Department for Communities and Local Government

Baroness Williams of Trafford
Parliamentary Under Secretary of State

Department for Communities and Local Government
Tel: 0303 444 3461
Fax: 0303 444 3291
E-Mail: baroness.williams@communities.gsi.gov.uk

www.gov.uk/dclg

Baroness Gardner of Parkes
House of Lords
London
SW1A 0PW

26.4.16

Dear Trixie,

Housing and Planning Bill

Thank you for instigating a very interesting debate at Report last Wednesday on amendments relating to subletting, overcrowding and leasehold. You raised a number of concerns which I expect we will discuss further on Thursday but ahead of our meeting I wanted to write to provide some further clarification on the issues.

Sub letting and overcrowding

I can confirm that the changes to allow short-term letting in London through the Deregulation Act did not change anything about access: they introduced a measure so that planning permission did not need to be sought for letting out property, as long as certain criteria were met, for no more than 90 nights per year. However, the reforms only relate to the requirement to obtain planning permission - they do not alter the terms of any lease which may contain restrictions on the use of property.

On recovery of costs in relation to overcrowding, I can clarify that a local authority could recover costs from the landlord in preparing and serving a prohibition order. This is set out in section 49 of the Housing Act 2004.

Right to manage and voting procedures

Turning to your leasehold related amendments, you highlighted concerns relating to the voting procedure for a Right to Manage Company.

You suggested that while only 50 per cent of leaseholders in a block needed to agree in order to exercise their Right to Manage, having formed a Right to Manage Company very little could be done to resolve problems in a building unless there was a unanimous decision by the members to take a specific course of action.

A Right to Manage Company must adopt and comply with the 'Articles of Association' prescribed by law for this purpose. These are the Right to Manage

Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767), which set out the 'objects' of the Company. Further details can be found at: http://www.legislation.gov.uk/uksi/2009/2767/pdfs/uksi_20092767_en.pdf

A Right to Manage Company is subject to company law in general – and does need to appoint Directors, for example. However, the Right to Manage Company does not need 100 per cent agreement from its Members before agreeing to take a course of action.

The decision making process and appointment/termination of Directors for a Right to Manage Company are set out in the model articles, so a general rule about decision making by the appointed Directors is that there needs to be a 'quorum' present before a decision can be made. Any decision of the Directors of the Company must be either a majority decision at a Directors meeting, or a unanimous decision, where all eligible Directors indicate to each other by any means that they share a common view on a matter (which can take the form of a written resolution). Where votes are equal the Chairman or other Director chairing the meeting has the casting vote. In addition Members of the Right to Manage Company may, by special resolution requiring a majority of 75 per cent of its Members, also instruct the Directors to take, or refrain from taking, specified action.

Where general meetings are concerned, a 'quorum' is required consisting of at least 20 per cent or two members of the company (whichever is the greater) present in person or by proxy entitled to vote on the business of the Company. A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded in accordance with the Articles of Association. Generally there is one vote for each flat cast by the qualifying tenant, and proxy votes are allowed.

I hope the above helps to address some of the concerns raised when debating the Right to Manage.

Sinking funds

On sinking funds, I agree that it is important that there is a clear process in place for managing maintenance and repair costs.

Many leases will already contain provisions for sinking funds, but inclusion in a lease may not be automatic. A prospective purchaser of a leasehold property would be well advised to check whether the lease provides for a sinking fund. The Leasehold Property Enquiry form introduced by the Law Society highlights the amount collected and held in reserve funds and whether this is sufficient to meet expected expenditure on maintenance and repairs for prospective leasehold property purchasers.

I appreciate that Wednesday's debate referred to leaseholders who had lived in their property for a number of years without a sinking fund, who then faced significant charges for maintenance or repairs. The debate highlighted the complexities of the issues regarding sinking funds, especially in Local Authority managed blocks where tenants have exercised their Right to Buy.

My Department will consult later this year on local authorities and housing associations separating out the costs, as far as practicable, of providing services to leaseholders and social rented tenants, to make clear the costs that are being incurred by leaseholders for common services and to explain the allocation of costs in an accessible way. My Department will work with the Homes and Communities Agency and Local Government Association as part of this, building on the findings and recommendations of the 2014 Competition and Markets Authority study into Residential Property Management. This will also provide a helpful vehicle to obtain information on current practice in relation to sinking funds and should identify opportunities to start to address the issues raised in your amendment, proposing workable solutions to them.

I am copying this letter to Lord Kennedy of Southwark, Baroness Andrews, the Earl of Lytton, Lord Beecham, Baroness Maddock and Lord Campbell-Savours.

A copy will also be placed in the House library

Best wishes,

Susan .

BARONESS WILLIAMS OF TRAFFORD