

Reaching Agreement for Energy Efficiency in Flats



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The Freehold/Leasehold Barrier

“There is one big reason for the [relative] lack of progress in improving energy efficiency in blocks of flats: the legal and practical difficulties in freeholders, leaseholders and short-term tenants reaching agreement for improvement works to proceed.”

Prof. Susan Bright



Future Climate

The multi-occupancy problem for energy efficiency improvements

- Multiple owners have diverse interests (eg how long are they planning to stay in the property)
- Benefits of installed measures do not accrue equally

Compared to the much more widely discussed landlord/tenant split incentive problem (which can also apply in flats) the multi-occupancy problem has enjoyed little attention/discussion.



The problem of the lease....

- The majority of leases do not permit freeholders to recover the cost of improvements
- Leases limit what changes leaseholders can make even within individual flats
- Leases can vary greatly, even within the same building
- Leases limit what changes leaseholders can make even within individual flats
- Getting a lease altered unilaterally by a court or tribunal is difficult, rarely undertaken and not permissible for energy efficiency reasons

PLUS

- It is difficult to access specific information on the potential costs and benefits of energy efficiency measures to empower those in the building to make an informed decision
- It can be difficult to bring parties together - absentee landlords are a problem



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Tenure based considerations

Social Sector Experience

- Older leases don't allow improvements
- Disengaged and uninterested leaseholders
- Growing stock of RTBs

Private Sector Experience

- Most leases don't allow improvements
- Disengaged and uninterested freeholders
- Restrictions on leaseholders



Action to Date

- Westminster City Council produced early studies to understand the problem
- TLT Solicitors have provided free legal expertise to develop solutions
- Oxford University have developed an aligned academic research project to study the issue
- Future Climate have co-ordinated activity
- The Association for the Conservation of Energy led efforts to have this issue adopted as a Parliamentary Private Members Bill



Proposals for legal reform: summary

1. **Making it easier to install energy efficiency measures across the whole block**
 - a) “imply a term” in leases to give freeholders power to recharge the costs of basic energy efficiency improvements as with repair and maintenance
 - b) An independent right for resident leaseholders’ to improve their block
 2. **Making it easier to install measures in individual flats**
 - Qualify blanket bans on adaptations so that energy efficiency measures are allowed, and require freeholders not to unreasonably withhold consent in all circumstances
 - An independent right for resident leaseholders (or even tenants) to fit improvements
 3. **Providing the information that freeholders and groups of leaseholders need to make decisions about block level investment in energy efficiency measures**
 - A building level energy survey mandatory every ten years and at key trigger points
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Outcome/Impact

These proposals would open up the opportunity to:

- **Improve the refurbishment rate of flats:**
 - Pre-1980 flats account for 70% of all flats – and over half of them have no wall insulation at all. This means that residents face unnecessarily cold winters and are at greater risk of ill health and mounting fuel bill debt.
 - Twenty-one per cent of English homes are flats. Flats are being refurbished with insulation and double glazing at a far slower rate than houses. One in every ten top floor flat (of all ages) has no loft insulation at all
- **Making ECO and other policies reach flats:**
 - Only 4.9% of ECO affordable warmth funding went to flats
- **Converted flat problem:**
 - converted flats are the coldest and least energy efficient homes in the housing stock.
- **Ensuring 2018 Minimum PRS standards aren't compromised**
- **Make advanced block wide refurbishment possible:**
 - Enable progressive landlords to move ahead with approaches such as EnergieSprong



Summary and Conclusions

- This is a problem that will need to be overcome if the Government is to achieve its energy-saving and fuel poverty targets: 23% of the remaining uninsulated cavity wall homes are flats and 26% of the remaining totally uninsulated lofts.
- The English Housing Survey reveals that 17% of flat residents can't keep their home warm in winter, higher than the corresponding 10% in houses.
- There is strong precedent for what we propose – Scotland and France have amended their laws to place energy efficiency works on the same footing as repairs and maintenance. With relatively straightforward amendments, English law can be updated to allow flat owners to make their homes and buildings warm, comfortable and healthy.



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