

## Written evidence submitted by Andrew Colvin [FPS 020]

### Existing lessees left even more vulnerable by new proposals for permitted development because of lack of accessible remedies which are fit for purpose in respect of defects in development

**1 My concern** relates to the possibility of abolishing the need for planning permission when adding up to 2 additional floors to facilitate provision of extra housing units. Developers will generally seek to carry out development and then sell the new flats and probably the freehold particularly if there is no value left in the freehold.

**2 Difficulties** will arise because of -

(i) the additional risks existing lessees will be exposed to as a result of poor-quality design and /or workmanship, and

(ii) lack of effective remedies against the developer/landlord/contractor,

which can have devastating consequences. Existing lessees have no opportunity to object to the development and are “sitting ducks” who must take what comes and deal with any difficulties. Existing protections for lessees are not fit for purpose.

**3 Current legislation** provides a measure of protection via

(i) the Building Regulation regime, and

(ii) party wall/structure legislation [different statutory regimes operate within and without London].

**4 Rights of recourse** may also be provided under lessees’ existing leases and under the general law of negligence.

**5 Currently** there is no automatic legislative regime compelling equitable resolution of future relationships between existing lessees and future lessees of the newly added storeys – the only remedy is to challenge any service charge for repairs arising from the new development as unreasonable which may not resolve any need to carry out significant and costly remedial work to cure defects in the new development. The cost and complexity of making such a challenge may deter many lessees from doing so.

**6 Difficulties** can arise in the following ways -

(i) limitation of party wall/structure rights to flats immediately subjacent to the new structure and the fraught issue of what actually is a structure falling under the regime ,

(ii) inability of lessees generally to access “as designed” and “as built” drawings and specifications to provide an adequate post build audit trail unless specific provision is made in any party wall award which is limited only to those lessees immediately subjacent to the development with a Party Wall Award [the Building Regulation regime does not ensure such access],

(iii) lack of compulsory liability defects insurance for patent and latent defects, with all lessees named on the policy for their benefit, who otherwise might be exposed to significant costs of any necessary remedial work via their service charge,

**(iv)** inadequate financing of any developer/landlord/contractor, particularly single property development companies, with unscrupulous individuals hiding behind “the corporate veil” and avoiding personal liability and accountability,

**(v)** lack of knowledge of pitfalls by the populous/lessees at large [which is not overcome by the limited protection afforded by the Building Regulation and party wall/structure regimes],

**(vi)** the cost of getting competent surveying and legal advice should the need arise.

**7 The answer** lies in compelling

**(i)** a proper accessible audit trail of the building process including all services for all the lessees in the building,

**(ii)** compulsion to have adequate liability insurance for patent and latent defects with all lessees in the building named as insured on the policy.

These steps would improve general building standards and accountability at a stroke and help avoid future remedial cost issues for lessees eg Grenfell Tower cladding issues. If these steps are not taken it will significantly increase the risk to lessees of having expensive repairs to carry out without adequate and accessible remedies.

**8 I am prepared** to give evidence if required to clarify and or supplement any point raised. I have personal experience of the difficulties outlined in this submission.

*October 2020*