leasehold Valuation Tribunal and the right to manage;*
3. *information and guidance relative to this point should be promoted through the Councils associated strategies and plans including the Council's Welfare Reform Anti-Poverty Action Plan; and*
4. ***to request the Head of Housing and Regeneration to investigate the rise in the number of new houses offered as leasehold, the time period of the lease and the details of the associated service charges and submit a report to the Cabinet Member – Communities and Housing."***

Cabinet Member Communities and Housing subsequently agreed that the above report should be considered by this Committee.

2. Leasehold ownership

- 2.1 In England and Wales most flats are owned on a long leasehold basis (i.e. with a term in excess of 21 years when first granted). It is also possible to own a house on a long lease. Essentially, long leaseholders buy a right to live in their property for a period of time. Owners of long leasehold properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord/tenant relationship with the freeholder. In blocks of flats, the management and maintenance is usually retained by the freeholder. The cost of carrying out this

work is recoverable from leaseholders in the form of a service charge, which is provided for in the lease. This tenure generates a good deal of dissatisfaction from residents concerning matters such as the level of service charges and the standard of services provided. Despite a good deal of legislative activity in this area, dissatisfaction remains.

- 2.2 The *Leasehold and Commonhold Reform report* published in the House of Commons Library in December 2016, provides an overview of the issues and problems associated with leasehold sales. While recognising that the majority of sales of flats are usually transacted on a leasehold basis, a number of issues relating to these are identified. In line with Members own concerns (as recorded in the Council motion) the report also recognises;

There have been recent press reports about developers selling newly built houses on a long leasehold basis in order to benefit from significant ground rent increases which are provided for in the lease and future income from enfranchisement.

[Guardian, [New build ground rent scandal could spark legal battles](#), 19 November 2016].

- 2.3 The report also contains information on the extent of leasehold ownership.

The extent of leasehold ownership

The English Housing Survey (EHS) includes a question on whether the respondent lives in a freehold or a leasehold property. The survey tables include an estimate of 1,235,000 leasehold dwellings in England.³

DCLG published a technical paper, [Residential leasehold dwellings in England](#), in August 2014. The paper combines Land Registry data on freehold and leasehold properties with EHS data on housing tenure to produce a new estimate of 4.1 million leasehold dwellings in England in 2012-13.

The [Leasehold Knowledge Partnership \(LKP\)](#) estimated that there were around 5.37 million leasehold properties in England and Wales at the end of 2013. The LKP argues that the size of the sector justifies calls for extensive reform.

- 2.4 Additionally, on the 6th April 2017, the DGLG released a new methodology for estimating the number of residential leasehold dwellings in England¹. This new methodology involves matching English Housing Survey (EHS) and Land Registry data. DCLG's Dwelling Stock Estimates and Valuation Office Agency Council Tax Property Attributes are used to inform the distribution of different types of dwellings.

Using this new methodology, DCLG estimate that, in 2014-15, there were:

- 4.0 million leasehold dwellings in England in the private sector.
 - Of these, 2.3 million dwellings (57%) were in the owner occupied sector and
 - 1.7 million (43%) were privately owned and let in the private rented sector.
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- There were 1.2 million leasehold houses in 2014-15 and 2.8 million leasehold flats. This represents 30% and 70% of the total number of leasehold dwellings respectively. Clearly the majority of leasehold properties are flats/apartments.

¹ <https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2014-to-2015>

Again, historic trends regarding leasehold data cannot be acquired from this new methodology, nor can information on smaller geographical areas such as individual Local Authorities. However, looking ahead, the new methodology will allow DCLG to publish an annual estimate of the number of leasehold dwelling in England as the required data is published. An updated estimate based on 2015-16 EHS data will be published in September 2017.

3. Levels of Leasehold in Sefton

The Land Registry released an updated version of its Price Paid dataset², in recent months, thereby allowing Local Authorities to query locally based sales of new-build housing alongside the tenure information. The results of this further leasehold information, in conjunction with research conducted by contacting housing developers, who have been active in Sefton over the past decade, is set out below:

Land Registry Price Paid data 2007-17

The Land Registry's sales data (Table 1) highlights that the proportion of newly built houses in Sefton (excluding flats/apartments and maisonettes), sold as leasehold rather than freehold tenure has increased significantly within the last decade (2007-17).

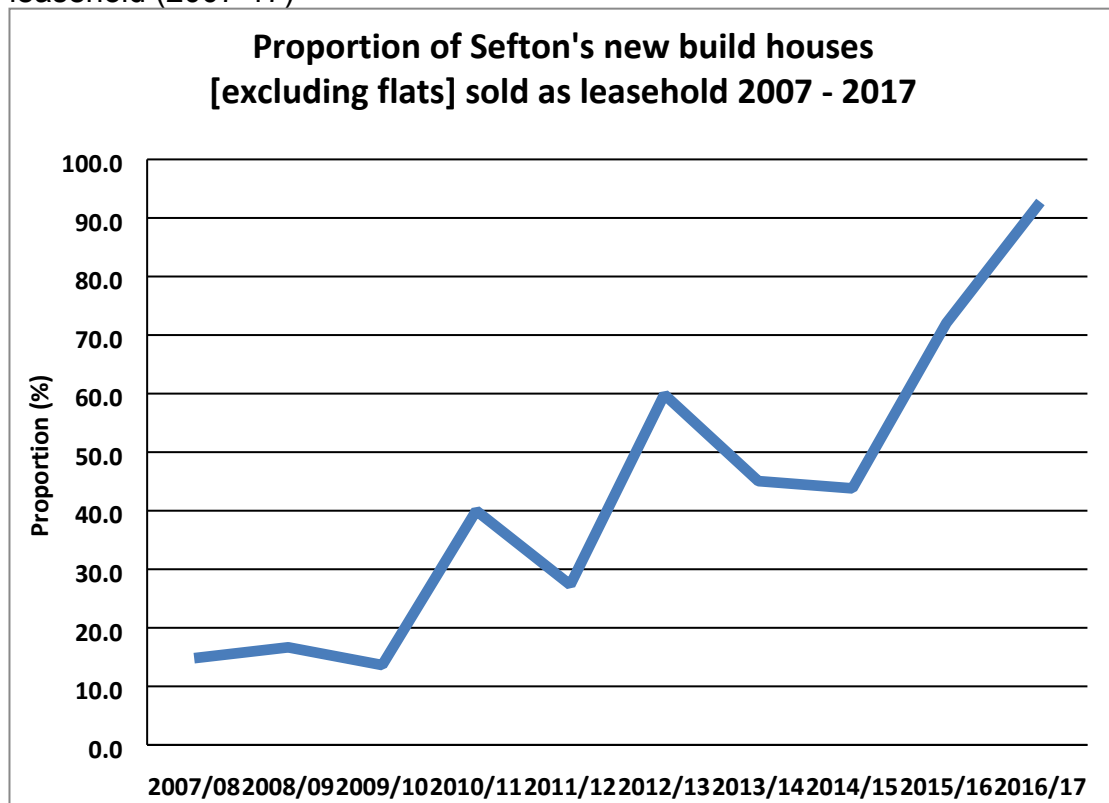
Table1. Proportion of Sefton's new build houses (excluding flats) sold as leasehold (2007-17)

Date	Total New-Build Sales	Total New-Build Leasehold Sales	Proportion of New-Build Houses sold as leasehold
2007/08	54	8	14.8
2008/09	18	3	16.7
2009/10	22	3	13.6
2010/11	30	12	40.0
2011/12	150	41	27.3
2012/13	132	79	59.8
2013/14	182	82	45.1
2014/15	194	85	43.8
2015/16	161	116	72.0
2016/17	110	102	92.7

Source: <http://landregistry.data.gov.uk/app/ppd/search>

² <http://landregistry.data.gov.uk/app/ppd/search>

Figure 1: Proportion of Sefton's new build houses (excluding flats) sold as leasehold (2007-17)



House building developers state that newly built houses sold as leasehold can be initially marketed and sold at a reduced price compared to freehold. However the purchasers of these homes, including a large number of first-time buyers (including those within Sefton) are increasingly complaining that; at the point of sale they are not being made fully aware of the associated and ongoing costs of buying a leasehold property.

These issues can include the complexities and cost of purchasing the freehold title of their properties and also the ground rents levied by the freehold owning landlords increasing at an exponential rate.

4. Time period of leases and the associated service charges

Regarding lengths of leaseholds, this is a very difficult question to get any meaningful information on without obtaining the commercial (paid for) data from the Land Registry.

The only other piece of 'evidence' on leasehold lengths and levels of service charges is contained within a letter sent from Taylor Wimpey to the Leasehold and Commonhold All Party Parliamentary Group. In which the CEx states :

"In common with other developers, the Group has sold houses on a leasehold basis in the North West as standard for a long period of time and we understand it has been normal practice in this region going back many decades.

From a Taylor Wimpey perspective, the specific leases that have caused some concern have rent reviews every ten years for the first fifty years and double at each review. They are then, however, capped for the balance of the lease (which is between 75 and 949 years). This means that they tend to be more expensive than RPI leases for the first fifty years but then end up cheaper in the later years (dependent on the level of RPI).

The leases with these doubling clauses were introduced in March 2007, at a time when historic RPI had averaged 5.9% pa over the previous 50 years, when RPI was 4.4%, house prices were increasing at around 8- 10% pa and land prices will increase increasing at around 15% pa. The inflation implicit in the first fifty years of these rent reviews is 7%. However over the life of the lease, (using the example of a house lease of 250 years), the average inflation was about 1.4% (or about 2.8% on the apartment lease of 125 years), significantly lower than most long-term predictions for RPI. The final payment on a 125 year lease with an initial rent of £250 if RPI was 3% would be about £10,000 compared with £8000 on the 50 year capped leases. If this was a 250 year lease with RPI at 3% the final payment would be about £405,000

The Group has always sold its freehold interest to 3rd parties, as to all major housebuilders in the sector. This is because both the financial structures and administrative structures needed to manage a book of freehold interests is very different to a household core business. In 2007, RPI expectations were significantly higher than today, and the costs of capital were also higher, meaning that the capital value of these interests (and the value in 2007 of future payments) was considerably lower than today. This, and the capped nature of leases, is why the average value at which these leases were sold to 3rd parties compared to RPI leases was very small - generally less than 1% of the value of the house or apartment”.

Taylor Wimpey go on to state:

“We will make future sales of houses on a freehold basis on any new sites that we develop, except in the very small number of cases where Taylor Wimpey does not own the overall development site on a freehold basis. Whilst we expect that this may mean a small increase in sales prices on previously leasehold sites, it will enable us to offer a consistent, simple product to all customers. We will make this change from the beginning of 2017”.

Other evidence tends to be more anecdotal, where specific cases are used to highlight problems across the industry. For example, the Guardian highlighted a case where one flat owner reported being trapped in a property that had been rendered virtually worthless just six years after being built. The owner of a £100,000 flat bought on a 125-year lease in 2010 found this year it was valued at zero by mortgage companies because of the ground rent clause.

Others have been forced to pay £1,000-plus fees to their freeholder for permission to build an extension, while attempts to buy out the leasehold have been met with demands of £35,000 or more, even though the lease has, in some cases, hundreds of years to run.

Ground rents that double every 10 years have become hugely attractive to specialist investors, because they imply an interest rate of 7% a year when the Bank of England base rate is just 0.25%.

It must be noted that ground rents are not service charges. Service charges are paid in exchange for a service, such as insurance, building or landscape maintenance. A Ground Rent is paid by the leaseholder of a property to the freeholder or landlord of the property, this rent must be formally demanded by the landlord or freeholder and can be fixed or escalating. If it is fixed it means that it remains unchanged throughout the term of the lease. Escalating Ground Rents will increase during the course of the lease. The lease will specify when the Ground Rent increases and by how much, however there is no set way of determining Ground Rent it can vary from lease to lease. It is very important that the buyer understands their obligations before exchanging contracts for a property by employing the services of an independent conveyancing solicitor.

Many buyers claim they were told that the 250- or even 999-year leases on their new-build homes were “virtually freehold” because of the length of the lease. But the investors who have snapped up the leases, often for just a few thousand pounds, refuse to sell them to householders unless they pay £30,000 or more. In some cases they simply refuse to sell the freehold, and are not legally required to do so. Buyers have also complained that their attention was not drawn to the ground rent increases, as they were encouraged to use the conveyancing services provided by the developer.

Earlier this year, a report by the campaign group ‘Home-Owners Alliance’ warned of the worsening “nightmare” of the leasehold system in England and Wales, saying millions of homebuyers were hostages to exorbitant bills and estimating that landlords were in line to earn £4bn from lease extensions. Leasehold, once seen as a dying relic of the Victorian property market, has returned with a vengeance since the 1990s, according to the report. In 1996, just 22% of new builds in the UK were sold as leasehold, but this has doubled to 43% at present.

Within Sefton, new-build properties are sold to customers using a range of tenures including freehold and leasehold. Focusing on leasehold sales, there are a number of different housing leases sold to buyers ranging from long-term 999 year leases to short-term 150 year leases, these developments are identified in

Appendix 1.

Contacting housing developers within Sefton

Bellway Homes PLC and BDW Trading LTD (David Wilson Homes) were contacted directly by Sefton Council's Regeneration and Housing Department as they are the two largest developers currently building homes within Sefton, both companies have sold homes on a short-term (under 250 year) leasehold basis in the Borough.

They were contacted before the Government's White Paper leasehold consultation began (explained in further detail in section 5), to help gain an understanding of their motivations of selling these new-build properties using this leasehold tenure. The implications of ground rents and potential future increases

charged by the freehold landowners (landlords) were also raised as questions to the developers.

*Due to the current leasehold public consultation, the housing developers contacted by the Council were reticent to put leasehold information into the public domain, before responding and understanding the outcomes of the Government's consultation on this issue.

A spokesperson from Bellway stated that they were not currently able to comment as the issue had *"become politically sensitive this week following the announcement by the Housing Minister of a forthcoming public consultation on leasehold sales by housebuilders"*.

David Wilson Homes stated: *"Whilst Sefton sold the site [Town Lane, Kew] to BDW freehold, the residential units at Kew are sold leasehold. There has been a lot of bad press about leasehold disposals recently, which is due aggressive multiples which are applied at every rent review, as high as doubling the ground rent at every review. When we dispose of freeholds, the companies who we use are limited to a rent review every 15 years, and then the review has to be in line with RPI, and as such, we have not been linked to the negative news stories"*.

On the 8th August a spokesperson from BDW added: [With] *"reference to your recent enquiries regarding Leaseholds at Kew we would like to respond as follows rather than answer the individual points/items listed in your earlier e-mail.... Leasehold position at Kew – All new properties at Kew, Southport currently not exchanged contracts will be sold as 'Freehold'"*

Further to this, Kingswood homes have stated in their sales literature that: *"Our homes are sold either leasehold for a period of 999 years as this allows us to ensure that any modifications people may wish to make to their home on our development are sympathetic to the development and do not cause harm to other occupants, or freehold. Your solicitor will provide you with details of this. This may include restrictions on parking large commercial vehicles at your property or running a business from your home that involves staff and visitors. Specific requirements can be discussed on an individual basis"*.

5. The Housing White Paper (2017)

The Government appears to have responded to the House of Commons report and have issued a new White Paper in February 2017, which includes proposals for reforms affecting leasehold.

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Leaseholders

4.36 The Government will act to promote fairness and transparency for the growing number of leaseholders. Leasehold has been a traditional part of the housing market in this country but there are areas where urgent reform may be needed, particularly when buying a house on a leasehold basis. New leasehold houses can be marketed at a reduced price compared to freehold. But some purchasers are not aware at the point of sale that the associated costs of buying a new leasehold house can make it more expensive in the long run. Some freeholds

and ground rents of leasehold houses are sold on and traded, with leaseholders left in the dark, and facing increasing and onerous payments. This is not in consumers' best interests.

4.37 In particular, ground rents with short review periods and the potential to increase significantly throughout the lease period may not be offering a fair deal. We are absolutely determined to address this. We will therefore consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold.

4.38 We will consider further reforms through the consultation to improve consumer choice and fairness in leasehold, and whether and how to reinvigorate Commonhold. We will also work with the Law Commission to identify opportunities to incorporate additional leasehold reforms as part of their 13th Programme of Law Reform, and will take account of the work of the All-Party Parliamentary Group on Leasehold and Commonhold.

Commonhold

Part 1 of the Commonhold and Leasehold Reform Act 2002 introduced the possibility of an alternative form of ownership in blocks of flats. However, it has failed to take-off and this has led to calls for a review of the legislation and action to make commonhold tenure compulsory in certain circumstances.

On the 25th July 2017, the Government issued a consultation “ *Seeking views on prohibiting the sale of new build leasehold houses, limiting ground rents and protecting leaseholders from possession orders.*”

Unfortunately this consultation closes on the 19th of September 2017, the date of this Committee’s meeting. Further information on this consultation is provided in **Appendix 2**.

6. Existing legislation

The Council does not have any legal powers, such as Planning powers, which could make developers sell on a freehold basis.

Council owned sites are usually sold by informal Tender by way of a Building Agreement followed by freehold transfer once the construction works are completed to the Council’s satisfaction. We don’t specify what type of tenure a developer subsequently conveys the completed houses. When the Council sells it’s own land for residential development it could consider including provisions that require developers to sell houses on a freehold basis. Certainly the Council’s Asset Disposal Policy could be amended to include this requirement.

As part of it’s past Housing Market Renewal Programme, the Council entered into development agreements with two developers. All of the houses built for sale under these arrangements have been sold on a freehold basis.

7. Market reaction

Awareness of the issues arising from leasehold sales has been increasing. Lobby groups (such as the Leasehold Knowledge Partnership (LKP)) have been highlighting problems through case study reports and lobbying.

Possibly of more significance has been the recent announcement by the Nationwide Building society, one of the largest mortgage lenders. The society said that it will stop lending against any new-build leasehold flat or house where the ground rent is more than 0.1% of the value of the property. It will also refuse loans on new flats with lease lengths of less than 125 years or new houses with less than 250 years. Developers will now be forced, if other lenders adopt the same policy, to slash the ground rents or risk that they simply can't get any buyers.

Taylor Wimpey has also said it had set aside £130m to compensate buyers of some of its new-build leasehold properties, which were rendered near-worthless after homeowners found themselves trapped in spiralling ground rent contracts. The housebuilder said a review of the contracts, in which the ground rent doubles every 10 years, found they were legal but "not consistent with our high standards of customer service and we are sorry for the unintended financial consequence and concern that they are causing".

It said it would make a provision of £130m "to alter the terms of the doubling lease to materially less expensive ground rent review terms, with the group bearing the financial cost of doing so".

As stated above, Taylor Wimpey also say they will make future sales of houses on a freehold basis on any new sites that they develop.

8. Conclusion

The report provides the Committee with information and evidence about leasehold house sales and associated issues at both the national and local level.

Following consideration of this report, Officers, on behalf of Cabinet Member Communities and Housing will write to the Secretary of State for Communities and Local Government expressing concern about the alarmingly rapid rise in new build houses sold as leasehold and the duration and costs associated with the terms of the lease, including service charges.

Additionally, the Council will submit a response to the current consultation in consultation with Cabinet Member.

Appendix 1– New-build housing sites with a capacity greater than 5 units. Completed between 2007 and 2017 and sold on a leasehold basis. (Source: Sefton Council Housing Database/Land Registry Property Registers)

Site Reference	Development Started (Year)	Development Completed (Year)	Site Name/Location	Developer	Length of Lease (Years)	Comment
L225	2006	2007	Land at Ash Road/Beach Road – Litherland	Bellway Homes LTD	999	Long-lease
B162	2006	2007	Peterhouse Mews - Bootle	Riverside	Not publically owned	Properties owned by Riverside Housing Association
F142	2007	Development not yet completed (2017)	The Hamptons - Formby	York Homes Developments LTD	999	Long-lease
B227	2010	2012	Former Bibby's Sports Ground - Bootle	Bellway Homes LTD	150	Short-term lease
S810	2008	2009	Holland Close	L & C Developments (Southport)	150	Short-term lease
S1140	2010	2013	Former Southport General Infirmary, Southport	Bellway Homes LTD	150	Short-term lease
S0113	2010	2013	Former Leaf Factory, Southport	Bellway Homes LTD	150	Short-term lease
C359	2006	2009	Hall Park, Crosby	Douglas Property Developments LTD	999	Long-lease
C139	2012	2015	Former Littlewoods Site, Crosby	Bellway Homes LTD	150	Short-term lease

F0127	2011	2012	Fallowfield Close, Formby	Broadley Developments LTD	999	Long-lease
S0153	2012	2016	St Thomas More, Southport	Bellway Homes LTD	150	Short-term lease
L0013	2013	2016	Former Hugh Baird Site, Church Road, Litherland	Bellway Homes LTD	150	Short-term lease
S0177	2013	2014	Singleton Close, Southport	Newfield Construction LTD	999	Long-lease
L238	2008	Development not yet completed (2017)	Field Lane, Litherland	Field Lane Developments LTD	-	Leasehold details not known
F0140	2014	Development onsite (2017)	The Powerhouse Site, Formby	Bellway Homes LTD	999	Long-lease
S0179	2013	2014	Holywell Gardens, Birkdale	Broadley Developments LTD	999	Long-lease
B0135	2015	Development onsite (2017)	Former Crown Packaging site, Netherton	Bellway Homes LTD	999	Long-lease
S0192	2015	2016	Ploughmans Close, Southport	Kingswood Homes	999	Long-lease
S0230	2016	2016	The Fallows, Southport	Kingswood Homes	999	Long-lease
S11	2016/17	Development onsite (2017)	Town Lane, Kew	David Wilson Homes	150	Short-term lease

Appendix 2 – CONSULTATION; Housing White Paper Update – 25th July 2017

As identified earlier in this report, the Government's stated aims within the Housing White Paper included – "improving customer choice and fairness within the leasehold sector".

As a consequence of this the Government has released a consultation paper³ which looks at "a range of measures to tackle unfair and unreasonable abuses of leasehold; in particular the sale of new leasehold houses and onerous ground rents.

The consultation also seeks views on excluding leaseholders from possession orders because of arrears of ground rent; and views on freeholders being able to challenge service charges for mixed tenure estates with shared facilities"

Specific questions asked within the consultation also included:

- i) Prohibiting the sale of new leasehold houses (with possible exceptions where developers are obliged to sell a house on a leasehold basis.)
- ii) Possible changes to the Help to Buy scheme in relation to leasehold houses.
- iii) Limiting the starting value and increase of ground rents on all new residential leases over 21 years.
- iv) Updating Ground 8 of the Housing Act 1988 so long leases over 21 years with an annual ground rent over £1,000 in London and £250 outside of London cannot be an Assured Tenancy.
- v) Providing freeholders on private estates with equivalent rights to leaseholders to challenge the reasonableness of service charges via the First-tier Tribunal (Property Chamber).
- vi) Areas for future leasehold reform.

The deadline for comments is 19th September 2017.

³ <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>