

Rt Hon Chris Huhne MP
Secretary of State for Energy and Climate Change
Department of Energy and Climate Change
3 Whitehall Place
London SW1A 2HD

10 June 2010

Dear Mr Huhne

Congratulations on your appointment to the new Cabinet as Secretary of State for Energy and Climate Change.

I am writing to you on behalf of The Federation of Private Residents Associations who are members of the End Fuel Poverty Coalition and a national not for profit organisation that represents the interests of long leaseholders which we do via their Residents' Associations.

Our organisation has been an active supporter of the previous Government's policy on energy efficiency and climate change, however we are concerned that the one to two million leasehold flats in the UK (a significant proportion of homes) are effectively being excluded from carrying out many home insulation initiatives as a result of conflicts with legislation or because there is no provision for this in their leases.

Much legislation on energy efficiency and certainly the legislation that provides for Grants currently exclude many of those people living in leasehold flats because the grants are aimed at individuals that purchase in their own names rather than through communal arrangements. It is not practicable for the leasehold owner of a flat to take most of the steps that a house owner can take to improve the energy efficiency of his or her home. Measures such as loft insulation and cavity wall insulation obviously have to be taken for the block as a whole.

As you are no doubt aware, almost invariably long leases of flats provide for works to the exterior, and on the internal common parts, to be funded by a service charge payable by all leaseholders. For good reasons, most leases provide for service

.../2

charges to be levied for repair and maintenance of existing facilities and make no provision for "improvements". The typical flat owner is likely to find that he is not able to install loft insulation or cavity wall insulation because the roof space and the cavities in the external walls belong to the ground landlord, and not to him. In most cases the windows will also belong to the ground landlord, and replacement of single-glazed windows with double glazed sealed units may well be counted as an improvement, which the ground landlord cannot therefore fund via the service charge, or indeed in any other way.

If the new coalition government is to succeed in reducing CO2 emissions from our homes we believe there needs to be serious consideration given to the situation for long leasehold flats and work in conjunction with your colleagues at the Department of Communities and Local Government (Leasehold Reform Branch) and enter into discussions with ourselves as we believe with a few simple changes to leasehold legislation we can make existing blocks of flats as energy efficient as those flats built today.

Essentially, we believe that this could be achieved in the following way. Section 35 of the Landlord and Tenant Act 1987 already provides for long leases of flats to be varied by the Leasehold Valuation Tribunal if they are defective in certain designated ways (e.g. if the service charge arrangements are defective, or if there are inadequate provisions for insurance). We are suggesting that s 35 should be amended to provide that the failure of a lease to make adequate provision for the reasonable insulation of a property should be a ground for its variation. Section 35(2)(g) of the LTA 1987 (added by 162(3) of the Commonhold and Leasehold Reform Act 2002) already makes provision for additional grounds for variation of leases to be added to s 35 by Regulation, so this is a matter which could be dealt with by Statutory Instrument and not by primary legislation. Expressly providing that the lease should provide only for "reasonable" insulation would automatically mean that, in the event of any dispute arising as to whether the measures proposed were reasonable, a further application could be made to the Leasehold Valuation Tribunal under s 19 or s 27A LTA 1985 in order to resolve the issue.

.../3

We look forward to hearing from you on this important matter.

Yours sincerely

Bob Smytherman
The Federation of Private Residents Associations Ltd.

Disclaimer: - FPRA only advises our member associations - we cannot and do not act for them. Opinions and statements offered orally and in writing are given free of charge and in good faith and as such are offered without legal responsibility on the part either of the maker or of FPRA Ltd. All questions and answers are passed to our newsletter and website editors and may be published (without name details) to help other members.