

The government is currently considering measures that may lead to greater availability of information relating to “contractual arrangements used to exercise control over the buying or selling of land”. For developers, this means that details of otherwise confidential agreements, such as pre-emptions, options and conditional contracts may be made public. For the public, this move could give greater control of development in their area.

The government considers that the lack of data around which entity is really in control of a piece of land is leading a market failure, resulting in two significant disadvantages impacting the public and small to medium developers:

- The general public cannot understand the likelihood of development in their communities
- Small to medium developers who do not have the resources, technology and/or market knowledge due to being new to development could potentially offer opportunities for larger corporates and more experienced developers “to exploit market position, reducing competition and market efficiency”

What Is the Government’s Aim?

The aim is to “redress the balance” between the general public and large developers, for the benefit of public interest, and at the same time, improving the development process by giving free access to data. This would have a dramatic effect on cost and time in the planning and development process.

The move towards cost and speed efficiencies goes hand in hand with the aims set out in the government’s White Paper, Planning for the Future, which identifies that the planning system needs to move towards a modernised, open data approach to create a reliable national picture of what is happening where in planning.

What Are the Current Issues?

Although we enjoy a government protected-system that records land ownership, that system is limited by both the extent to which land itself is registered and how many and how detailed are the entries affecting the land. With data protection further curtailing access to the detail, it is quite clear that the information obtainable from Land Registry frequently only paints half the picture.

There are certain contracts affecting land that mean that, while ownership rests with the registered proprietor, in fact, another party, usually a developer, actually controls the ultimate destiny of that land. This could be by way of conditional contract, option or pre-emption agreement, for example. Any one of these could change a current agricultural use into a major housing development, if the relevant consents are obtained.

As you can see, the system is not the most transparent!



What Are the Proposals for Reform and How Do They Affect You?

- A new contractual controls dataset to collect additional data that will allow the public to understand what land is subject to a contractual control, who is the beneficiary of that control and on what terms control is exercised. This excludes individual’s contractual arrangements or rights relating to the purchase or lease of a domestic residence, testamentary options or statutory rights (provided that, in the first case, the option is not dependent on a condition that requires planning permission).

It is suggested that parties may be required to provide the following details:

- What conditions is the contract subject to (e.g. planning permission or other)?
- What is the planning permission type (e.g. outline or full)?
- What is the usage type (e.g. residential, commercial or mixed)?
- Number of residential and commercial units.
- Square footage of office space.
- If you are a developer who is part of a wider group, then you will be asked to provide a Legal Entity Identifier, which is a 20-digit, alphanumeric code. This is a push to establishing “who owns whom”. It is understood that most contractual control arrangements are likely to be held by legal entities whose boards have a duty to protect their entity’s assets. There are proposals to certify in annual accounts that all relevant interests are the subject of an agreed notice.

- The government acknowledges that most of the interests on which it wishes to collect additional data are generally protected by a notice at the Land Registry and, therefore, no changes are proposed towards relying primarily on the self-interest of beneficiaries to note their interest on the title registers.
- However, the current agreed notice system will be adapted to incorporate the collection of additional data by the Land Registry; this will include any variations, assignments and novation of interest, meaning the contents of your agreements and any such variations will need to be registered at the Land Registry and will be available to the public. This will, however, exclude contractual control over unregistered land.
- The government is looking to limit the scope of additional data required for estate contracts through a completion date and conditionality test, i.e. contracts that may complete outside of a six-month period from exchange of contracts and include a condition for which grant of planning permissions would be required. The government is also seeking views on whether the requirement to provide additional data should be extended to existing arrangements, which would mean a large review and disclosure task for those of you who have multiple options, promotion agreements and other estate contracts. The collation of information will be wholly digital.

Whether or not the government can achieve its aims of delivering comprehensive information that can be used by local communities to action controls over development in their area and allow new, small and medium builders to flourish in the market could, in part, be up to you. The consultation ends on 30 October. There is still plenty of time to give your views.

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