

PC12-20 : TRANSPARENCY AND COMPETITION: DATA AND LAND CONTROL

Consultation questions: [St Cuthbert \(Out\) Parish Council response](#)

1. The Public Interest

Do you think there is a public interest in collating and publishing additional data on contractual controls over land?

Yes, there needs to be much greater transparency regarding the ownership and interests of developers, companies and individuals in the ownership of land.

2. Rights of pre-emption and options

(a) Do you think that the definition of rights of pre-emption and land options in the Finance Act 2003, s. 4616 is a suitable basis for defining rights of pre-emption and options that will be subject to additional data requirements? Please give reasons.

Yes. The definition is okay but needs to be repeated with the additional data per the OFT's recommendation within a new Land Registry bill to avoid confusion and improve public comprehension.

(b) Is the exemption for options and rights of pre-emption for the purchase or lease of residential property for use as a domestic residence sufficient to cover: • options relating to the provision of occupational housing and • shared ownership schemes? Please give reasons.

Yes.

(c) Are there any types of rights of pre-emption or options that do not fall under the scope of the definition in the Finance Act 2003, s. 46? Please give reason

Not aware.

3. Estate contracts

Are the tests set out above sufficient to avoid inadvertently capturing transactions not related to the development of land? If not, please give examples.

Yes based on information received.

4. Other contractual controls

(a) Are there any contractual arrangements by which control can be exercised over the purchase or sale of land, which should be included within this regime and which are not rights of pre-emption, options or estate contracts? Please give examples.

Need to ensure TP1 vendor-set and historical covenants over land disposal by buyers is included.

(b) If so, do you consider them (i) an interest in land (interests that are capable of being protected by way of a notice on the land register); or (ii) not an interest in land? Please give reasons.

i) an interest in land in that they are (normally) tied to an uplift agreement incumbent on the buyer, heirs and successors. This is particularly important where the seller's intent is for the land to remain an open / green space in perpetuity and the sale being contingent on that. This needs to be clearly visible for public / developer scrutiny.

5. Data requirements

(a) Are there any data fields that (i) should; or (ii) should not be subject to additional data requirements? Please give reasons.

In Common, data field for determined boundaries where geospatially different to the general boundaries rule. Or a warning that determined boundaries exist to alert purchasers or land neighbours to the fact. All information on any central register should be available to all parties.

(b) Are there any data fields that (i) should; or (ii) should not be placed on the land register? Please give reasons.

In Common, data field for determined boundaries where geospatially different to the general boundaries rule. Or a warning that determined boundaries exist to alert purchasers or land neighbours to the fact. All information on any central register should be available to all parties.

(c) Are there any data fields that (i) should; or (ii) should not be included in a contractual control interest dataset? Please give reasons.

In Common, data field for determined boundaries where geospatially different to the general boundaries rule. Or a warning that determined boundaries exist to alert purchasers or land neighbours to the fact. All information on any central register should be available to all parties.

d) Are there other data fields that should be collected? Please give reasons.

Not sure what other data fields are available but would require information on who actually buys a new property. Real estate agents know this but it is not passed on to Local Authorities.

e) Do any of the data fields give rise to privacy risks? Please give reasons.

Protect individuals who may be at risk or vulnerable when their data is disclosed. However, companies should not be exempt.

6. Contractual conditions

(a) Are there any data fields that (i) should; or (ii) should not be subject to additional data requirements? Please give reasons.

No.

(b) Are there any data fields that (i) should; or (ii) should not be placed on the land register? Please give reasons.

(i)should be placed on land register: determined boundaries (see above) and ultimate ownership, not just Investment Company address. All parties who develop, invest in, own or purchase land should be declared on the land register.

c) Are there any data fields that (i) should; or (ii) should not be included in a contractual control interest dataset? Please give reasons.

Not aware.

7. Legal Entity Identifiers

Should legal entities that are beneficiaries of contractual arrangements be asked to provide a Legal Entity Identifier? Please give reasons

Yes. For transparency and public scrutiny.

8. Data currency

(a) Should beneficiaries be required to provide updated information on: • variation • termination, or • assignment or novation? Please give reasons.

Yes. *All* relevant information relevant to any transaction.

b) Are there other ways in which data currency could be maintained?

Online, for transparency and validation.

9. Accounting treatment

If your organisation is required to produce annual accounts, when are: (i) rights of preemption; (ii) options; and (iii) estate contracts recognised on the balance sheet? Please give reasons and state the accounting standard used.

N/A

10. Existing contractual control interests

(a) Should the requirement to supply additional data be limited to: (i) new contractual control interests only; or (ii) all extant interests? Please give reasons.

ii all extant interests. For sake of completion and to reduce scope for errors and misunderstandings, otherwise it will take decades to be useful.

(b) How long should beneficiaries of an extant contractual control interests that is varied, assigned or novated be given to provide additional data before losing protection: (i) three months; or six months?

Three months. Though given that the limit on planning is currently 14 weeks, this would still allow someone to hide a change until it was “too late”.

11. Current beneficiaries

What are the best ways of informing current beneficiaries of the need to provide additional data? Please give reasons.

Lawyers, Government / Land Registry websites, social media, conventional media notices, representative / governing bodies (with instructions to alert their clients) likewise estate agents and conveyancers representative bodies, RICS.

12. A digital process?

Should the provision of additional data prior to the application process for an agreed notice be exclusively digital (with assisted digital support if required)? Please give reasons.

Yes, encourage a digital process but make exceptions for individual levels of competence, local inconsistencies in coverage in the short term.

13. Certification

Should beneficiaries of contractual control interests with a duty to produce annual accounts be required to certify that all relevant interests have been noted? Please give reasons.

Yes. Self-certification, to provide a legal requirement to be honest and transparent.

14. Restrictions

(a) Should beneficiaries of contractual control interests be required to obtain an agreed notice before they could apply for a restriction? Please give reasons.

Yes, to provide an opportunity for fair discussion within 3 months.

(b) Should the protections of restrictions placed on an un-noted contractual control interest be (i) limited; or (ii) removed? Please give reasons.

No, limited to 3 months (see above).

(c) If the Government accepts the Law Commission's recommendation on restrictions, should contractual control interest fall into the category of interest that cannot be capable of protection by way of a restriction? Please give reasons.

Yes contractual control should be included to protect individual's interest.

15. Alternative options

(a) Should a mandatory system be introduced whereby the beneficiary of a contractual control interest would, where it is possible to do so, be required to note their interest with HM LR? Please give reasons.

Yes, to clarify their interest and all parties required to note their interest.

(b) If so, how should the system be enforced? Please give reasons.

Yes, by law and with appropriate penalties.

16. Current practice

(a) If you are a beneficiary of a right of pre-emption, option or estate contract, please indicate how you protect your interest.

	Notice		Restriction	Other	Do not protect
	Ag reed	Unilateral			
Right of pre-emption					
Option					
Estate contract					

(b) What factors influence your choice? Please give reasons.

N/A

17. Data collation and provision

(a) Are there any data fields in Annex A that contracting parties would not have readily to hand? Please list them.

Not aware of any.

b) What is your estimate of the time needed to provide the additional data?

Allowing a maximum of one month would be reasonable.

(b) Does your entity hold a Legal Entity Identifier?

No.

18. Data currency

What additional work (over and above the time and cost of preparing annual accounts) would your organisation need to undertake to identify contractual control interests that needed to be updated?

1 week (37.5 hours)

19. Certification

What additional work (over and above the time and cost of preparing annual accounts) would your organisation need to undertake to certify in your organisation's annual accounts that all relevant contractual control interests had been noted on the land register where the land is registered?

<7 day self-certification, 1-2 weeks for a notary.

20. Economic impact

What impact, if any, do you think that these proposals will have on the English land market (residential and commercial)? Please describe the effects and provide evidence.

Difficult to say, perhaps an initial small increase in land prices.

21. Costs

What impact, if any, do you think that these proposals will have on the costs incurred by participants in the English land market (residential and commercial)? Please describe the effects and provide evidence.

GUESS - increase agents/lawyers/conveyancers etc transaction fees by 10%, maybe more. It will likely depend on complexity. With greater transparency, the actual costs paid for land will enable third parties and the local community to appreciate the real value of land.

22. Identifying and understanding contractual control interests

(a) Can you estimate the amount of (i) time and (ii) money that you have spent on identifying land affected by a contractual control interest?

>£3,000 incl. legal fees per unit.

(b) What is the source of your information?

Parish Council records.

(c) Can you estimate the amount of (i) time and (ii) money that you have spent on seeking professional advice on exactly how a contractual control interest affects a piece of land?

<£500

23. Market impact

(a) If you are a small or medium enterprise (SME) builder or developer, do contractual controls hinder your ability to assess the viability of a local market? Please give reasons.

N/A

(b) If you are an SBE builder or developer, does a lack of freely accessible and understandable data act as a barrier to you entering the market? Please give reasons.

N/A

24. Trust in the planning system

(a) Do you think that a lack of accessible and understandable data on contractual controls makes it more difficult for local communities to understand the likely pattern of development? Please give reasons.

Yes. It has proved impossible to predict and evaluate the threat of new housing in rural fringes of a neighbouring city, and this in turn has meant that cash rich developers have driven a coach and horses through the planning system. Transparency will enable local communities to recognise anticipated profits and better understand the potential community benefits that development could bring.

(b) If so, to what extent does it undermine trust and confidence in the planning system: (i) not much; (ii) somewhat; (iii) a great deal? Please give reasons.

(iii) A great deal. Witness the public outcry against decisions to ignore the protected elements and spirit of local plans and build, build, build with no adequate additions to the local infrastructure. Transparency would highlight more clearly the costs and benefits of developing land.

25. Public Sector Equality Duty

What impact, if any, do you think that these proposals will have on people who share protected characteristics? Please describe the effects and provide evidence.

None as far as we are aware.

Your evidence

Please email your responses to this consultation to policycomms@nalc.gov.uk by 17.00 on 16 October 2020. County associations are asked to forward this briefing onto all member councils in their area.