Submission from City of Edinburgh Council

Dear Sirs

Long Leases (Scotland) Bill

We write in connection with the Long Leases (Scotland) Bill, and the Rural Affairs, Climate Change and Environment Committee's invitation to all interested parties to submit views on this, in order to propose the Bill be amended to the extent more fully set out below.

1. Exemption for Leases where the premium / grannum equates to an annual rent greater than £100

The Bill provides that a lease will not be eligible for conversion to ownership where the annual rent is over £100, albeit that there is now an ability for variable rents to also be taken account of.

As previously suggested in our submissions of 11 January and 28 February 2011 (copies attached), the Bill makes no allowance for situations where the landlord has chosen to receive an upfront premium or grannum on the granting of the lease, with the tenant only then paying a nominal or peppercorn rent during the lease term. As a consequence, it is to be expected that the Bill will result in many landlords (including local authorities and other public sector bodies) being divested of valuable land which would have otherwise generated an annual rent in excess of £100, but where the decision was taken at the granting 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, it is respectfully suggested that the Bill does not give sufficient regard to the fact that 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 have a location which is of particular importance to the landlord, and the parties’ decision to deal with the property in that manner should be protected.

As such, the Council would, therefore, again propose that the Bill also excludes from conversion those leases where any premium / grannum paid to the landlord on the granting of the lease would equate to an annual rent in excess of £100 if the premium / grannum were divided by the number of years which the lease was granted for, or that instances such as this were otherwise taken account of. Naturally, this proposal is made while at the same time acknowledging the previous consideration already given to this point by the
Justice Committee. 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 should 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.

2. Princes Mall Shopping Centre

As the Committee will be aware, the Council is the heritable proprietor of Princes Mall (formerly the Waverley Market Shopping Centre) and the head landlord of the property under an ultra-long lease (for a period of 206 years) which is a qualifying lease under the Bill.

The Bill as introduced would result in this long leasehold interest being converted into outright ownership for the tenant of the land in question, with the implication that the Council would be divested of this land without having formally resolved to do so. Waverley Station is the gateway to Edinburgh for many residents and visitors, and Princes Mall often their first sight upon leaving the station. Given this, the property’s central location within an UNESCO World Heritage Site, and its proximity to Princes Street Gardens and the other main transport hub at St Andrew Square Bus Station, this property has significant importance to the Council, beyond any monetary value the residual heritable interest might have.

As such, the Bill’s provisions entitling a landlord to compensation in the event of such a conversion are, we would respectively submit, unlikely to give the Council and the City’s residents appropriate recompense for the loss of the property, and the Council’s ability as owner to have an involvement in its future development and use.

While the amendment to the Bill which we have proposed above would address our general concerns with the Bill, and also our specific concerns over the possible loss of the ownership of Princes Mall, should the Committee not be minded to recommend the Bill be changed in that manner, then the Council would as an alternative ask the Committee to specifically exclude this property from the scope of the Bill.

We would also highlight that a full meeting of the Council on 2 February 2012 resolved that we write to the Committee seeking such an exemption, given the Council’s concerns over the potential loss of ownership of Princes Mall.

We again confirm that Iain Strachan (Principal Solicitor) and Bill Miller (Property Management and Development Manager) will be pleased to attend to give oral evidence to the Committee on 29th February. However, if the Committee have any specific queries before 29th February, please do not hesitate to contact James Doherty in the first instance.
Letter to the previous Justice Committee - 11 January 2011

Dear Sirs

Long Leases (Scotland) Bill

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.
Letter to Simon Stockwell - 28 February 2011

LONG LEASES (SCOTLAND) BILL

I refer to your letter of 8 February. I understand from our subsequent telephone conversation that you wish further information about the original grant of the long lease at Waverley Market, Princes Street, Edinburgh, and the background to the Council entering into that transaction. I will not deal with the City of Edinburgh Council’s position on the alleged Common Good status of the site, namely that it is not Common Good, since our view on this has been explained in some detail in previous correspondence, and also in our evidence given to the Scottish Parliament’s Justice Committee on 1 February 2011.

Development of Waverley Market.

As you may be aware, the former fruit and vegetable market which was located at this site was demolished in the early 1970s. Following that demolition, the site was then used as a car park until the 1980s.

Edinburgh District Council entered into a Development Agreement with Reed Publishing Pension Trustees Limited and Reed Pension Trust Limited (“Reeds”) in 1982, whereby the site was leased for 125 years at £0.01 per annum with Reeds constructing the Waverley Market Shopping Centre and sub-letting the completed centre back to Edinburgh District Council for the remaining period of the head lease, at a rent which was to be the greater of £941,250 per annum or 76.102% of the net rental income from the centre. Edinburgh District Council subsequently sub-underlet the individual units within the centre.

In 1989 Edinburgh District Council and Reeds agreed to extend the period of the head lease as part of the proposed sale of the centre. The sale comprised (a) Edinburgh District Council’s interest as both tenant under the sub-lease (of the completed shopping centre) and as landlord of the sub-under leases granted to the individual units and (b) Reeds’ interest as both tenant under the head lease and landlord under the sub-lease (of the completed shopping centre). In this way, Edinburgh District Council retained its interest as heritable proprietor of the site subject to the head lease at the above-mention rent of £0.01 per annum. The sale price of the respective interests was £23,500,000, exclusive of VAT, of which £17,250,000 was paid to Reeds and £6,250,000 was paid to Edinburgh District Council. The disposal was completed in November 1989, with the duration of the head lease being simultaneously extended to 206 years from its commencement in 1982.

The disposal was proposed by Reeds, given a re-structuring and re-organisation of their investment funds, as they wished to disinvest from direct
property holdings throughout the UK. By Edinburgh District Council and Reeds jointly disposing of their interests this created a marriage value of both interests potentially greater than disposing of those interests separately, and as such an enhanced disposal price for both parties. The 1989 disposal was approved by Edinburgh District Council’s Policy and Resources Committee, as the accepted offer was the highest offer made.

While it would have been possible for the District Council to buy out Reeds this course of action was not recommended, as the sums involved would have been considerable without certainty of major or ongoing improvement of the then rental income. The purchase price to buy out Reeds’ interests was at the time estimated to be in the order of £17,250,000.

The terms of the head lease mean that Edinburgh District Council’s consent was not required to further disposals of the whole of the tenant’s interest, i.e. Reeds’ interest, which we understand is now held by PPG Metro 39 Limited (“PPG”), provided the proposed incoming tenant is of sound financial standing demonstrably capable of fulfilling the tenant’s obligations. While this might seem unusual, this is in fact quite common in a long lease of a commercial property such as this, since it reflects the commercial reality that, in essence, the tenant “owns” the centre with the landlord having been paid a full market value for the tenancy, and having no practical involvement in it other than its residual heritable interest.

As such, as far as we are aware, Edinburgh District Council and subsequently the City of Edinburgh Council has not been directly involved in any subsequent disposals of the tenant’s interest. Subsequent re-development of the shopping centre and increases in the value of commercial property have clearly made it a more valuable asset in monetary terms than it was in 1989, but equally PPG and previous tenants under the head lease will also have had to have paid full market value for their interests. We understand that PPG paid £37,600,000 for the leasehold interest in May 2004.

**Impact of Long Leases (Scotland) Bill**

If the above-mentioned Bill is enacted in such a form that enables PPG to acquire the heritable interest in the long lease of this property, then, leaving aside any question as to the Common Good status of this site, the Council should not be prejudiced in financial terms, given that in 1989 it received an open market value capital receipt for its interest and will also be entitled to some level of compensation under the Bill, although no doubt a fairly nominal one given the passing rent. As explained above, even if such compensation is nominal, PPG would not be acquiring the heritable interest free of cost, given the large amount it paid for the tenancy in 2004.
However, as the Council has previously highlighted in its evidence to the Scottish Parliament’s Justice Committee, the Bill as introduced does not exclude such commercial long leases from the scope of the proposed legislation, unless the passing rent is greater than £100 per annum, which is not the case here. With Waverley Market, the former District Council agreed a deal which gave it an upfront grassum (or premium) in 1989, and not a commercial rent, as this provided a capital receipt which was to be used to support the District Council’s strategic objectives at the time. Importantly, this use of a leasehold structure also gave the District Council certainty that the ownership of such an important and centrally located site would remain with it, and not be lost to the City, and clearly the developer accepted this by entering into the Lease. If the District Council had envisaged that it would have been required to charge a rent of £100 per annum to retain this ownership, then it would certainly have done so. The Council consider that the Bill should recognise situations such as this, and make provision to exclude such commercial leases from the ambit of the Bill as introduced. To fail to do so risks parties being denied the objectives they set out to achieve, and in this instance will mean the Council is divested of the ownership of this prominent site, which was never its intention.

I hope that this is of some assistance, but please feel free to contact me further if required.