

**Paper prepared by: Councillor Anne Newson 10<sup>th</sup> October 2020**

**Burwash Parish Council response to the request from NALC for comments on the following government consultation document:**

**Transparency and Competition: A call for evidence on data on land controls.**

**This document seeks views on:**

1. Proposals to require additional data from beneficiaries of certain types of interest in land
  - i) Rights of pre-emption
  - ii) Options
  - iii) Estate
2. The design of the policy and additional evidence on the impacts of the policy.

The stated purpose behind this Call for Evidence is to consider the impact of improving and extending transparency on land control. This would give the public more information on who *controls* – not simply owns - the land. Although much of the document will be of interest to developers and those with control over land which is not currently 'visible' to the public, there are questions which we should comment on. Others are simply not relevant or require specialist knowledge.

There is also a suggestion in the document that improved data transparency would not just be in the 'public interest' but help small builders to compete more effectively and improve 'market efficiency'.

Below are suggested answers to the questions in the report so far as they relate to Burwash Parish Council:

**QUESTIONS**

**Q1. 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:** As set out in the paper, additional data will show the public who has control (not simply ownership) of land. The Law Commission noted in 1990 when the Land Register was opened that 'the ownership, as well as the user, of land, a finite resource, carries social responsibilities and is a matter of legitimate public interest...'

Improved land record transparency would also appear to assist in identifying land banking (described in this paper rightly as "hoarding land with planning permission, rather than building on it, to profit from rising land prices"). These might also be held by other industries, land traders or strategic land funds and this should be publicly visible.

**Q2: 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.

(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.

(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

We do not have specialist legal knowledge to enable us to comment usefully and the document does not provide sufficient detail for us to attempt a layperson's response to any of Question 2

Q3. 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

We do not have specialist legal knowledge to enable us to comment usefully and the document does not provide sufficient detail for us to attempt a layperson's response to this question

Q4. 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. (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. Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.

We do not have specialist legal knowledge to enable us to comment usefully and the document does not provide sufficient details for us to attempt a layperson's response to any part of this question

Q5. Data requirements

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

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

(c) Are there any data fields that (i) should; or (ii) should not be included in a contractual control interest dataset? Please give reasons. (d) Are there other data fields that should be collected? Please give reasons. (e) Do any of the data fields give rise to privacy risks? Please give reasons

We do not have sufficient knowledge to contribute usefully

Q6. Contractual conditions

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

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

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

We do not have sufficient knowledge to contribute usefully to this question

#### Q7. Legal Entity Identifiers

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

Yes. This ensures that the ultimate ownership is clearly identified and not hidden through subsidiary entities or complex company structures.

#### Q8. Data currency

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

- variation
- termination, or
- assignment or novation? Please give reasons.

Yes. It will be pointless if changes are if not kept up to date and clearly recorded within a required period of time.

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

Fines?

Q9. 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.

Not applicable.

#### Q10. 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.

To all extant interests otherwise transparency will not be achieved

(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

Q11. Current beneficiaries What are the best ways of informing current beneficiaries of the need to provide additional data? Please give reasons.

HMLR? Whoever holds beneficiary addresses. Law firms to advise clients?  
Companies House?

Q12. 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.

No, there should be an option for written communication although this could probably be phased out.

Q13. 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. This would help focus the mind on ensuring that relevant interests have indeed been publicly noted if it forms part of a legal requirement.

Q14. 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.

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

(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.

We do not have the required legal knowledge to comment on this question but would endorse steps that ensure transparency is properly maintained and loopholes are not permitted.

Q15. 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 ensure accuracy and transparency of records

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

Financial penalties

Q16 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

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

Not applicable to us.

Q17. 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.

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

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

Not applicable to us.

Q18. 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?

Not applicable to us.

Q19 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?

Not applicable to us.

Q20. 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.

The English land market is impacted most directly by factors such as interest rates, mortgage, commercial credit availability. If the practice of land-banking can be stopped through greater land control transparency and the practice of avoiding build-out to inflate land values be curbed by legal constraints / financial penalties then that might have a very significant impact but we would not attempt to predict exactly what that would be.

Q21. 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

Actual costs in terms of reporting and recording transparent data on the land registry and within published accounts should not be significant. The 'cost' of land-banking practice having to be open to public scrutiny is another matter, but it is in the public interest that this happens.

Q22. 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? (b) What is the source of your information? (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

Not applicable to us

Q23. 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. (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.

Not applicable to us

Q24. 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.

Probably as lack of transparency of control (as opposed to simply ownership) of land hides potential development projects.

(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.

Somewhat. However, the main concerns of trust are typically in relation to developers who wish to build on AONB green fields.