Create Streets
We can help you make better places
contact@createstreets.com
www.createstreets.com

In praise of freehold

A personal view by George Trefgarne

The argument is growing for more community based architecture, such as houses and mansion blocks, on the proven grounds that it is what the public prefers. However, there is another angle which should not be forgotten: tenure.

Large skyscrapers have their place in a diverse city, but among their disadvantages is that the occupiers are almost universally leaseholders. That means that they do not own their homes absolutely, but restricted by time (typically somewhere between 99-999 years). The lease is usually renewable, but it does mean they are subjected to high service charges and ground rent.

If tenants fail to pay these charges, the landlord may take an action for forfeiture and repossession. In that sense, a leasehold is one step short of full ownership. There is still a renter and still a rentier.

In fairness to landlords, modern apartments or flats have a dazzling array of services: parking, porterage, gyms, elevators, CCTV, exterior cleaning and even cinemas. But the consequence is that service charges can be quite high. Skyscrapers are expensive to maintain. I have seen many advertised with service charges at £5 per square foot, or £10,000 per year for a riverside 4 bedroom flat. That's not a city for the middle income let alone the poor.

In 2002 the law was reformed to create a new form of tenancy: commonhold. This is intended to help flat owners get together to buy the freehold to their buildings and to then manage the services collectively. However, plainly it is best suited to small blocks, ie mansion blocks, and not skyscrapers with hundreds of tenants. Apart from the difficulties of co-ordinating such a large group, overseas tenants can be hard to get hold of to participate in a commonhold arrangement.

Research on the issue of service charges is not easy to come by, but in 2012 the London Assembly conducted an investigation which found that tribunal disputes over excessive charges for deficient services had doubled over the previous five years to 4,000 per annum. Presumably, the number is now higher still.

Wealthy tenants who regard their apartments as an investment or *pied à terre*, may not be bothered by service charges. But for first time buyers and families on modest incomes they amount to a substantial addition to monthly outgoings and a transfer of value to the landlord. Inevitably service charges make the burden of a mortgage much heavier.

Furthermore, we should not forget the totemic political significance of the freehold (originally known as a fee simple), one of the great achievements of English common law.

Among the many reasons England became a Parliamentary democracy and then industrialised early was widely dispersed property ownership. This encouraged a sense of individual responsibility, as noted by the philosopher John Locke and his contemporaries. It also translated into households having an asset which shielded them from rising rents and

against which they could borrow to invest. Furthermore, for nearly five centuries, from 1430, the Parliamentary franchise was based on the "40 shilling freehold", with property requirements not finally extinguished until 1918.

The evolution of the freehold is a complex tale. According to Alan Macfarlane in *The Origins of English Individualism* "property in England was highly individualised by the end of the thirteenth century, if not much earlier. It was held by individuals and not by large groups; it could be bought and sold; children did not have automatic rights in land; there is no evidence of strong family attachment to a particular plot of land."

The Black Death in the fourteenth century led to the gradual abolition of serfdom and soon the most common form of ownership was the copyhold, whereby the tenant owed nominal feudal duties to the manor. But the legal historian WS Holdsworth tells us that in the Tudor period the courts became reluctant to enforce these duties and "copyhold lost all servile taint."

In the seventeenth century the jurist Sir Edward Coke wrote in his book, *The Complete Copyholder,* "in the point of service a man can scarce discern the difference between freehold lands and copyhold lands." One of the most significant early acts of the Restoration of the Monarchy under Charles II was the final abolition of all residual feudal duties in the Tenures Abolition Act of 1660.

In 1925, reality was recognised when the term copyhold was merged into freehold in the Land Property Act. Under the act, the only other form of ownership is leasehold.

The point of this little history lesson is very simple. It is to remind us that it would be a great pity if, through the reliance on massive blocks and towers for new housing, we created a new generation of not-quite homeowners, whose service charges and leasehold tenancies again gave them "a servile taint". Rental has its time and its important place, as does leasehold. But where possible, we should aspire to create cities of freeholders, masters of their own domain.

George Trefgarne is founder of Boscobel & Partners. He began his career as a journalist and is a former Economics Editor, Business Editor and columnist at *The Telegraph*. He has a strong interest in housing and an affection for terraced houses. He continues to write on economic and related subjects for national newspapers and wrote Metroboom – Lessons from Britain's Recovery in the 1930s. This highlighted the importance of building new homes in the recovery from the Great Depression.