

## **Justice Committee**

### **Long Leases (Scotland) Bill**

#### **Written submission from the City of Edinburgh Council**

We write in connection with the above, and the Justice Committee's invitation to all interested parties to submit views on the Bill.

#### **Common Good Land**

There are two points the City of Edinburgh Council would wish to raise in connection with the topic of Common Good land.

Firstly, the Council would wish to clarify the position on whether or not the property known as Princes Mall (formerly the Waverley Market Shopping Centre) forms part of the Common Good of the City of Edinburgh, since it has been reported in the press that it does. So the Committee are aware, the Council's interest in this property is as head landlord under a long lease, which might be a "qualifying lease" under the Bill.

In short, the site on which Princes Mall is built ceased to form part of the Common Good of the City of Edinburgh in 1938. Historically it is correct that this site was the City's Fruit and Vegetable Market and as such was held on the Common Good account. However, the actual site of this market was transferred with Council approval in the late 30s to land at Cranston Street and East Market Street, Edinburgh. This transfer of the market included the transfer of the Common Good status. As a consequence, Princes Mall is not held on the Common Good account, and it is not land forming part of the Common Good of the City of Edinburgh.

We understand that this has also recently been confirmed to you, or possibly the Scottish Government's Family and Property Law Team, by the Council's Finance Department.

Secondly, the Committee might, however, wish to consider that there may be a number of properties across Scotland, which are owned by local authorities and subject to long leases, but forming part of the Common Good of the local authorities in question. For such properties, the Bill as introduced might result in these long leasehold interests being converted into outright ownership for the tenants of the land in question, with the result that those local authorities would be divested of such Common Good land without resolving to do so. The Bill's provisions entitling a landlord to compensation in the event of such a conversion may not give the local authority and its residents appropriate recompense for the loss of such an asset.

We have been requested by the Council to highlight this to the Committee, and to propose on behalf of the Council that long leases of such Common Good land be exempted from the Bill, and not capable of conversion to ownership.

We are aware that on 23 December 2010 the Scottish Government's Family and Property Law Team issued a further specific consultation on the potential impact of

the Bill on Common Good land, and as requested by them we shall separately respond to that consultation on behalf of the Council by the 21 January 2011 deadline.

### **Exemption for Leases with Annual Rent Greater than £100**

The Bill as introduced provides that a lease will not be eligible for conversion to ownership where the annual rent is over £100. However, the Bill makes no allowance for situations where the landlord has chosen to receive an upfront premium or *grassum* on the grant of the lease, with the tenant only then paying a nominal rent during the lease term.

In such situations, the Bill as introduced could result in landlords being divested of valuable land which would have generated an annual rent in excess of £100, but where the decision was taken at the grant of the lease to instead receive a lump sum.

The Council considers that this distinction needs to be recognised, in order to give full effect to the proposed exemption of leases with a certain minimum value. Further, the Bill as introduced ignores the fact the parties to the lease had chosen that their relationship be governed by the Scottish law of leases, when they might have alternatively chosen to transfer the heritable interest in the land, subject to such title conditions as they might have agreed at the time. There will often be good reason why such properties have been leased and not disposed, particularly if they are valuable, and the parties' decision to deal with the property in that manner should be protected.

The Council would, therefore, propose that the Bill also excludes from conversion those leases where any premium/*grassum* paid to the landlord on the grant of the lease would equate to an annual rent in excess of £100, if the premium/*grassum* were divided by the number of years which the lease was granted for. It should be borne in mind by the Committee that even this might not adequately reflect the value of the lease in question, since a landlord taking a premium/*grassum* would ordinarily accept that such a payment would be less than it would have otherwise received in rent over the life of the lease if it had chosen to receive payment solely by way of an annual rent.

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11 January 2011