



Tenants Association
of the National Trust

longleases@nationaltrust.org.uk
Longleases@tantuk.org
Direct line: +44 (0) 1793 817686
29 September 2020

Name
Address

Dear

'Long lease property name'

We wrote to you in September 2019 about your long lease and the consultation paper that the Law Commission had published the previous year in which they made provisional proposals for reform of the law relating to long leases.

This is to remind you of those proposals; TANT and National Trust's response; and to let you know what the Law Commission has now recommended.

What were the proposals?

The proposals the Law Commission made covered all aspects of law relating to long leases. It set out a number of ways in which it could be made easier and cheaper for leaseholders to extend their leases. A section of the consultation paper also considered the unique position of National Trust leaseholders and asked how those leaseholders should be treated under a new system.

In our last letter we let you know about the joint proposals that TANT and National Trust made in response to the Law Commission's consultation and how National Trust leaseholders could extend their leases.

In summary, we jointly proposed that:

- Most of our long leaseholders should have the same statutory right to a lease extension as any other long leaseholder. We explained to the Commission that we would be willing to see these leases extended to 999 years.
- However, once a lease has been extended, the National Trust should have the opportunity (if it so wishes) to buy back the lease at market value whenever the leaseholder wants to move on from their property.

Whilst there are some properties to which this proposal would not be applicable, we confirmed that it was proposed that it would apply to the lease of the property specified in this letter (provided the lease is held by an individual person (or people) and not by a corporate body or other organisation).



Swindon
2NA
03 817400
03 817401
ust.org.uk

President: HRH The Prince of Wales
Chair: Tim Parker
Director-General: Hilary McGrady

Registered office:
Heelis, Kemble Drive, Swindon, Wiltshire SN2 2NA
Registered charity number 205846



What has the Law Commission recommended?

The Law Commission has now published its recommendations and we are pleased to see the Law Commission has largely adopted the joint proposals we put forward. These sought to give the majority of our leaseholders the security they need whilst protecting inalienable properties for the nation, for ever.

In summary the Law Commission has:

- Agreed with our proposal that National Trust leaseholders should have the right to extend their leases in the same way as other long leaseholders. This is recommended as an extension of **990** years to the existing term, in return for a premium, and at a peppercorn rent.
- Agreed that National Trust should have the right to buy back the leases at market value when leaseholders want to move on from the property.
- Agreed that some specific properties (those open to the public and those leases to historic families) should be exempt from the right to have an extended lease.

Government had additionally asked the Law Commission to think about ways they could make it cheaper for all leaseholders to extend their leases and the Law Commission has published options which they suggest that the government explore. There is no one formal recommendation for how lease extensions should be valued under this new regime at the moment.

What is likely to happen next?

These recommendations from the Law Commission are put to Government and it is for Government to decide if and when they will introduce any changes to the law. We understand there is parliamentary protocol that indicates that the Government might provide an interim response to the Law Commission within 6 months of publication, and a full response within a year, setting out which recommendations they will take up and a time scale for implementation. However, this timeframe is not binding.

In the meantime, the National Trust will continue to work within the current law, and our position on granting voluntary extensions will not change for your property. Until the Government introduce any changes to the law, the current right to a statutory 50-year lease extension will additionally continue to be available for qualifying leases.

We will be monitoring how the Government responds to the proposal and we hope that this update on the current position is helpful.

We have also included a question and answer sheet, but please do contact me if you have any questions, or send an email to NT long leases or TANT long leases (addresses above).

Yours sincerely

Lead estate manager for region

Cont/d



September 2020 Questions and Answers

The Law Commission's Enfranchisement Reform Project: "Leasehold home ownership: buying your freehold or extending your lease"

What is the Law Commission?

The Law Commission is an independent body set up under statute to keep the law of England and Wales under review and to recommend reform where it is needed. The aim of the Commission was to ensure that the law is fair, modern, simple and cost effective. Public consultation is a very important aspect of the Law Commission's work. Whenever it looks to reform an area of law, the Commission always carries out a public consultation to hear the views of as many people as possible before making its recommendations to the Government.

What is enfranchisement?

Where property is held on a lease, the leaseholder's ownership of the property is time-limited. Eventually, the lease will run out and the leaseholder's right to remain in the property will come to an end. This also means that leasehold properties decrease in value over time, as the time remaining on the lease decreases. It can be very hard to mortgage or sell properties which do not have many years remaining on the lease – many lenders require a remaining lease term of at least 70 or even 80 years.

The current law provides most long leaseholders of residential properties (i.e. those with a lease of more than 21 years) with a number of rights:-

- Leaseholders of houses have the right to extend their leases, once, by 50 years, provided they meet certain qualification criteria set out in statute. They may also have the right to purchase the freehold of their property, so that they no longer have a landlord at all and own their property forever;
- Leaseholders of flats have the right to extend their leases, as many times as they wish, for 90 years at a time. By joining forces with other leaseholders in the block, they can also purchase the freehold of their block of flats.

These statutory rights are often described as "enfranchisement rights". In most cases, leaseholders must pay a sum of money – or "premium" – to their landlord, calculated in accordance with a statutory formula, to exercise their enfranchisement



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rights (though in the case of a lease extension of a house, a “modern ground rent” is payable during the extended term in place of a premium).

Do National Trust leaseholders have enfranchisement rights under the current law?

There are some important exceptions to the enfranchisement rights described above. One exception is for leases of “inalienable” National Trust land. Most National Trust land has been declared “inalienable”. This special status ensures that National Trust properties are protected forever for the benefit of the nation. Once the National Trust has declared land inalienable, it is unable to sell or transfer the land (although it can lease the land).

Where inalienable land is concerned, the current enfranchisement rights of National Trust leaseholders are different:

- Leaseholders of National Trust houses have the same right as all other leaseholders to a single lease extension of 50 years under the terms of the Leasehold Reform Act 1967, provided they meet certain qualification criteria set out in statute. But, unlike other leaseholders, National Trust leaseholders do not have the right to purchase the freehold of their house;
- Leaseholders of National Trust flats have no enfranchisement rights whatsoever;
- The National Trust has chosen to waive the modern ground rent payable during the statutory lease extension for most long leaseholders.

National Trust leaseholders who have no statutory right to a lease extension can of course ask the National Trust for an extension on a voluntary basis, but the National Trust is not legally compelled to grant such a request. The National Trust recognises that this causes difficulties for these long leaseholders.

What has the Law Commission proposed?

The Law Commission was asked by the Government to review the law relating to the enfranchisement rights of all long leaseholders (not just National Trust leaseholders). The National Trust and TANT jointly responded to the Law Commission consultation launched in 2018 to suggest improvements to the ways in which National Trust long leaseholders could extend their leases.

In July 2020 the Law Commission published its report called ‘Leasehold home ownership: buying your freehold or extending your lease’. In that paper, the



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Commission set out 102 recommendations for reform. They are detailed and extend to over 860 pages. They cover all aspects of enfranchisement law, including qualification criteria, procedure, dispute resolution, and costs. The key recommendations for National Trust leases largely follow the proposals put forward by the National Trust and TANT. They are:-

- that National Trust leaseholders should have the right to extend their leases in the same way as other long leaseholders. This is recommended as an extension of **990** years to the existing term, in return for a premium, and at a peppercorn rent;
- that the National Trust should have the right to buy back the leases at market value when leaseholders want to move on from the property;
- that some specific properties (those open to the public and those leases to historic families) should be exempt from the right to have an extended lease.

The Law Commission have said:

"In particular we have worked with the National Trust and its leaseholders to devise a compromise position which will enable leaseholders of inalienable National Trust land (with a small number of exceptions) to enjoy the same right to a lease extension as all other leaseholders. The National Trust's unique statutory function in relation to its inalienable properties will be protected by a right for the Trust, wherever a lease been extended, to buy back the lease at market value whenever the leaseholder seeks to dispose of it."

The Commission was also asked to come up with options to reduce the premium payable by leaseholders to exercise their enfranchisement rights, whilst ensuring sufficient compensation is still paid to landlords.

The Law Commission's project is part of a bigger programme of work by the Government to look at how the leasehold housing system can be made fairer for leaseholders.

If you would like to see the Law Commission's recommendations in full, the report is available here: <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

What is the right to buy back?

- When a leaseholder wants to sell, they would be required to offer the property to the National Trust first. If the National Trust does not wish to buy back the lease, it can then be offered for sale on the open market;



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- The right to buy back would apply each time a leaseholder wants to sell their lease. It wouldn't apply to certain disposals, such as a transfer of the lease to a partner in the case of divorce or family separation, or where one existing long leaseholder wants to transfer to a co-leaseholder. Equally, it wouldn't apply where a leaseholder wishes to leave their property to someone under their Will;
- Any buy back by the National Trust would be at the market value for the property concerned. If the National Trust and the long leaseholder are unable to agree what this is, an independent joint expert would be appointed to determine the price.

Why did the National Trust and TANT suggested this approach?

The National Trust recognises that it is important that its long leaseholders have the security of knowing they can remain in their homes for as long as they want to and be able to continue to mortgage them. The National Trust made proposals that will ensure as many leaseholders as possible can continue to do so.

In proposing these measures, the National Trust has tried to set a balance between ensuring that leaseholders have the certainty of knowing that they can remain in their properties for as long as they wish and the National Trust's desire to protect the inalienable status of its land. It is important for the National Trust to retain the ultimate ownership of properties on National Trust estates so that historic estates can be kept together as far as is possible for future generations to enjoy. However, if leaseholders are able to purchase a 990 year lease extension in the way proposed by the Law Commission then long leaseholders will have the certainty of knowing they can have both the right to remain in their homes and be able to continue to mortgage them.

How much will a lease extension cost?

It isn't possible to answer this question at present. The Government recognises that buying a lease extension can be expensive. They asked the Law Commission, as part of its review, to look at ways in which this cost could be reduced.

On 9th January 2020 The Law Commission published a report proposing options for reforming the valuation process. They set out a range of options to reduce the cost to leaseholders of extending their leases using 3 key schemes with 7 sub options.



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The Law Commission have not made a recommendation as to which of these options should be used to calculate premiums as this is not just a legal question but includes valuation and public policy issues. As such, it is a matter for Government to decide.

There are many variables in the calculation of lease premiums and until Government decide which of these methods will be used we cannot tell you what this means for your lease. However, the report can be found at <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/> where you can see several hypothetical examples. Additionally, you can download a summary report which explains in more detail the various variables and why the Law Commission have not recommended any one valuation methodology.

The key thing is that the Law Commission was asked to examine options to reduce the cost to leaseholders of extending their leases whilst ensuring sufficient compensation is paid to the landlord. Therefore, the aim of the recommendations is to reduce the overall cost to leaseholders of extending leases. The Law Commission have also suggested that whatever method is used, an online calculator should be developed so that leaseholders can understand more easily the cost of extending leases.

What will the rent be under the extended lease?

The rent payable under an extended lease will be a peppercorn (effectively nil or very close to nil) ground rent.

What is the view of the Tenants Association of the National Trust ('TANT')?

TANT has recognised the problems for National Trust long leaseholders under the current law and has become aware of the difficulties leaseholders have experienced over the past few years. TANT has worked hard to represent these leaseholders and welcomed the opportunity of being able to work with the National Trust to find a solution that will benefit both the National Trust's long leaseholders and the National Trust itself. TANT believes that the recommendations which the Law Commission has made strike a suitable balance between the National Trust's desire to protect the inalienable status of its land for future generations to enjoy and its leaseholders' desire to be able to live in their homes for as long as they want.

What Happens Next?

As explained in the attached letter, it is now for the Government to consider the Law Commission's recommendations and decide whether and when they will introduce



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changes to the law. Until that time, the existing law continues to apply. We will however be keeping a close eye on progress.

What should I do next?

As these recommendations are potentially important for you, we would encourage you to take some time to consider the information provided in this note and accompanying letter. You may also want to discuss this matter with your solicitor or other legal advisor.

If you have any questions about the information set out in the enclosed document, do please contact either: -

- The National Trust, by sending an email to Longleases@nationaltrust.org.uk or by writing to the National Trust at Long Leases, National Trust, Heelis, Kemble Drive, Swindon, SN2 2NA; or
- The Tenants Association of the National Trust by sending an email to longleases@tantuk.org