Grounds for concern:
Leasehold reform and the future of home ownership

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Summary

- Home ownership in the UK comes in two main varieties: freehold and leasehold. 'Freehold' is 'home ownership' in the way most people probably understand that term: undivided, unconditional and permanent ownership. 'Leasehold' denotes a more limited form of ownership, which is not permanent (although typically very long-term), and which is shared with an 'ultimate owner' (the freeholder, who retains residual property rights).
- Leasehold can be a way to manage interdependent properties (e.g. a block of flats), which benefit from common rules (e.g. because structural alterations to one unit could affect other units) and which share communal facilities (e.g. gardens, hallways, stairways). In such cases, it is the freeholder's responsibility to lay down and administer those common rules and to manage the maintenance of communal spaces.
- Leaseholders have a statutory right to buy the freehold to their property ('enfranchisement'), or to extend their leasehold, in such a way that it is guaranteed to outlive them. The leaseholders of a block of flats have a statutory right to collectively take over the management of that block.
- While leasehold can have its uses, various studies of the sector have documented a number of common problems and shown a high level of dissatisfaction among leaseholders. Service charges and administrative charges are often perceived as excessive and opaque. Many leaseholders believe that they have not been properly informed about the nature of their arrangement, which later leads to unpleasant surprises. The statutory processes for enfranchisement, leasehold extension and collective self-management have been described as costly, time-consuming and overly complex.
- Freehold is by far the most common type of property ownership in the UK, accounting for more than four out of five housing units, but the leasehold sector has been growing over the past two and a half decades. Successive governments have been worried about the rise in leasehold sales and the problems reported in the sector. After a long-running process of public consultations and expert commission inquiries, the government is currently rolling out a far-reaching reform package.
- These reforms are an attempt to improve the functioning of the market by increasing transparency and strengthening leaseholders' rights. But there are also grounds for concern. For example, under the new system, there is a blanket ban on ground rents (the residual rents leaseholders have to pay to their freeholders) for new leaseholds. Ground rents, however, are a perfectly legitimate charge. They are a recognition of the fact that the freeholder is the ultimate owner.
- For houses (as opposed to flats), there will be a ban on new leasehold sales altogether, on the grounds that the government does not see a case for the existence of leasehold houses. This is a strange approach: we do not normally ban products on the grounds that politicians do 'not see' why those products should exist. If a product has willing buyers, then that is justification enough.
- The government itself recognises a legitimate role for leasehold houses under some circumstances, which it why it has created a series of exemptions from its leasehold ban. However, the exemptions from the ban drive home the problems with the ban itself, because the exempt cases are often not that different from the non-exempt ones.
- Ultimately, the rise in leasehold sales cannot be viewed in isolation. It is just another response to the UK's overall housing crisis. Since 1995, UK house prices have increased by a factor of 2.8 in real terms, compared with an OECD average of 1.5 and a Eurozone average of 1.4. Under these circumstances, homebuyers will naturally lower their sights in various ways. This can mean settling for a less desirable property or neighbourhood, but it can also mean settling for a downgraded form of ownership, which does not come will all the rights and benefits of full ownership. That is what leasehold is. If the government wants to solve that problem, it has to think more holistically and address the causes of the overall housing crisis – not try to regulate every detail in any one specific subsector.

Introduction

Home ownership in the UK comes in two main varieties: freehold and leasehold. Freehold is by far the most common one, accounting for just over four in five housing units in England,[1] and it refers to 'home ownership' in the way in which most people presumably understand that term. A freeholder owns both the land, and the building(s) upon it, in perpetuity. Subject to planning constraints and building regulations, they can do whatever they please with their property.

Leasehold, on the other hand, refers to a system of 'layered' property rights. Layered property rights are not an unusual arrangement. For example, if you own a book, what you really own is the physical copy and the right to consume the content. But you do not own the content as such. You do not have the right to reproduce it and sell copies, or to turn it into a theatre play. Such actions would require permission from the copyright owner, who retains residual property rights, even if they have no claim on your particular copy. In other words, what we casually describe as 'ownership' is really a bundle of ownership rights, which can be split between two or more parties.

Home ownership rights can be similarly split, namely by creating a leasehold, or rather, by 'carving' a leasehold out of a freehold. A leaseholder owns a home for a specified period and subject to certain conditions. But the freeholder retains certain residual ownership rights, and once the leasehold expires, the property reverts to them (or their heirs).

Technically, the freeholder still owns the land and typically the outer walls of the building, so in this sense one could think of leasehold as a status that is somewhere in between a tenancy and full ownership. However, the current freeholder no longer has any rights of use, or rights of access, to the parts of the property that are technically still theirs, and in most cases, they never will again. This makes a dividing up of which wall belongs to whom a somewhat academic exercise. 'Layered property rights' is the more useful way to think about it.

On a day-to-day basis, leasehold ownership can look very much like freehold ownership. But there are a couple of important differences. For example, a leaseholder does not have an automatic right to make permanent alterations to the property. A typical leasehold agreement will rule out some changes outright and require the freeholder's permission for others. Nor will leaseholder(s) be directly involved with commissioning property maintenance services, or purchasing building insurance. These remain the freeholder's responsibilities, unless they are specifically transferred to the leaseholder(s). The cost, however, is passed on to the leaseholder(s), in the form of service charges. Leaseholders also have to pay an annual ground rent to the freeholder, recognising the latter's residual property rights.

There are about 4.3 million housing units in England which are owned on a leasehold basis, or just under one fifth of the English housing stock (Wilson and Barton 2019: 13-15). Leasehold ownership is common for flats, but not for standalone houses: just over half of all flats are leasehold properties, but only about 7 per cent of houses. The outlier here is the North West region, where leasehold ownership is common for houses as well.

Leases run for at least 21 years, and usually far longer than that: most leasehold arrangements can be expected to outlive both contracting parties. 90 years, or 120 years, are common durations (HomeOwners' Alliance n.d.). The value of a leasehold property declines as the leasehold's expiry date approaches.

Historically, leasehold used to be a strictly time-limited (if very long-term) form of ownership. But this feature has been weakened over time. In the late 1960s, owners of leasehold houses were given a statutory right to purchase the freehold of the home, even if the freeholder did not wish to sell it. In the early 1990s, this statutory right was extended to leaseholders of flats, or rather, the leaseholders of a block of flats were given the right to purchase the freehold of the block collectively. They were also given an individual right to extend the length of their lease by a period of 90 years, in exchange for a premium.

[1] This briefing will mainly concentrate on the situation in England. The situation in the devolved administrations can differ.

These measures turned leasehold into a semi-permanent arrangement, and strengthened the position of leaseholders vis-à-vis freeholders.

Leasehold ‘extension’ is, strictly speaking, a misnomer, because extending a leasehold via the statutory process does not simply mean adding more years to its duration. It means replacing the existing leasehold with a new one, which does not just last longer, but which is subject to different conditions. In particular, after the extension, the leaseholder is no longer liable to pay ground rent.

When the statutory process is used, neither the purchasing of a freehold nor a lease extension are entirely voluntary transactions, since the freeholder cannot refuse. As a correlate of this, freeholders cannot simply demand whatever premium they see fit, because otherwise, they could thwart the transaction by demanding an impossibly high premium.

The price is set through a statutory valuation process. The details of this process are complex (Law Commission 2020), but the basic idea is that the leaseholder has to compensate the freeholder for at least the lost income stream from future ground rents, and for the fact that the property will now no longer revert to them at the end of the initially agreed period.

Why does leasehold exist?

Historically, leasehold has often been used as an urban planning tool – not ‘planning’ as in ‘state planning’, but private planning (Davies 2002). Housing development involves various forms of externalities, as properties are interdependent. For example, if a building is completely out of character for its neighbourhood, it can reduce the value of the properties around it. In addition, urban amenities often have characteristics of public goods. The residents of a street or a neighbourhood may all have an interest in the provision of street lighting, or in the creation and maintenance of a communal space. But if there is no mechanism for charging their beneficiaries, such goods may be underprovided.

Nowadays, these issues are addressed via state regulation of residential development (e.g. planning laws, building codes) and state provision of public amenities. But this was not always so. In the eighteenth and nineteenth century, owners of larger estates often acted as private ‘mini-planners’.

It was common for them to parcel out their land, and sell different parts to different developers, while still prescribing some common rules for the entire area. They would, for example, impose regulations regarding the size, layout and appearance of buildings, and the kinds of activities that could take place within them. They would ensure that communal amenities were provided and maintained. Landowners had an incentive to do so, because an appropriate set of rules, and an attractive mix of communal amenities, would increase the value of the land, and thus the price they were able to sell it for. Leaseholds, with residual property rights held by the original owner, were one mechanism to achieve this.

Leasehold has long lost that original function, as urban planning has become almost exclusively a government function, leaving next to no room for private urban planning. But albeit greatly reduced in scale and scope, a faint echo of that earlier economic logic behind the concept of leasehold still survives.

As mentioned, most flats are leasehold properties, while only a minority of houses are. There is a reason for this. Flats are far more interdependent than standalone houses. For example, if a flat owner carries out renovation work, and damages a wall, floor or ceiling in the process, it has an impact on the flat next to, below or above them. If a flat owner replaces a carpeted floor with a wooden floor, it will result in increased noise levels for the people living in the flat below them. If a flat owner neglects fire safety issues, they are not just putting themselves in danger, but also the people in the flats around them. And so on. It therefore makes sense that a flat owner does not have the same unconditional right to dispose of their property that a house owner has. It makes sense to establish common rules for the entire block of flats. Leasehold is one way of doing this.

Blocks of flats also have communal areas, such as staircases, hallways, lofts, basements, communal gardens etc., which could otherwise be subject to the 'tragedy of the commons'. Somebody needs to provide, or commission, property maintenance services for these areas, and collect the contributions from the flat owners to pay for that. Again, leasehold is one way of doing this.

Leasehold has become more common in recent decades. In 1995, only one in five property sales were leasehold, compared to one in four today (Wilson and Barton 2019: 24). This upward trend has been even more pronounced among new builds, where the proportion sold as leasehold has increased from one in five in 1995 to more than one in three today. To some extent, this reflects a rising flats-to-houses ratio, but the share of new-build houses sold as leasehold also doubled, from 7 per cent to 15 per cent, between 1995 and 2016. (It has since fallen back again.)

The government is clearly worried about this trend, which is why there have been several consultations and investigations into it. But the main reason may be a very simple one. When a good becomes more expensive, we lower our sights in some way, in order to economise on it. In the case of housing, this can mean that we accept a smaller property, or a property in a worse state of repair, than we would otherwise have. We may move further out, and accept a longer commute, when we would otherwise have chosen to live more centrally. We may settle for a less desirable area that we would otherwise not have considered. Or, alternatively, we may accept a reduced bundle of property rights, when we would otherwise have gone for 'the full package'. That is what leasehold is. Since leasehold does not come with the full bundle of property rights that freehold comes with, a leasehold property will, other things equal, fetch a lower price on the market than an otherwise identical freehold property.

Housing in the UK would certainly fit that bill. House prices in the UK have increased 2.8-fold in real terms over the past 25 years (OECD 2020). This is a nationwide average. The trend is more pronounced in those parts of the country that offer the greatest economic opportunities, i.e. in and around the towns and cities with the best job prospects and the best earnings prospects. It is entirely unsurprising that consumers have responded to this cost explosion by lowering their sights in various ways, and it is entirely plausible that a greater propensity to accept leasehold is just one way of doing this.

If so, the government's response of appointing expert commissions to investigate the details of the leasehold sector would mean missing the wood for the trees. There are no expert commissions that investigate why the average size of new build properties has been shrinking, why the average age of first-time buyers has been increasing, or why the average commuting time has been lengthening. It is obvious why they have: these are all just different responses to one and the same core problem, which is the increase in the cost of housing relative to incomes. The details of how people react to this are relatively unimportant.

In recent years, there has been a lot of legislative zeal to reform the leasehold sector, to curb its growth and to strengthen the position of leaseholders vis-a-vis freeholders. Many of these measures are perfectly sensible. (More on this later.) But it still means that the government is investing much of its political capital in what is ultimately a sideshow.

Problems with the leasehold sector

In recent years, the leasehold sector has increasingly come under fire from various quarters. The *Guardian* has called it a 'money-making racket' and claimed that '[t]he grisly leasehold sector has enriched itself at the expense of ordinary families' wealth and security'.[2] The *Independent* has described it as a 'hoax' and a 'trap'.[3] *The Conversation* has called it a 'feudal leftover'.[4]

This is not all just polemics. The government has initiated various public consultations, calls for evidence and expert inquiries into the subject, which have come up with several genuine issues. Some of these are about a small number of 'bad eggs'; others are more widespread. Consultations have also shown that there is widespread discontent with leasehold: a majority of the leaseholders who take part in these consultations express regrets about having chosen this option (DCLG 2017: 5; Wilson and Barton 2019: 10-11).

One issue that frequently comes up is service charges for the maintenance of the property and/or the quality of those maintenance services (Wilson and Barton 2019: 52-56). Most leaseholders do not believe that they are getting good value for money. Charges are often perceived to be excessive and/or opaque. This is not limited to leaseholders: it also applies to freeholders in mixed properties (MHCLG 2019: 36-39).

In principle, leaseholders can demand a detailed breakdown of their service charge bills, and they can challenge charges they consider unreasonable. In practice, many leaseholders are unaware of their rights, while others are reluctant to make use of them, describing the process as complex, time-consuming and potentially costly.

Similar problems arise with regard to self-management options. In principle, leaseholders who are not happy with the property maintenance services commissioned by their freeholder can demand a switch to a different property management company, or they can demand to manage the property themselves. But there have been cases of freeholders dragging their feet and thwarting their leaseholders' applications for this self-management scheme (MHCLG 2019: 36-39; Wilson and Barton 2019: 44-48).

One-off charges for the processing of applications to make changes to the property can be even more opaque and arbitrary (ibid.: 57-59). Leasehold contracts can range from very permissive to very restrictive with regard to the structural changes, such as renovation works, that a leaseholder can make. Both restrictive and permissive arrangements can be fine, and both can be appropriate responses to particular circumstances. For example, it would make sense for a less solid building to have stricter rules regarding structural alterations. But problems can arise in contracts with lots of grey areas, where it is not clear from the outset what is allowed and what is not, and where each case requires a separate evaluation.

Freeholders, or their management companies, often charge fees for such applications, and these are a common source of conflict. Since these are all one-off applications, and since each case is different, there is no such thing as a 'going market rate'. Nor can an applicant easily judge whether an application just needs rubber-stamping, or whether it requires a more complex appraisal, for example by an in-house surveyor.

As mentioned above, leaseholders have a statutory right to either buy their freehold, or extend their lease in such a way that it is guaranteed to outlive them. Again, in practice, this process does not always work as smoothly as that. For example, there are cases of freeholders dragging their feet and trying to

[2] 'The leasehold system is a money-making racket. Reform is long overdue', *Guardian*, 20 July 2018 (https://www.theguardian.com/commentisfree/2018/jul/20/leasehold-money-making-racket-reform).
[3] 'The great leasehold hoax: When you buy a property, but don't ever own it', *Independent*, 18 January 2019 (https://www.independent.co.uk/news/long_reads/leasehold-tenure-hoax-housing-landlords-estate-agents-property-developers-help-to-buy-a8681821.html).
[4] 'It's time we let the feudal leftover of leasehold ownership expire', *The Conversation*, 24 January 2018 (https://theconversation.com/its-time-we-let-the-feudal-leftover-of-leasehold-ownership-expire-90406).

sabotage the process (ibid.: 48-49). The valuation process through which the premiums are determined is also a bone of contention, as well as being costly, complex and time-consuming (Law Commission 2020).

Leasehold is not an arrangement that works for everyone, and it has some inherent limitations relative to freehold. This need not be a problem, as long as the people who choose that option are fully aware of its limitations. Unfortunately, this is not always the case. Some respondents to public consultation argue that they have not been made sufficiently aware of important information about their leasehold agreement, or at least not until quite late in the sales process, when they had already narrowed down their options (MHCLG 2019: 40-41; Wilson and Barton 2019: 42-44). This includes cases which border on mis-selling.

One of the most commonly raised subjects is ground rents. Until recently, ground rents used to be very modest payments – typically around £100-£250 per year (HomeOwners Alliance n.d.) – that were only updated very infrequently. But leaseholds with higher or more rapidly rising ground rents have become more common. For example, in some contracts, ground rents double every ten years.

Given that there are so many genuine issues with the leasehold sector, it is somewhat surprising that the issue of ground rents has attracted such a disproportionate share of the ire. From an economic perspective, high or rapidly rising ground rents need not be a problem. If ground rents rise according to a fixed formula, this is transparent and predictable. Future payment obligations should then be reflected in a lower initial purchase price, in the same way that, for example, a car with a high level of fuel consumption will not be able to command the same market price as an otherwise identical, more fuel-efficient car. Unless informational asymmetries are so severe that the buyer is unaware of them, higher future running costs will be factored in at the point of purchase, lowering the buyer's willingness to pay. Other things equal, the market price of a leasehold property with high and rising ground rents must be lower than the market price of an otherwise identical leasehold property with low and stable ground rents.

Leasehold properties with rising ground rents could then be thought of as a financial product of sorts. Purchasers pay less now, but agree to pay more in the future.

This point is inadvertently conceded by critics of rising ground rent schemes, because the most common criticism is that when ground rents exceed a certain level, they affect the resale value of the property (Law Commission 2020). But this, far from indicating a 'market failure', shows that the market is working as it should. Future payment obligations are taken into account by homebuyers and capitalised into property prices.

Perhaps the greatest weakness of the critics' argument is that they treat rising ground rents as a phenomenon that just suddenly came out of nowhere, and that is unconnected to anything else that is happening in the housing market. They appear to assume that property developers and other freehold owners had just woken up one morning and collectively decided to be greedy.

The elephant in the room is the aforementioned fact that the UK has experienced an exceptionally large increase in housing costs. This has been a massive economic change, which has affected every subsector of the housing market (Niemietz 2016a; Niemietz 2016b: 8-11; Niemietz 2015a: 8-14). Homeownership rates have fallen. The proportion of young adults (i.e. people aged 20-34) still living with their parents has increased from 20 per cent in 2000 to 27 per cent today (ONS 2019). The average size of new builds has fallen. The proportion of households depending on housing benefit has increased. Waiting lists in the social housing sector have grown longer. The private rental sector has become more expensive and more insecure. And so on. The housing cost explosion is arguably the UK's single biggest social and economic problem.

Against this backdrop, it would be amazing if ground rents were the only aspect of the British housing market that was completely unaffected by these overall trends. In a sense, ground rent levels have only been catching up with overall trends in the housing market, and then only to a minor extent. If anything, it is surprising that this has taken so long, and that it has been so subdued.

Forthcoming leasehold reforms

There is no such thing as a 'free-market liberal perspective on leasehold', no more than there can be a free-market liberal perspective on beer, or a free-market liberal perspective on carrots. Therefore, the short summary of this briefing is not 'leasehold is bad' or 'leasehold is good'.

From a classical liberal perspective, the role of the state is to enable the functioning of markets by setting and enforcing a general framework of rules. It is not the role of the state to actively shape markets, for example by trying to steer them towards a particular outcome. A liberal economic policy is outcome-neutral. The state ought to act as a referee, not as a player.

But while this briefing does not take a view on leasehold per se, it will, in the following, comment on some of the legislative changes to the leasehold sector that are currently underway.

The leasehold sector is undergoing some major changes at the moment, with an ambitious reform package on its way. Most elements of that package seem sensible. They are procedural changes aimed at addressing the above-described problems with leasehold that have come up during the consultation processes.

The government is trying to make it easier and less costly for leaseholders to seek various forms of redress and to access information. It is trying to make it easier and less costly for leaseholders to challenge unreasonable service charges (Wilson and Barton 2019: 53-56), to take over the management of a block of flats collectively (ibid: 46-48), to buy their freehold or extend their lease (Law Commission 2020), etc. There will be a cap on arbitrary one-off administrative charges (Wilson and Barton 2019: 57-59), such as when leaseholders request a freeholder's permission to make alterations to the property. The valuation process for determining the premiums that leaseholders have to pay when they want to purchase the freehold, or demand a lease extension, is going to be streamlined, in order to make it less complex, less costly, less time-consuming and less discretionary (Law Commission 2020). The sales process will also be improved (Wilson and Barton 2019: 69-70). Prospective leasehold buyers will be provided with more information earlier on in the process.

All of this broadly falls under the rubric of improving the overall functioning of the market, by increasing transparency, making the rules of the game more easily enforceable, and reducing uncertainty. This should enhance the efficiency of the market and increase consumer welfare. From a liberal perspective – so far, so good.

But the package also contains elements which go beyond improving the functioning of the market and which aim to steer the market in a particular, politically determined direction. The government has announced an outright ban on the sale of leasehold houses (MHCLG 2019: 10-17). This is not as big a change as it sounds, because there will far-reaching exemptions, in areas where the government sees a good case for the existence of leasehold. But it still means that the government is second-guessing consumer preferences and pre-empting a market outcome. This was exemplified by then Prime Minister Theresa May, who in 2017 stated that 'Other than in certain exceptional circumstances, I do not see why new homes should not be built and sold with the freehold interest at the point of sale' (cited in Wilson and Barton 2019: 28). This may be so, but we do not normally ban particular products or product specifications on the grounds that the Prime Minister does 'not see' why that product should exist.

The then Secretary of State for Housing, Communities and Local Government, James Brokenshire, expressed a similar sentiment, stating that 'Leases that are unjustified, include onerous terms or unfair conditions, or put corporate profit over consumer protection have no place in today's housing market' (cited in MHCLG 2019: 4). Again, we do not normally ban products on the grounds that a Secretary of State considers them 'unjustified', 'onerous' or 'unfair'.

The government also announced that ground rents are going to be banned for newly granted leaseholds, be it for houses or flats (MHCLG 2019: 24-26). Again, the economic justification for this is dubious. James

Brokenshire claimed ‘Consumers see no clear benefit from ground rents. I want to ensure that consumers only pay for services that they receive’ (cited in MHCLG 2019: 4).

Using that logic, one could argue against rent payments of any kind. A tenant in the rental sector does not ‘see a clear benefit’ from paying rent either; they would, of course, prefer it if they only had to pay for services they directly consume. When we buy artistic content, we (indirectly) pay royalties to the artist, from which, again we ‘see no clear benefit’. But the point is that the artist owns the copyright, the landlord owns the flat, and the freeholder holds a residual property right in the leaseholder’s home. They can sell it, keep it, borrow against it, or, for that matter, charge rents for it. Preventing them from doing so is an infringement of private property rights.

There will be exemptions from the ban on the sale of leasehold houses and, to a lesser extent, from the ban on charging ground rents. These exemptions limit the potential downsides of the bans, but they also highlight the arbitrary nature of those bans, because the exemptions seem rather ad-hoc: the exempt parts of the housing market are often not that fundamentally different from the non-exempt ones.

For example, leasehold houses in retirement villages will be exempt (DCLG 2017: 10; MHCLG 2019: 19-20). The government recognises that retirement villages contain shared facilities and/or communal areas, and they consider the management of those a legitimate use of leasehold. Communal areas and shared facilities are, indeed, regular features of retirement villages – but this does not mean that no other type of development can ever have such features.

Leasehold houses in retirement villages were also initially meant to be exempt from the ground rent ban, an exemption which has since been revoked at the last minute (MHCLG 2021). The government’s reasoning behind this previously planned exemption was that if developers were no longer able to charge ground rents, they would have to increase the initial purchase price of those leasehold houses, in order to make up for the lost future revenue (MHCLG 2019: 28-29). This is, indeed, highly plausible. But this raises two sets of questions:

1. If the government assumes that banning ground rents for leasehold houses in retirement villages will increase the purchase prices of such houses, thus harming homebuyers – why is the government now going to ban them anyway? Why did they suddenly U-turn, and revoke the exemption which they had previously deemed sensible? Does the government now believe that the price-raising effect of the ground rent ban, which they described in 2019 and 2020, no longer exists in 2021? Or do they believe it still exists, but is a price worth paying? Or is the ban simply a populist measure, i.e. is the government now indifferent to the adverse effects it previously described, because these are more indirect and less visible?

2. If the government assumes that banning ground rents for leasehold houses in retirement villages will increase the purchase prices of such houses, thus harming homebuyers – why should this effect be limited to retirement villages? Surely, all sellers of leasehold properties will try to recover lost future ground rent income by adjusting the initial purchase price accordingly. Why should this depend on whether a property is located in a retirement village or not?

Shared ownership schemes will also be exempt from the ban on the sale of leasehold houses (although not from the ground rent ban), on the grounds that these are ‘specifically designed to support affordable ownership’ (DCLG 2017: 20). Under a shared ownership scheme, people buy a part of their property (between a quarter and three quarters) from a local housing association and rent the remaining part. They are thus part-tenant and part-homeowner.

Shared ownership, however, is just a special form of leasehold. It can be a sensible option for people who cannot afford the full bundle of property rights, but who still want some of the benefits that come with homeownership, even if incomplete. But this consideration can, in principle, apply to any form of

leasehold ownership. It is not at all clear why the government deems shared ownership desirable and worthy of protection, but conventional leasehold per se ‘unjustified, onerous and unfair’.

Community-led housing projects will be exempt from both the leasehold sales ban and the ground rent ban. The justification for this is that ‘[t]he inability to recover ground rents could […] threaten the growth of community-led housing, which is an objective of the Government’ (MHCLG 2019: 27-28).

In this statement, the government clearly does acknowledge that banning ground rents in this subsector of the housing market would impede its growth. But if this is the case, how can this growth-limiting effect be confined to this one subsector? If ground rents are merely an unjustifiable rip-off which serves no useful economic purpose (as the government seems to assume they are), how can they suddenly become a useful tool for growth just because a developer claims to be ‘community-led’?

It does not help that the government does not offer a clear definition of what exactly constitutes a ‘community-led developer’, or how it differs from a non-community-led one. The difference they note is that that ‘ground rent income in community-led housing is not used for development for profit, nor is there any question of selling the freehold to raise profits’ (MHCLG 2019: 27). But this sounds like a mere aversion to the profit motive. It boils down to a reflexive communitarianism. (‘Community-led developers are good, because they have the word “community” in the name’.)

Further exemptions include agricultural buildings, leasehold-like Islamic/Sharia-compliant finance arrangements that avoid interest payments, and equity release plans, under which a freeholder temporarily sells the freehold to their home and becomes a leaseholder, in exchange for a ground rent (MHCLG 2019: 32-33). All of these exemptions seem eminently sensible. There clearly is some demand for leasehold or leasehold-like arrangements in these circumstances, which is why some people use them and why the issue comes up in the consultations.

Conclusion

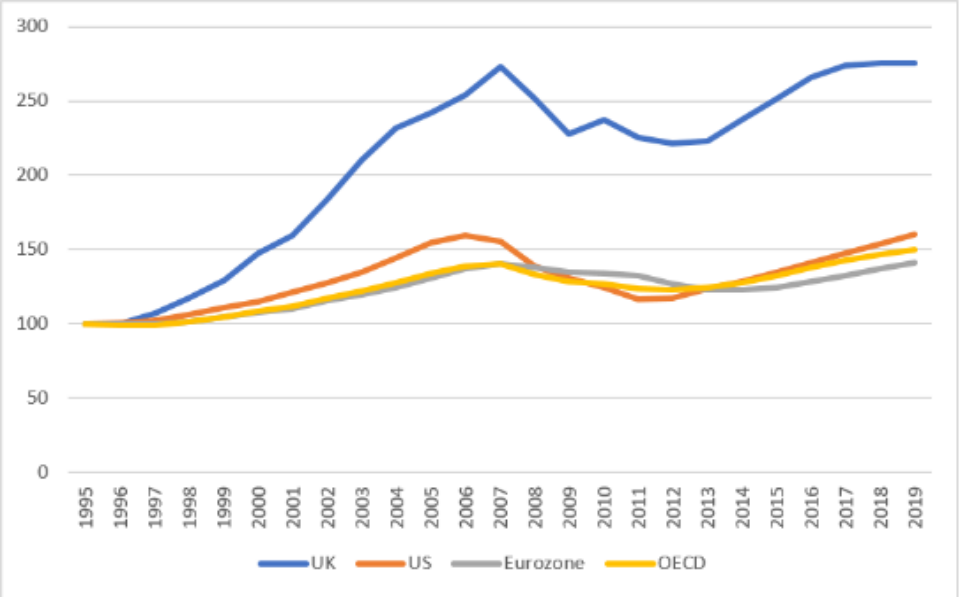
The leasehold sector in the UK is currently undergoing major reforms. Much of this is understandable. There are genuine issues in the sector, which need sorting out. To the extent that the government is trying to provide greater transparency, certainty, and enforceability of rules, the forthcoming reforms can be seen as an attempt to improve the overall functioning of the market.

But in other respects, it could be argued the government is overstepping the mark by trying to steer the market in a politically desired direction. The ban on leasehold house sales and the ban on ground rents fall into that category.

Overall, though, the main problem is not in the fine print of the legislation, but in the government's overall focus. The current government, much like its predecessors, has taken a compartmentalised view of the housing market. It appears to see the problems we see in different subsectors of the housing market as unconnected to one another and in need of separate solutions. It has tried to help would-be first-time buyers with demand-side subsidies, such as the Help-to-Buy scheme. It has tried to reduce the insecurity in the private rental sector with increased regulation, such as a ban on no-fault evictions. It has tried to contain the cost of Housing Benefit by changing the formula. And so on.

In doing so, the government is missing the elephant in the room. Over the past quarter of a century, housing costs in the UK have increased to a much greater extent than in comparable economies. As mentioned, since 1995, UK house prices have increased by a factor of 2.8 in real terms. This compares with a factor of 1.6 in the US, 1.5 in the OECD as a whole, and 1.4 in (what is now) the Eurozone (see Figure 1).

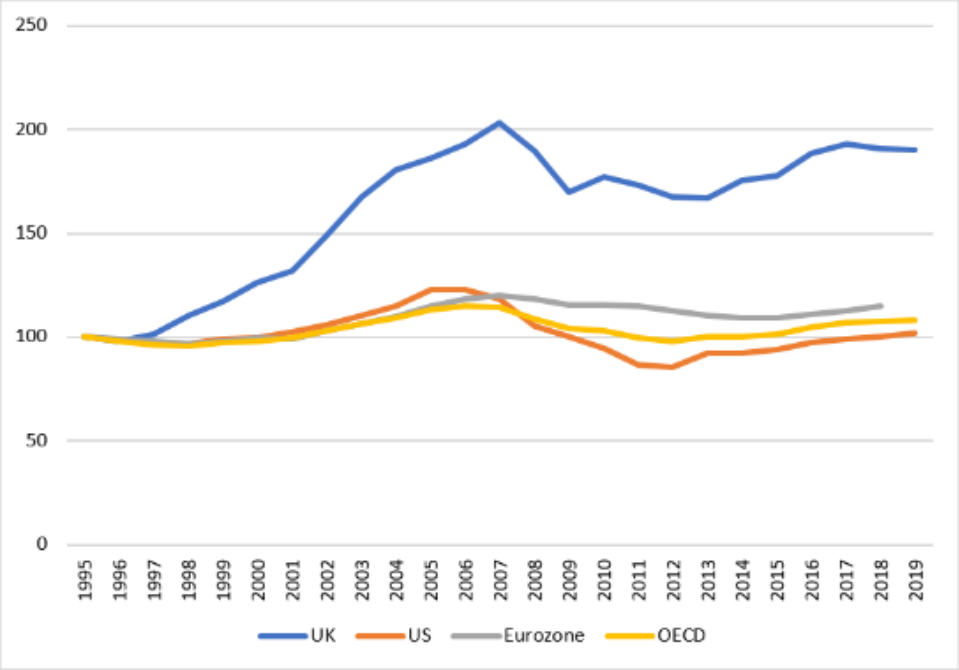
Figure 1: House prices in real terms, 1995–2019



Source: OECD (2020)

In most comparable economies, growth in house prices has only slightly outpaced income growth. In the UK, house prices have grown almost twice as fast as incomes (Figure 2).

Figure 2: Growth in average house prices relative to growth in average incomes, 1995-2019



Source: OECD (2020)

The British housing market could benefit from a supply side-led revolution, a modern-day equivalent of the construction boom of the 1930s. Rather than obsessing about the exact composition of the housing stock – social housing vs. private, rented vs. owner-occupied, 'affordable' vs. market-priced, reserved for first-time buyers vs. available to all buyers, flats vs. houses, or, indeed, freehold vs. leasehold – the focus could be on its overall *level* and its location. The government could aim to create a competitive land market, a competitive real estate industry, a competitive construction industry and a competitive rental market. Competitive markets would result in much greater choice – choice for first-time buyers, choice for second-time buyers, choice for private renters, and choice for social renters.

All of this, and more, could be achieved through sensible planning reform and tax reform (Niemietz 2015b: 37-45; Niemietz 2016: 23-25). There are positive examples of functioning, competitive housing markets around the world, which offer valuable lessons. Indeed, so do selected periods in Britain's own past, especially the 1930s, which were the relative 'golden age' of British housing. The precedents are there. All that is lacking is the political will to learn from them.

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