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From: FPRA
To: paul.watling@london.gov.uk
Cc: 'Stephen@FPRA.co.uk' ; 'FPRA'
Sent: Tuesday, August 09, 2011 12:50 PM
Subject: London Assembly Leasehold Service Charges Review

Dear Mr Watling,

Many thanks for your email. We are a national body that represents the interests of long leaseholders in England and Wales which we do via their Resident Associations, Resident Management Companies, Right to Manage Companies and similar groups.

The issues you raise will be of significant interest to our London members; however we are unable to respond on their behalf due to our limited resources as a non-profit organisation. We will of course make them aware of the call for evidence.

We would however, ask that in your deliberations you give careful consideration to how Section 20 consultations impact upon smaller blocks of flats and estates in the leasehold sector.

The Federation of Private Residents Association have asked the Secretary of State for Communities & Local Government to use his powers to increase the financial limit under Section 20, so as to reflect the effects of building cost inflation since the present £250 limit was set 10 years ago.

We would welcome the support of London Assembly to influence the Government on this important issue for leaseholders in small blocks in particular where the Residential Management Companies (RMC's) are facing a huge bureaucracy carrying out ordinary day to day maintenance in their buildings.

Here is an example of the sort of 'red tape' we face:-

You apply for a dispensation from the process for urgent works such as the replacement of a lift at say a cost of approx £20000. After the usual tedium of filling in the forms you eventually have a tribunal site visit and hearing.

As a relatively small group of flats; each having a share of the freehold company, and have previously set aside sufficient monies to cover the cost of the lift as part of responsible budgeting.

The current problem is:-

1. Section 20 procedures are far too complex and perplexing to leaseholders who generally want their RMC to just get on with the job.

2. There are huge costs to the taxpayer in dealing with S20 applications when they have to be considered by a Leasehold valuation Tribunal (LVT)

3. As a small RMC they would rather spend time getting the best quotes and value for the leaseholders than spend time filling in paper and bombarding leaseholders with statutory letters from both the RMC and the Tribunal service.

4. The current 'hurdle' rate to have to comply with Section 20 is so small there will be many items falling into the S 20 category. e.g fence repairs, painting, etc (all very mundane every day items)

5. We appreciate the general need for safeguards to tenants but some more leeway needs to be given to small RMCs if we are to avoid a general paralysis in decision making and implementation.

6. The alternative to the problems indentified above will be to ignore S 20 which would totally counter productive to good block management., alternatively one way of quickly saving the taxpayer money and meeting the objectives of the 'Big Society' is by cutting out much of this red tape and to raise the £250 threshold to 'say' £1250 with a corresponding increase for the recurring contracts.

The Secretary of State could make such a simple change using existing powers without the need for primary legislation and we believe this would free up voluntary Directors of
RMC's from a huge amount of pointless 'red tape' when managing their blocks of flats.

We would be grateful if Planning and Housing Committee could raise this matter with Rt Hon Eric Pickles MP at the most appropriate opportunity in Parliament.

Another big issue for our members is the role out of the Green Deal as part of the Energy Bill.

The FPRA recently gave the following presentation to the Green Deal Consent Barriers and Retaliatory Evictions Working Group at The Department of Energy and Climate Change on 8th August 2011

The FPRA have long been concerned about the issue of energy efficiency for long-leaseholders living within blocks of flats due to the very complex nature of most leases.
It is however for very good reasons that most leases don't allow for 'improvements' to be carried out as part of the service charge.

Our legal advisor Dr Nick Roberts research published last year in the New Law Journal proposed a simple change to existing leasehold regulations which would go some way to removing one particular barrier, however it would not provide the much needed incentive for leaseholders to insulate their homes which need to be carried out to the block as a whole which often involves very complex arrangements especially in mixed tenure developments and a number of parties to the lease.

In my own block for instance we have a tripartite lease where we have a Freeholder, RMC as well as leaseholders who vary from being reasonably well of occupiers to those in dire fuel poverty struggling to pay their bills. Who should fund works in such a situation?

It took us over 10 years from the time one leaseholder wrote to our RMC suggesting insulation to be able to complete the works.
Partly as result of our case and others like it in West Sussex working with the local authorities. Arun DC bid and received funding from the Regional Housing Board for a pilot Flats Project for West Sussex which has just come to an end. This project highlighted many of the problems with some managing agents seeing it as a great opportunity to improve conditions for the leaseholders and other that refused to allow cavity wall insulation, at all.

The project was led by Arun DC and covered all of West Sussex and was started by their full time Energy Efficiency Officer Jo Brooks who in addition to her work with the Council, Jo has just finished studying for an MSc with the Advanced Environment and Energy Studies at Centre for Alternative Technologies. Jo has recently completed a thesis researching the barriers and solutions to improving the thermal efficiency of private sector blocks of flats through insulation.

Jo has done a literature review of existing research and carried out a on-line survey of leaseholders with the FPRA to try bring together into one document all the issues and also to try and plug any gaps through interviews, case studies and ideas. Unfortunately this thesis is yet to be marked and therefore I am unable share the results with you today.

Issues with the Green Deal

Some existing research has modelled that in medium to high rise buildings, the energy/carbon savings that could be seen in top floor flats are different to those on middle floors and significantly different to those on the ground floor within the same building even when the same measures are offered. Also there seems to be some presumption that a block of flats is divided into flats of even size, but this is certainly not the case in many situations. In highly exposed buildings or any building with mixed size flats within t would therefore seem wrong to install a measure for the whole building and then based on carbon savings, divide the cost up equally amongst the number of dwellings in the block even though this what most leases demand.

There is also the question of access costs with the Green Deal? Are these to be included in a Green Deal loan? And if they are what is reasonable? Scaffolding, Cherry Pickers or Abseil? Sometimes the cost of access can be equal to or even more than the insulation measure itself!

Most blocks of flats in the private sector are co-owned and a number of parties are involved with each building including freeholder-landlords, leaseholder-landlords, leaseholder-owner-occupiers and short hold tenants, not to mention residential management companies and letting and managing agents too. In some circumstances the freeholder can even be a social landlord and the tenants private. Leases vary from flat to flat and block to block and the whole sector struggles from a lack of national regulation; the responsibilities of the various parties mentioned above can vary significantly which makes improvements to these buildings very difficult to implement.

How can the 'golden rule' be fairly applied to such complicated buildings, given the clear differences expected in carbon savings between floors and flats (and that is before you even consider extras such as balconies, under floor car ports and variable sized flats in a single building).

Often energy efficiency improvements such as wall insulation will have to be applied to 'common parts' such as the wall cavity and would have to be done the whole building in one go, affecting all dwellings at one time.

We would suggest that for these reasons blocks of flats/apartments in the private sector, especially those where works would need to be done to common parts, would best be treated as a separate entity under the Green Deal so that these issues are correctly and fairly addressed.

We also have specific concerns for the private rental sector with regards to blocks of flats. There is strong a case for minimum standards of energy efficiency to be applied to the private rental sector, eventually with the hope of removing G and F rated rental properties from the market through local government enforcement, which is something we support as a principle.

Although there is a real issue for local government to have the capacity to deal with this in some areas of the country.

Unfortunately however , by just applying this to the rental but not owner-occupier sector this is likely hit problems in a building owned and lived in by many different parties that would actually benefit most from measures being applied on external walls or in shared, 'common parts'.
If leasehold landlords were made to upgrade G and F rated flats in such buildings, they may be forced to either simply stop renting flats in such buildings as they cannot upgrade them without the rest of the building agreeing (which on mass may lead to rental property shortages).

Alternatively some will just panic and install inappropriate measures to raise the SAP rating of that flat to meet the minimum standards to enable them to let or sell their flat, this could lead to huge problems in the long term as the internal insulation can move dew points to the inner leaf leading to condensation mould build-up or cause thermal bridging trouble where floors and walls meet, whereas external measures do not have this trouble.

We agree that leaseholders of flats are used to sharing all expenses equally and any proposals that require a detailed cost benefit analysis, distinguishing flats with one or two external walls, or on the ground or top floor, is in our view doomed to failure.

Finally, I have some legal comments,

We believe there should be further studies done to mitigate against any unintended consequences and whether Nick's proposal on s 35 LTA 1987 should be extended to cover 'whole building energy efficiency improvements' will need significant further work. The FPRA are, however unlikely to favour this, as it is contrary to the principle of S 35 which deals with MANDATORY variation of leases on matters where a lease is

DEFECTIVE, not matters where it would be a good idea to improve them. Such as insulating homes.

We believe it would be muddying the waters to include improvements in s 35 because if we do this for energy efficiency improvements, why not for others?
What next installation of barriers to control parking?

Variations to leases to deal with improvements fall more naturally within the alternative jurisdiction under s 37 LTA 1987, which deals with DISCRETIONARY variations, and requires a substantial majority of leaseholders to be in favour of the scheme, the support of at least 75%, and not more than 10% actively opposing though the landlord, including an RMC, counts as an additional party.

If there is this 'super-majority' and the LVT agrees it is reasonable, the wishes of the minority can be overridden. This could be done as the law stands, without the need for either primary or delegated legislation.

It is not just a case of 'clarifying' s 35 LTA 1987 as it stands to cover insulation measures.
We could, however, make a case for clarifying s 37, which says little about how the LVT is to go about exercising its discretionary jurisdiction, except that 36(6) (b) talks about the variation not being affected if it would not be "reasonable in the circumstances".

We look forward to hearing from you.

Yours sincerely

Bob Smytherman
Chairman
The Federation of Private Residents Associations Ltd.