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Section 17 of the Commonhold & Leasehold Reform Act 2002 and regulation 11 of the Commonhold Regulations 2004 prohibit the creation, in a commonhold unit, of a residential lease of over 7 years at a premium, ie, an upfront payment known as the purchase price.

It has been said that the prohibition applies a brake to the creation of new commonhold developments. At §12.16 of its consultation on commonhold, the Law Commission notes that “local authorities, through planning law, require developers to allocate a certain percentage of units in new developments to affordable housing, such as shared ownership”.

As the law stands therefore, planning requires what commonhold cannot give.

Accordingly, and given that “the only form of shared ownership which Homes England and the Welsh Government provide funding for is the leasehold model”, the Law Commission provisionally proposes “that a limited exception to the ban on residential leases over seven years in commonhold be permitted for shared ownership leases which contain the fundamental clauses prescribed by Homes England or the Welsh Government” (§§12.28-29).

Do you agree? The Law Commission consultation is open until March 2019. The shared ownership leasehold question is number 65, on page 285.