

# From red flags to green lights: making problem properties lender-ready

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# Speakers



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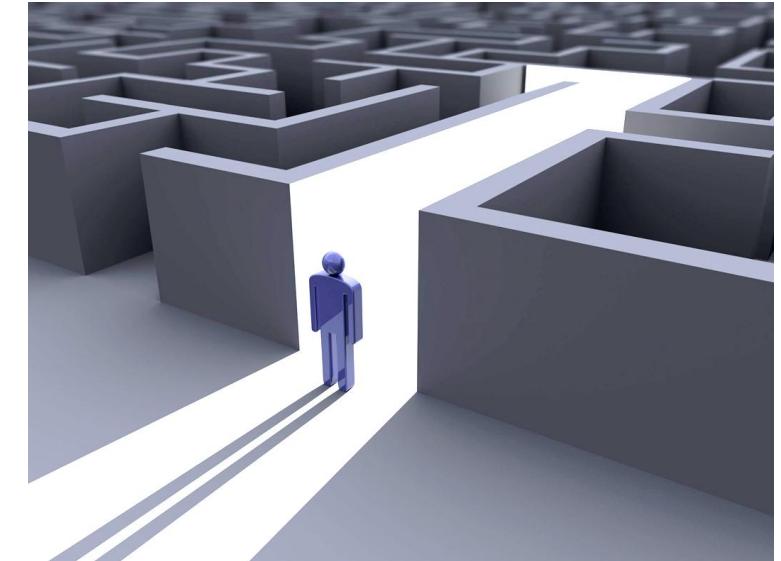
# Difficult does not mean **Impossible**



**It will take time, competence, legal input and cost to resolve.**

**But could produce high value results.**

**If you are interested?  
... lets go**



# Fictional Scheme

Fictional Scheme Details	
Property Address:	Flats 1-50 Riversway Court, 45 Rivers Walk, Birmingham B1 9XX
Title Number:	WM123456
Current Registered Proprietor:	Oakbridge Housing Association Limited
Original Lease Date:	25 March 1995
Lease Term:	99 years from 25 March 1995 (69 years unexpired)
Lender	Security Trustee Limited 25 March 1995
Section 106 Agreement Date:	25 March 1994
EPC Rating:	D



# Short Lease



# What is Leasehold Enfranchisement?



Social Housing Flats



A long leasehold flat owner wishing to obtain a lease extension



Socially Rented Houses



A long leasehold house owner wishing to obtain their freehold



Social Rented Blocks of Flats



A group of leaseholders wishing to acquire the freehold of their block

# Leasehold Titles – An ever-increasing problem



- A leasehold title is a title granted for 'a term of years' and therefore a diminishing asset
- The leasehold value of the asset continually erodes over time
- At lease expiry there will be no value and potentially a claim for dilapidations
- Financial institutions will not accept short leases for loan security
- You may already have stock that cannot be charged due to its short lease length

IGNORING THE PROBLEM WILL NOT RESOLVE IT



# The Legislative Acts

There are **two** primary pieces of legislation enabling leasehold enfranchisement.

■ Leasehold Reform Act 1967

■ Leasehold Reform Housing and Urban Development Act 1993

## Voluntary Agreement (Greater Flexibility)

### Pros

- Parties free to come to their own agreement
- Parties not bound by the legislation
- No strict timescales to adhere to
- No threat of Tribunal determination

### Cons

- The freeholder under no obligation to come to an agreement
- If an agreement cannot be reached, a statutory claim may need to be made, and valuable time may have been wasted
- Transactions may be slower as there are no timescales

Generally, this is the preferred route for social housing leaseholders where there is an amicable relationship between landlord and tenant and a mutual desire to achieve an outcome



## Statutory Agreement

### Pros

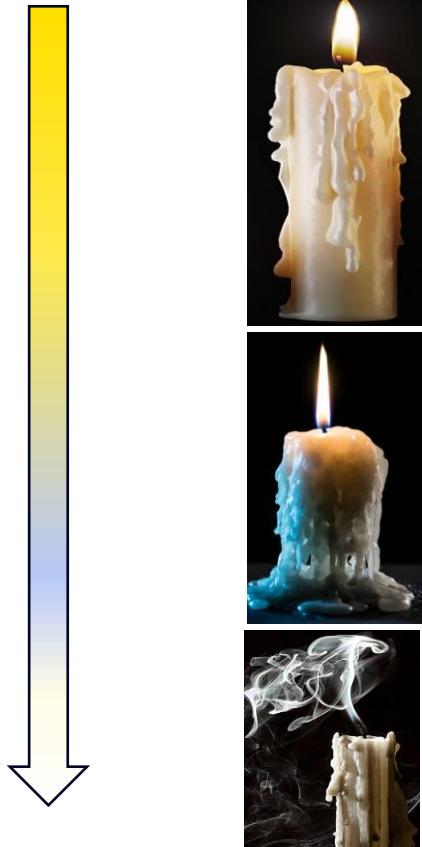
- Prescribed timescales set by statute
- Tribunal determine claims that cannot be negotiated
- Statutory formula for enfranchisement calculation

### Cons

- Penalties for not adhering to prescribed timescales
- Tribunal determination is risky
- Less flexibility than voluntary route
- Service of formal notices required

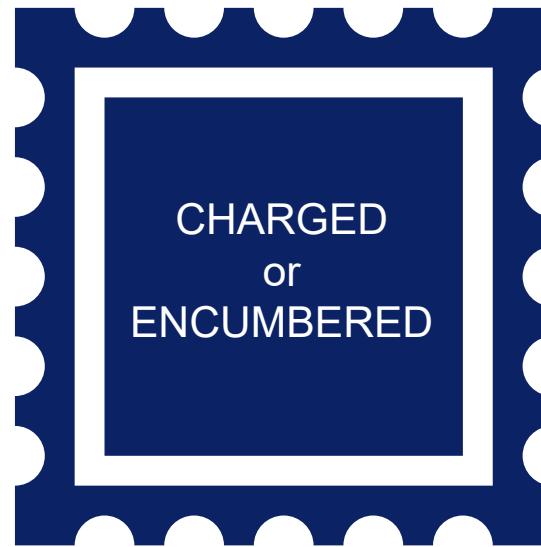
# House Leasehold Value Decay – Over Time

Assuming a £500,000 house on varying lease lengths subject to a rising ground of £20 fixed for the lease term based on a 9(1) valuation under the Leasehold Reform Act 1967



UXT	L/H Value	Ground Rent Paid to F/H	Reduction in L/H Value	Premium to acquire F/H (MV)	ROI for L/H
70	£437,000	£328	£0	£5,897	578%
65	£427,500	£326	-£9,826	£7,519	479%
60	£417,000	£323	-£20,323	£9,614	467%
55	£404,500	£320	-£32,820	£12,320	451%
50	£390,000	£315	-£47,315	£15,813	428%

# Property subject to a charge



# Consent to Charge

***RESTRICTION ON TITLE: No disposition of the registered estate by the proprietor of the registered estate is to be registered without the consent of Birmingham City Council.***

## ***LEASE EXTRACT***

***Dated 25 March 1995***

## ***BETWEEN***

- (1) *BIRMINGHAM CITY COUNCIL of Victoria Square, Birmingham B1 1BB (the **Landlord**) and*
- (2) *OAKBRIDGE HOUSING ASSOCIATION LIMITED (Company Number 87654321) (Registered Provider Number 4567) of Unity House, 15 Station Road, Birmingham B5 4AA (the **Tenant**)*

## ***THIRD SCHEDULE TENANT'S COVENANTS***

*The Tenant hereby covenants with the Landlord as follows: [...]*

- 8 **USER**
- 8.1 *Not to use the Property or permit or suffer the same to be used for any purpose other than as Affordable Housing and not to use or permit the Property to be used for any trade business or profession whatsoever without the Landlord's consent.*

# Use Restriction

## LEASE EXTRACT

**Dated 25 March 1995**

### 8 USER

- 8.1 Not to use the Property or permit or suffer the same to be used for any purpose other than as Affordable Housing and not to use or permit the Property to be used for any trade business or profession whatsoever without the Landlord's consent.
  
- 8.2 For the purposes of this clause "Affordable Housing" means residential accommodation provided to eligible persons whose needs are not adequately served by the commercial housing market and which: (a) is made available at a cost below the prevailing market rate for comparable accommodation in the locality; and (b) is allocated and let in accordance with the Landlord's nomination rights and allocation policies from time to time; and (c) is subject to arrangements that will ensure that it remains available at such cost for the benefit of eligible persons in perpetuity

# Forfeiture on Insolvency

## FOURTH SCHEDULE FORFEITURE AND RE-ENTRY

### 1 FORFEITURE PROVISIONS

The Landlord may re-enter the Property and terminate this Lease if:

- (a) the rent is unpaid for 21 days after becoming due; or
- (b) the Tenant breaches any covenant in this Lease; or
- (c) the Tenant: (i) enters into liquidation (except for solvent reconstruction); (ii) has a receiver or administrator appointed; (iii) enters into administration; (iv) makes a voluntary arrangement with creditors; (v) is struck off or dissolved; or
- (d) a mortgagee takes possession or appoints a receiver

This right may be exercised notwithstanding any previous waiver or acceptance of rent, subject to Section 146 Law of Property Act 1925.

# Section 106 Agreement Extract - Mortgagee Exclusion Clause

## SECTION 106 AGREEMENT

Dated 25 March 1994

BETWEEN

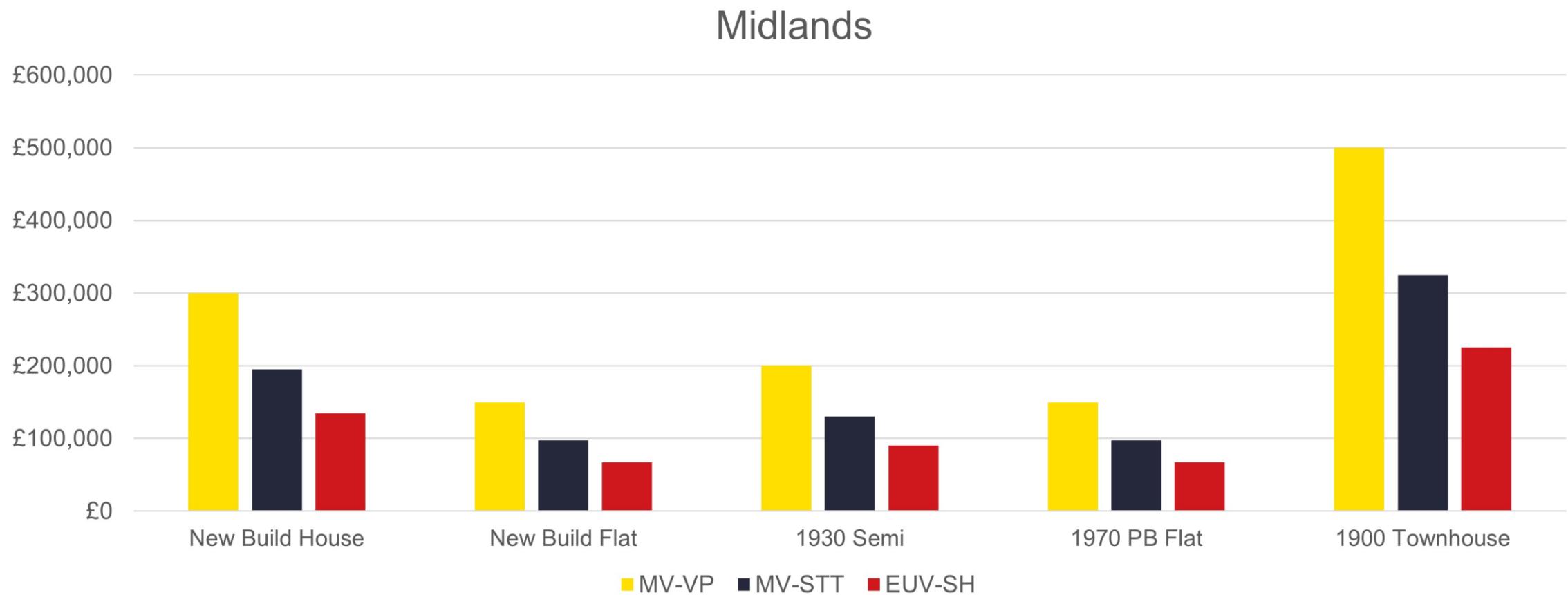
- (1) BIRMINGHAM CITY COUNCIL (the **Council**) and
- (2) OAKBRIDGE HOUSING ASSOCIATION LIMITED (Company Number 87654321) (Registered Provider Number 4567) (the **Registered Provider**)

## SCHEDULE 3 - AFFORDABLE HOUSING PROVISIONS

### Clause 8: Mortgagee Exclusion

- 8.1 The covenants and restrictions contained in this Agreement relating to Affordable Housing Units shall not be enforceable against:
- (a) a mortgagee or chargee of the Registered Provider (including a receiver or administrator appointed by or on behalf of such mortgagee or chargee) in respect of any Affordable Housing Unit; or
  - (b) any person deriving title through such mortgagee or chargee (including a purchaser from a mortgagee in possession or from a receiver or administrator)
- PROVIDED THAT nothing in this clause shall prevent the Council from enforcing the provisions of this Agreement against the Registered Provider or any successor Registered Provider other than those persons specified in sub-clauses (a) and (b) above.
- 8.2 For the avoidance of doubt, the exclusion in clause 8.1 shall apply to any mortgagee in possession or any receiver or administrator appointed by a mortgagee who takes possession of an Affordable Housing Unit and subsequently sells or disposes of such unit free from the affordable housing restrictions and covenants contained in this Agreement.
- 8.3 The parties acknowledge that this exclusion is required to enable the Registered Provider to obtain funding from private lenders to finance the development and management of Affordable Housing Units.

# Bases of Value



## Four points to liberate value



Short leases



Section 133 Relaxation



Section 106 Wording



Cladding

## Opportunity to increase value from EUV-SH to MV-STT

### MV-STT

- (a) Sales will be made to an investor;
- (b) stock will move towards Market Rent;
- (c) properties becoming void can be sold;
- (d) operational costs reflect market not regulatory norms.



## Why is MV-STT uplift viewed as too difficult?

Detail : LSVT stock can be different to surrounding private market – why ?

In general (not always!):

- Large volumes of property;
  - tight geographic concentration;
  - less varied in property forms;
  - mono tenure – social lettings;
  - visually distinct as a social product;
  - rents and sales values tend to be lower than the surrounding private markets.
- 
- The above could limit lender – investor appetite ?

# When Is MV-STT difficult?

Uplifts difficult (not impossible) in markets that have:

- low sales volumes;
- unstable sales volumes.
- lower prices;
- poor stock condition



## Outcomes

**EUV-SH for transferred stock typically in range 20% to 35% of MV-VP**

**MV-STT uplift typically 50% to 75% (but for some stock 45%!)**

**Conventional MV-STT typically 65% to 80%.**

London, South, South West and East of England have benefited mainly.

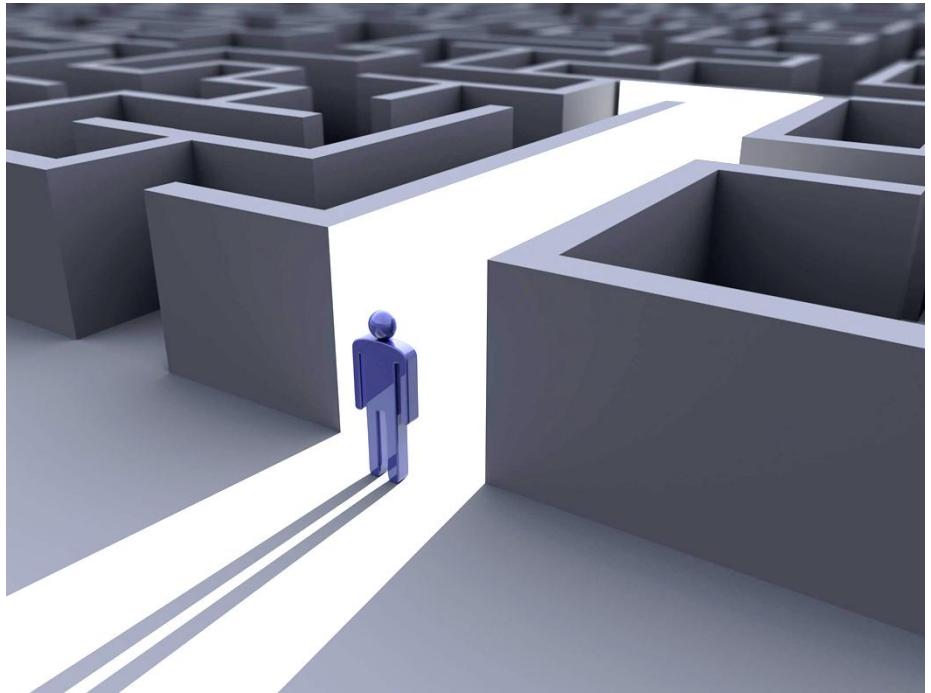
Parts of Midlands, North and Wales have also benefited.



## Some cautions:

- MV-STT may not be the best solution for poorest stock in very weak markets.
- Less favoured property types - Valuer may **limit** stock to EUV-SH or apply a weak MV-STT;
- Beware of clawback arrangements;

**Speak to your valuer and solicitor early to optimise the lending potential.**



## Cladding – Portfolio lending issues

### Building Lender and investor confidence

- Any impact apparent on voids and bad debts – generally limited – waking watch ?
- Building Safety Act 2022 – Regulator – Responsible person
- EWS1 – RICS gradings
- PAS9980
- Risks apparent & Intrusive investigation
- Remediation works costs
- Remediation Timelines



## Cladding – Portfolio lending issues

### Building Lender and investor confidence

- Fire Risk Assessments
- Tri Fire – Chartered Fire Engineers
- Third party responsibility - Litigation & recovery – speak to your solicitor
- Withheld Value?



## EPC Impact on Value – EUV-SH



£115 pw

£125,000



£119 pw

Uplift + £2 convergence

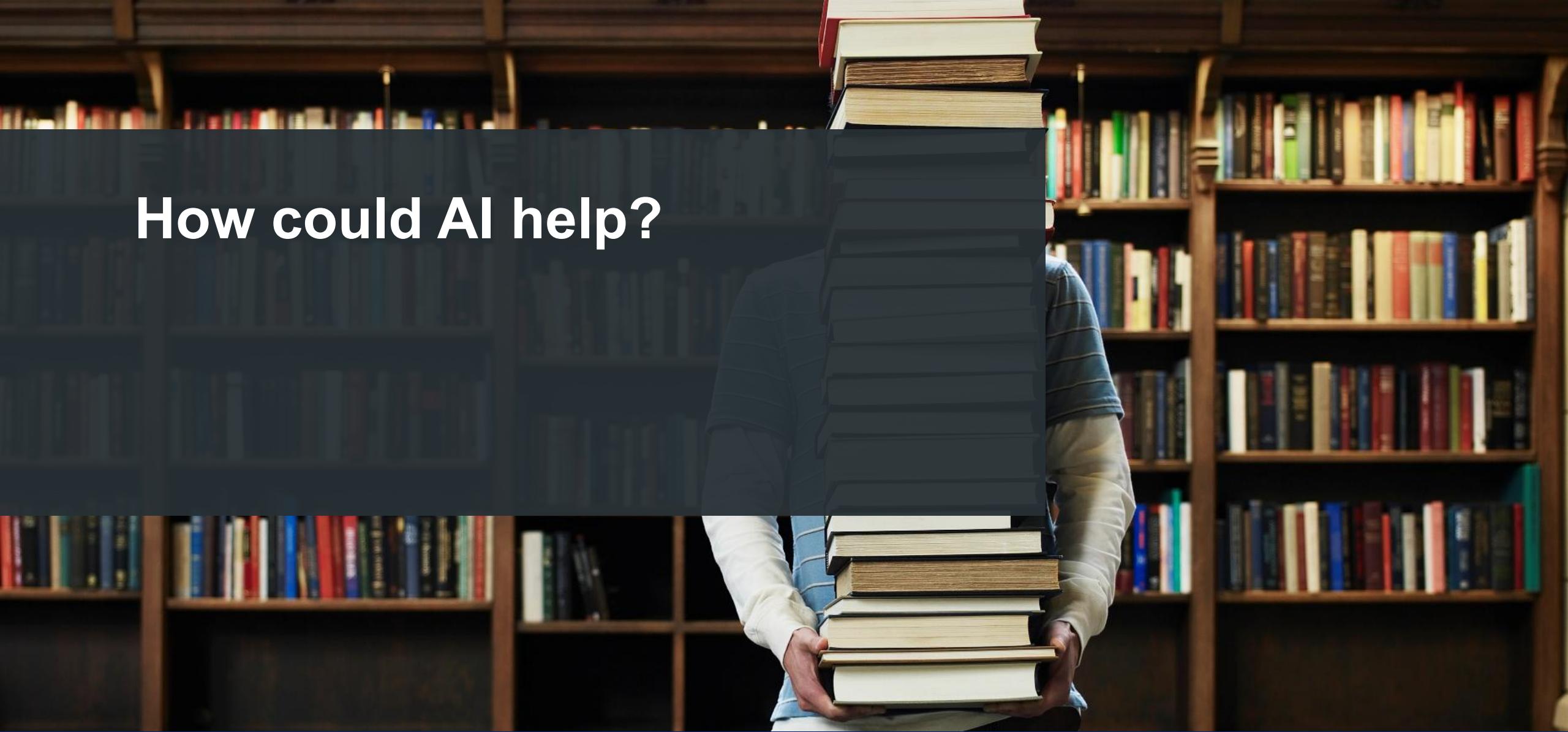
£130,000



£119 pw

£35k Decarb costs

£94,000



# How could AI help?

# Green lights

- Short Leases
- Section 106 Wording
- Cladding
- Decarbonisation Costs
- Section 133

