

**Response to the Transparency and Competition paper about the data held by
HM Land Registry (HMLR)
October 2020**

Introduction

This response is by the members of Burwash: Save our Fields group. Burwash is an historic village in East Sussex. The group aims include helping to ensure local people can find housing that they can afford and protecting the High Weald Area of Outstanding Natural Beauty.

Overall position

- 1) The group considers that it is in the public interest that the amount of information held by the Land Registry should be increased and that access to it by members of the public should be easier. The government's commitment to making access free is welcome. However there needs to be a balance. The need to protect commercially sensitive information is clear and to some extent the registration of information should not be too onerous. The later has been exaggerated by those who seek to protect those who fear the registering of important information will expose them to unwanted scrutiny.
- 2) The reasons for the need for increased information to be required is that it will enable neighbours, developers, statutory bodies, national institutions and others to know relevant factors about land including its ownership and its history. The examples below illustrate this importance.
 - a) **The police and law enforcement agencies** The police and law enforcement agencies like the CPS and the Serious Fraud Office will be assisted during criminal proceedings against an individual or a company in conducting prosecutions and confiscating assets acquired by criminal activity if they have the fullest information about land acquired from criminal activity.
 - b) **The Inland Revenue** The Revenue will similarly be assisted to reduce tax evasion by instant access to the full information about suspicious land assets.
 - c) **The developer** A developer will incur delay and unnecessary expense if he or she is unable to know information about the land near the site that he or she wishes to developer. If there is a piece of land which may hold up development, like a what are called ransom strips, the sooner everybody knows about such pieces of land the better. This is known as information asymmetry in the consultation document. This lack of data for developers was recognised as long ago as 2007 in the John Callcutt review.
 - d) **The neighbour** A neighbour might suffer from unpleasant behaviour on neighbouring land like public nuisance and anti-social behaviour. It is important that the neighbour should be able to determine the true ownership of the land. If the land is owned by shell companies in tax havens which offer secrecy, attempt to protect the neighbour and others will be thwarted.

- e) **Public authorities** Public authorities who seek to carry out their functions and for example help the neighbour in para d) must also need the fullest information to conduct their important work.
 - f) **Those interested in their communities** For a large number of reasons, including dealing with planning permission, proper records about the ownership of land is important.
 - g) **Land Banking** In 2008, the Office of Fair Trading was right to recognise that, 'It is possible that other industries, land traders or strategic land funds for example, may landbank permissioned land more extensively than homebuilders. The fragmented nature of land records has made it impossible for this study to consider these industries' practices within the scope of the current study'. This lack of information needs to be dealt with.
- 3) Linked to this is the compulsory registration of all land in England. The group welcomes the decision that such compulsory registration should be completed in 2030 and the registration of all public held land be completed by 2025. The government is asked to ensure the 2025 date is not moved back and the 2030 dates is brought forward to 2025. Registration is not complicated and the delay to 2030 is unnecessary. Experience shows that if you give a public authority or charity seven days to do something nothing happens until the last day. If ten years is given nothing happens until the last year.
- 4) The White Paper is right to recognise at para 43, 'the data held by HMLR on rights of pre-emption, options and estate contracts are limited and difficult to access and interpret'.

Answers to the Consultation questions

Question 1: The Public Interest

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

Please give reasons.

Yes. The reasons include matters listed in para 2 above.

Question 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. 46 is a suitable basis for defining rights of pre-emption and options that will be subject to additional data requirements?

Please give reasons.

The definition should incorporate section 46 for legislative consistence and widen it.

(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.

This is for a specialist.

(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 reasons.

This is for a specialist.

Question 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.

This is for a specialist.

Question 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.

This is for a specialist.

(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.

This is for a specialist.

Question 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.

The use of the phrase 'any data fields' is unfortunate because in this context it means the same as data. However the suggestions in Appendix A seem well thought out.

To ensure the real owner of the piece of land is known there should be a requirement that where the owner or one of the owners is a company, the shareholders in that company, who own more than 10% of the company, should be listed along with the company secretary. If

any of those shareholders is a company, there should be similar requirement to list those shareholders who own more than 10% of that company until the real owner(s) of the land is revealed.

An application for planning permission should be registerable when made. The local planning application form should be amended by adding a question whether this has been done. This would enable not only that application to be known but would enable the reader to access all previous application by typing in the planning application number on the planning authority data base. To ensure this information is added to data base, there should be a requirement to list the last planning application every time a fresh piece of information is added to the data base. Once it is done there would be no requirement to repeat it.

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

Please give reasons.

The answer is the same as the last question.

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

Please give reasons.

This is for a specialist.

(d) Are there other data fields that should be collected?

Please give reasons.

This has already been answered.

(e) Do any of the data fields give rise to privacy risks?

Please give reasons.

Yes, but the public interest listed in para 2 should prevail.

Question 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.

The suggestion that grants of planning permission should be listed to applications for planning permissions. All the other suggestions in this section should be adopted.

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

Please give reasons.

This has already been answered.

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

Please give reasons.

The differences between this and the above questions is small. The question has already been answered.

Question 7: **Legal Entity Identifiers**

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

Please give reasons.

Th suggestion in para 63 is welcome.

Question 8: **Data currency**

(a) Should beneficiaries be required to provide updated information on:

- variation
- termination, or
- assignment or novation?

Please give reasons.

Yes. The reason is that it would mean HMTR is up to date and provides the reader with the required information.

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

HMLR vigilance. There is very little HMLR vigilance at the moment.

Question 9: **Accounting treatment**

If your organisation is required to produce annual accounts, when are: (i) rights of pre-emption; (ii) options; and (iii) estate contracts recognised on the balance sheet?

Please give reasons and state the accounting standard used.

The question does not apply to our group as it has no such obligations.

Question 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.

It should extend to all extant interests to keep the entries up to date and relevant.

(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. However two months would be better.

Question 11: **Current beneficiaries**

What are the best ways of informing current beneficiaries of the need to provide additional data?

Please give reasons.

The best way is to change the law on the information the government can hold. Also, informing solicitors through the Law Society would be helpful.

Question 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)?

No, because there is still a small number of people who do not have a computer or have poor computer skills. Digital support usually fails to assist.

Question 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.

Restrictions

Yes, to the keep the records up to date and relevant.

Question 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.

This is for a specialist.

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

Please give reasons.

This is for a specialist.

(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.

This is for a specialist.

Question 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 HMLR?

Please give reasons.

Yes, to keep the records up to date and relevant.

(b) If so, how should the system be enforced?

Please give reasons.

Question 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.

Financial penalties.

(b) What factors influence your choice?

Please give reasons.

The need to keep the records up to date and relevant.

Question 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.

Our group is not a contracting party.

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

Our group is not a contracting party.

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

Our group is not a contracting party.

Question 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?

Our group would not have this requirement.

Question 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?

Our group is not a contracting party.

Question 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.

Nothing significant. The public interest should prevail.

Question 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.

Nothing significant. The public interest should prevail.

Question 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?

No, however such an exercise is not of significance.

(b) What is the source of your information?

The question does not arise.

(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?

Yes. None.

Question 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.

Our group is not an SME.

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

Please give reasons.

Our group is not an SME.

Question 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.

No. The likely pattern of development is usually easy to determine.

(b) If so, to what extent does it undermine trust and confidence in the planning system:

(i) not much; (ii) somewhat; (ii) a great deal?

Please give reasons.

The question does not arise.

Question 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.

The proposals would have little or no impact on such groups except for the suggestion that some activity by the public should be digital only. There is still a small number of people who do not have a computer or have poor computer skills. Digital support usually fails to assist. These people will often be those with 'protected characteristics'.

Question 26: **Wales**

Should a contractual control interest regime be extended to Wales?

Please give reasons.

This is a matter for the Welsh.

Robert Banks

Burwash: Save our Fields

Date