

Futureproofing Flats: Proposals to make it easier for energy efficiency improvements in blocks of flats

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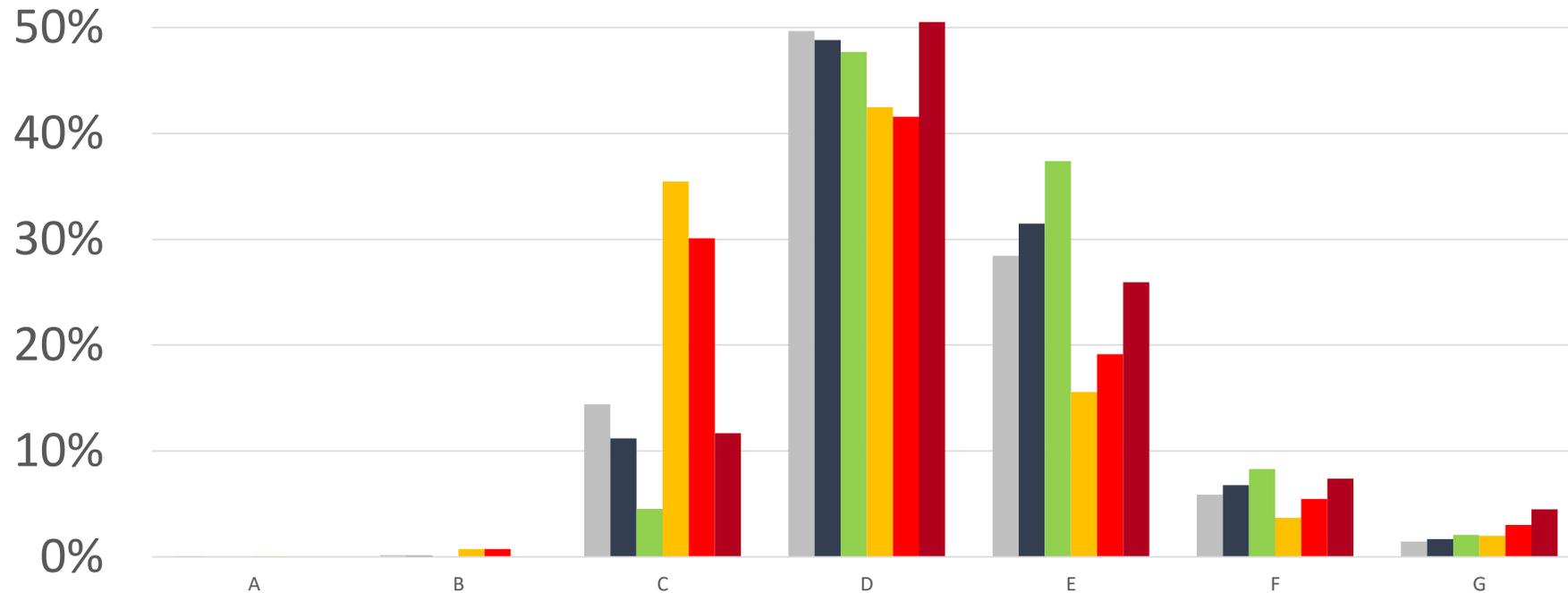
A cross-sectoral partnership

- Professor Sue Bright, Professor of Land law, University of Oxford
- Irene Fernow, Public Health, Westminster City Council
- Mark Routley, Partner, TLT Solicitors
- Jenny Holland, Association for the Conservation of Energy
- David Weatherall, Director, Future Climate
- Dr Frankie McCarthy, University of Glasgow Law Department

Refurbishment rates, flats vs houses (English Housing Survey)

	Pre-1980 houses	Pre-1980 flats
No loft insulation (percentage of top-floor flats only)	4.3%	17.9%
No double glazing (all flats)	4.3%	14.5%
Uninsulated cavity walls (cavity walled homes only)	33.8%	50.1%

SAP (energy performance) ratings



■ All

■ All private pre 1980s props

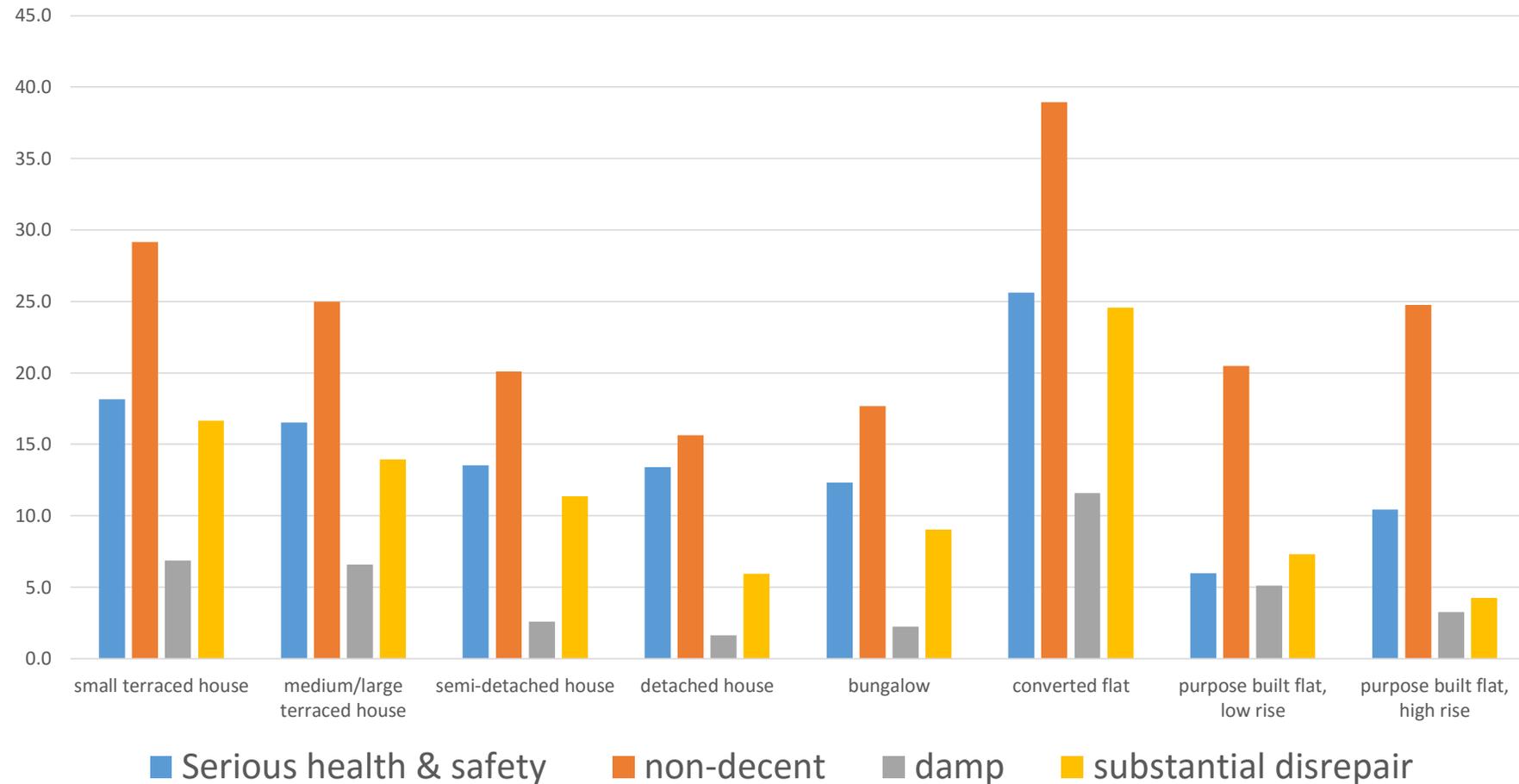
■ All private flats

■ All private sector pre-1980 properties

■ All flats

■ All private flats pre-1980

Disrepair, damp and health hazards (2013 data)



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 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.
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- 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 particularly in private housing.

Leases and the PRS minimum EE regulations

- PRS landlords and any freeholder or other superior landlord of a PRS property “cannot unreasonably withhold consent” where a tenant or landlord/leaseholder wants to install energy efficiency measures
- Even so several ways in which leases may be barriers to works, for example:
- Leases may impose a blanket restriction on alterations or structural works
- Leases may oblige freeholders to enforce lease terms
- One example real lease says [leaseholder is] “Not to make any structural alterations or additions to the Premises or any part therefore or any alterations to the exterior of the Premises and not to alter the colour texture or appearance of any glass in the windows”
 - So the key question in this example: what is a structural alteration?

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
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

Approach 1a: Government could “imply a term” into all repairing leases

- The Government could introduce legislation that would imply into any lease which imposes a repairing obligation on the landlord, wording to the effect that "maintain and repair" includes carrying out energy efficiency measures where they are "qualifying improvements".
- Qualifying improvements could be:
 - Basic energy efficiency measures:- cavity wall insulation; loft insulation.
 - Any improvements required to bring flats in the block out of the F/G EPC band or to alleviate a Category 1 hazard;
 - Any measures that meet a cost-effectiveness threshold and/or can be funded through grants.
- Existing protections against unreasonable actions (eg where leases are about to expire) would apply under Landlord and Tenant Act 1985

Approach 1b: an independent right for a majority of leaseholders to undertake energy improvements to the block.

- The proposed right to make energy improvements would override lease wordings. Where a majority group of leaseholders want to install measures they would create a “right to improve” company.
- Non-resident leaseholders would not be allowed to vote. Freeholder would have one vote
- A consultation process similar to that required under the Landlord and Tenant Act 1985 would ensure minority views on the works and costs are taken into account.
- The process of setting up the right to improve company would mirror that already in place for leaseholders to set up right to manage companies.

Approach 2: Removal of barriers to leaseholders carrying out improvement works inside their flats

- Where a covenant in a long lease prohibits a leaseholder from making alterations, additions or improvements, either absolutely or without the consent of the landlord.
- New legislation would restrict such covenants, such that, where the work is an energy efficiency improvement the landlord cannot unreasonably withhold or delay his consent.
- “It will not be reasonable to refuse consent if the energy efficiency improvement does not cause any structural or other harm to the building or substantially interfere with the rights of others in the building or parts thereof”
- This is effectively a more robust way of legislating the “not unreasonably withhold consent” principle established in the Tenants Energy Efficiency Improvement Regulations (TEEIR) :
 - Removes blanket prohibitions on alterations that currently would be reasonable grounds for withholding consent
 - Extends to cover all leasehold properties – not just private rented sector properties
- Note this proposal benefits leasehold houses as well as flats

Approach 3: A solution to help freeholders and leaseholders make informed decisions on improvements to blocks of flats

- A requirement for the freeholder (or other party having control of the building) to undertake an energy efficiency survey of the whole building
- Parallels flat-level EPC
- The costs of the survey could be recovered from leaseholders by implying a term (see above) into leases
- Production of the survey could be required every ten years and at trigger points such as enfranchisement (when leaseholders assert their right to jointly buy the freehold), when leaseholders utilise their right to manage, or appointment of a managing agent.