

An end to feudalism

Labour's New Leasehold Reform Programme

*Frank Dobson MP
Shadow Secretary of State for the Environment*

*Nick Raynsford MP
Shadow Minister for Housing*

October 1995

This paper sets out Labour's proposals for leasehold reform. Its objectives are:

- **effective help for leaseholders who have been betrayed by the Tories;**
- **cutting Tory red tape;**
- **new opportunities for leaseholders to own and manage their homes.**

Context

Leasehold as a form of residential tenure is a throwback to feudalism. It gives exceptional privileges and powers to landowners, enabling them to retain an interest in land and property while at the same time selling leases for limited periods of time. At the end of each of these periods the landowner can sell a further lease. By this means a relatively small number of landowners have been able to accumulate substantial fortunes through the ownership of land. Leasehold has helped to concentrate wealth in the hands of the few rather than the many.

The case for reform is overwhelming. Britain is almost unique in the world in retaining the system of leasehold. In other countries different and more modern arrangements have developed, to achieve a better balance between the interests of landowners and those occupying residential property, as well as enabling individuals to enjoy the benefit of freehold even where they are living in a block of flats. Over recent decades the weaknesses and injustices inherent in the British leasehold system have been increasingly highlighted, but reform has been a long time coming.

The first and most effective reform of the system made to date was Labour's 1967 Leasehold Reform Act. This gave to leaseholders living in houses the opportunity either to buy out the freehold interest or to obtain an extension of their lease. Many thousands of people have benefited from this Act.

By contrast, the Conservative government's attempts at leasehold reform have proved incompetent and ineffective. The 1987 Landlord and Tenant Act was meant to help leaseholders by giving them a right of first refusal where the freeholder intended to sell, and a right to take over the management of their homes from unresponsive or incompetent landowners or managing agents. The Act, however, involves such complex procedures and red tape that few - if any - leaseholders have benefited from it. The 1993 Leasehold Reform, Housing and Urban Development Act was supposed to give leaseholders in flats the same rights the 1967 Act had given to leaseholders in houses. However, during the passage of the legislation the Tories made so many concessions to the interests of the big landowners that it effectively undermined its whole purpose.

As a result, the number of leaseholders who have in fact been able to buy out the freehold of their block of flats under the provisions of the 1993 Act is derisively small. Not surprisingly, the vast majority of leaseholders feel let down by the Tories who promised them the opportunity to own their home, but then sold out their interests to the big landowners.

Against this background Labour recognises that an effective and comprehensive leasehold reform package is essential. This will remedy the outstanding problems, eliminate unnecessary red tape and extend to all those leaseholders who have been betrayed by the Tories new opportunities to own and manage their homes. This paper, which is published for consultation, sets out the ways in which Labour proposes to achieve this. We would welcome comments on these proposals and we will take account of the responses to this paper when finalising our policies for leasehold reform to present to the electorate. A number of separate issues apply to leaseholders who have bought their home from a council or housing association, and we will be consulting separately on proposals to remedy these problems.

A new tenure - commonhold

To replace the archaic and discredited leasehold framework, we need a new form of tenure which makes it possible for people living in flats to own their own home individually and to own the whole house or block of flats collectively. This is the purpose of commonhold. There is a wide measure

of agreement over the need for this new tenure; indeed, even the Tories promised in their last election manifesto to introduce commonhold. However, despite repeated Labour demands for action, the Tories have dragged their feet and, to date, have failed even to publish a Bill setting out the basis for the introduction of commonhold.

Labour will introduce legislation creating the commonhold tenure. Our proposal is that this should apply where new tenancies are created and where existing leaseholders wish to transfer from their current status. In such cases the support of a majority of the leaseholders in the block will be required to effect the transfer. We would expect the tenure of commonhold to replace leasehold over a period of years as the normal tenure for people owning flats in blocks or parts of converted houses. In the meantime, radical changes will be required to ensure that the option of leasehold enfranchisement can become a reality.

Simplifying the enfranchisement eligibility rules

The qualifying conditions for enfranchisement must be streamlined and simplified to remove the obstacles which currently stand in the way of thousands of leaseholders. Labour proposes a number of changes including:

- **abolishing the 'low rent test'** which limits the right to enfranchise to leaseholders paying a low ground rent;
- **increasing the permitted non-residential area** in any block currently set at a maximum of 10 per cent of the total floor area, which denies to most leaseholders living in flats above shops the opportunity to buy the freehold of their home;
- **reducing the number of qualifying tenancies.** We believe that it would be sensible to reduce the qualifying percentage from two thirds to one half, but at the same time require the support of at least 50 per cent of *all* tenancies in the block for an application to proceed. This would both simplify the system and provide proper safeguards against an unrepresentative minority seeking to takeover the ownership of a block of flats;
- **reviewing the 'residential' qualification** to ensure that it cannot be exploited to prevent residential occupiers from buying the freehold of their home.

Fairer and simpler valuations

The financial implications of enfranchisement have proved the greatest obstacle to leaseholders. Since the 1967 Act, which provided a simple and fair basis for valuation, the process has become progressively more convoluted. The result is an absurdly over-complex maze which is intimidating to all except the most determined and which affords huge opportunities for landowners to frustrate the hopes of leaseholders.

One of the most complex elements is the provision for 'marriage value', the added value of owning the property and the land together. This has played an increasingly significant role in valuations in recent years. To streamline and simplify the valuation processes, we believe that it is right to go back to the fundamentally sound logic behind the 1967 Act, which did not include 'marriage value' in the valuation process. Its subsequent appearance has tilted the balance significantly in favour of the landowner, and there is therefore a strong case for it to be deleted.

There is certainly no justification for continuing the current arrangement under which the freeholder is able to apply for anything up to 100 per cent of the 'marriage value' and be guaranteed a minimum of 50 per cent. We would welcome views on whether the concept of 'marriage value' should be removed from the valuation process or whether it should be retained but divided equally between the two parties.

We also propose to review the currently very open-ended terms under which freeholders can claim compensation from leaseholders who exercise the right to buy.

Safeguards are also needed for leaseholders against unreasonable costs incurred by the freeholder in the course of the valuation process. The very fear of these costs, particularly when it is known that the large landowners are able to deploy numbers of expensive professional advisers, can act as a powerful deterrent to leaseholders exercising their rights.

Cutting red tape

Many of the proposals set out above to reform the eligibility criteria and valuation rules will help to speed up and simplify the process, but there is also a need to review some unduly cumbersome procedures in both the 1987 and 1993 Acts.

The rules and timetables set up by the Tory legislation are complicated and bureaucratic and riddled with anomalies. For example the procedures for serving notices and counter-notices alone take 11 Clauses comprising 17 pages of legislation. It is hardly surprising that these procedures have in practice deterred many leaseholders from seeking to exercise their rights. We propose, therefore, a thorough review of all the procedures with a view to eliminating unnecessary, time consuming and costly Tory red tape.

We will also act to close the loopholes which enable landlords to wilfully deny to their leaseholders the opportunity to buy the freehold of their homes.

Efficient estate management

Many leaseholders have over the years felt aggrieved at the lack of easy redress against freeholders or their managing agents who have failed to deliver a good quality service or have been charging unreasonably large fees. The 1987 Act was supposed to allow leaseholders the right to have their own manager appointed by the court but once again the complexity of the Tory procedures and the scope which they allowed landowners to block such applications have prevented leaseholders from deriving any benefit from the legislation.

We therefore propose that a right to manage should be made available to leaseholders. This would enable leaseholders to take over the management of their estate or block of flats without the need to go through a tortuous and potentially expensive legal process. All that would be required would be clear evidence that at least 50 per cent of the leaseholders in the area concerned wish to take over its management. Such a scheme will not only cut out unnecessary Tory red tape but also provide a proper incentive to landlords and their managing agents to deliver a high quality and cost effective service.

A further issue is the future of estate management schemes. Many groups of leaseholders now find that they have little effective defence against unreasonable conditions being imposed by landowners in estate management schemes. The recent example of the Grosvenor Estate Scheme for Mayfair which includes a right for the landowner to enter individual homes on demand has, not surprisingly, aroused widespread concerns.

While retaining a framework for the establishment of estate management schemes Labour believes that it is right that leaseholders should enjoy proper safeguards against arbitrary and oppressive conditions. The onus should be on the landowner to demonstrate the need for the scheme and the support of a majority of leaseholders in the area concerned for its terms. This would act as an incentive for the landowner

to negotiate with the leaseholders to secure agreement on a proposal rather than simply seeking to impose conditions. As the progress of enfranchisement and the extension of commonhold reduces the involvement of landowners the framework for Estate Management Schemes will in any case need to be adapted. It is right that they should increasingly reflect the concerns of the residents rather than a single landowning interest.

Conclusion

This paper has set out a range of policy proposals to tackle the problems confronting leaseholders and to pave the way for a new and more appropriate tenure framework in the future. We would very much welcome comments and suggestions on the issues covered by this paper and the specific policy approaches which we have outlined. All comments should be submitted in writing to Nick Raynsford MP, Shadow Minister for Housing, House of Commons, London, SW1A 0AA.

Further copies of this paper can be obtained from Labour Party Sales, John Smith House, 150 Watworth Road, London, SW17 1JT, price £2 per copy.