

Consultation on contractual controls
FAO Melanie Montanari / Emma Fraser
Department for Levelling Up, Housing and Communities
Housing Markets and Strategy Directorate
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Delivered by email only to : CCAconsultation@levellingup.gov.uk

20th March 2024

Dear Sir / Madam

Re : ‘Contractual controls on land’ consultation

Thank you for consulting the Land, Planning and Development Federation (LPDF) on the ‘Contractual controls on land’ consultation.

The LPDF was set up in April 2018 and seeks to represent the UK’s leading land promoters, home builders and commercial developers.

LPDF members support the housebuilding and commercial development sectors by promoting sites through the planning system, providing “shovel ready” land with a planning permission which can facilitate the delivery of infrastructure and serviced land parcels.

The LPDF seeks to actively engage with government on planning, housing and commercial development policy and to educate the wider public on the social, environmental and economic benefits of development through an evidenced based approach.

The LPDF encourages its members to deliver well designed, high quality, sustainable places which deliver a mix of housing types and tenures, commercial spaces and community uses that have a positive social, environmental, and economic impact.

Our key values include:

- Working in a positive and cooperative way with central and local government and key stakeholders, to deliver a planning system capable of supplying the homes and employment space we need.
- Promoting research and an evidence-led approach to policy development.
- Increasing the supply of new homes to meet demand and make home ownership a realistic possibility for all those who aspire to it.
- Ensuring that we build the affordable homes of all types and tenures that this country so desperately needs.

- Delivering new employment space to meet demand from businesses and support economic growth.
- Championing the impact of increased housing delivery on reducing intergenerational unfairness.
- Creating well designed, high quality and sustainable places to live and work.
- Educating and informing about the social, environmental and economic benefits of development.
- Supporting diversity of delivery in the market and championing SME developers.
- Promoting diversity and inclusivity within the sector.

General Overview

Whilst the LPDF and its members understand the government's wish to make information regarding the control over land more readily available and accessible, we have a number of serious concerns about the details contained in the consultation document including the type of data that will be collected, how that data will be shared with end users and how that data could be used to frustrate the planning system and stall or even block suitable land from coming forward for development. We know that these unintended consequences of making contractual data more publicly accessible were not the original intention of the government, and that the government would not wish to make the planning system even more difficult to navigate which may, as a consequence, reduce housing delivery. But there is a flaw in the government's thinking, particularly about how the data may be misused once it is published.

Firstly, the LPDF have no issues with the government wanting to make information on the contractual controls on land more transparent. We recognise that this is intended to assist Local Planning Authorities (LPAs) in their local plan preparation processes and to inform the wider public about their local area with the hope that this will aid early engagement in the planning process. However, in its proposed format, the potential for negative outcomes as a result of the process are significant, and once the data has been published and the unintended consequences have been realised, there is no going back and the mistakes cannot be easily undone. The LPDF therefore recommend that the government proceed with extreme caution before it moves forward with this proposal.

After taking into account all of the potential negative consequences, if the government still wish to proceed with the collection and publication of this data, then the proposed system needs to be amended to ensure; it collects the right information, it is workable, and that the cost and workload to both the government and the development sector is minimised. The LPDF have set out below how the government can achieve these aims in its answers to the relevant questions contained within the consultation.

As a trade body, we have not sought to answer all the questions, particularly those that are more relevant to individual organisations who actively engage in contractual controls over land as part of their everyday business. Our individual members will respond separately on

the questions relating directly to their experience of preparing option agreements, promotion agreements and other forms of contractual controls.

Questions

Question 1 - What is your name?

Phill Bamford.

Question 2 – What is your email address?

phillb@lpdf.co.uk

Question 3 - Are you responding to this consultation as an individual or submitting a collective response from a group?

We are responding on behalf of the members of the Land, Planning and Development Federation (LPDF).

Question 4 – Type of respondent which best describes you?

Other professional – A trade body.

Question 5 -What is your postcode?

B3 1RB.

Question 6 - Are you more likely to be someone who provides or accesses the information, or both?

Neither, but our members and affiliates will both provide and access the information

Question 11 - Should there be any other exemptions to the types of agreements we are aiming to capture?

Yes – It is considered that Promotion Agreements are not a contractual control on land. They are an agreement between the land owner and the promoter for the delivery of professional planning services. It is the landowner and their agent who are most frequently in control of the land sale process, as set out in the CMA's Final Report of the 'Housebuilding Market Study'. As such, Promotion Agreements should not be captured under the proposed contractual controls on land system.

Question 13 - Do you wish to answer questions about the details of the information we propose to collect, as set out in this table?

Yes.

Question 13.2 - Do you think that the name of the grantee (e.g. developer) for the agreement should be collected and published?

There is no beneficial need for the name of the grantee to be collected and published as part of the new system. The information regarding the grantee may be of use for the LPA in its plan preparation process, but if the site is being actively promoted, then the grantee will indicate its involvement in the site through the LPAs 'Call for Sites' and/or Strategic Housing Land Availability Assessment process, both of which are publicly accessible documents and an established part of the planning process.

Question 13.4 - Do you think that the name of the grantor (e.g. landowner) for the agreement should be collected and published?

There could be unintended consequences of collecting and publishing this information as part of the new system which would have the effect of preventing land coming forward for development. Landowners may be concerned about the public's reaction to the knowledge that they have entered into a contractual agreement in respect of their land with a grantee, especially if the landowners are part of the local community. The potential for negative reactions towards the landowner from the local community may make them reconsider whether they wish to put their land forward for development. This could stifle the land market, increase the price of land, frustrate the planning system and ultimately, prevent land which would otherwise be suitable and deliverable, from being brought forward for development.

Question 13.7 - Do you think that the length of the agreement should be collected and published?

This data is extremely difficult to collect on an accurate basis and may, in certain circumstances, be impractical to include. Many contractual controls are extendable dependent upon the circumstances which are prevailing at the point when the agreement is scheduled to end. Many of these extensions have no specific end date as they relate to processes which, by their nature, are not defined. Examples include the outcome of a planning appeal, the completion of a S106 agreement, the outcome of a judicial review process (which may, if it proceeds through the High Court, Court of Appeal and Supreme Court, take in excess of 2 years, in addition to the other circumstances for which estimates of time are just not possible to make) or the determination of a planning application by the LPA. These processes have no specific end date which can be quantified and recorded, and are frequent occurrences

with many agreements. A practical solution to overcome this hurdle would be for the system to introduce an obligation upon the grantee to remove the agreement from the public register within a certain timescale from when the agreement ends. A sensible timescale would be 90 days from the end of the agreement. Collection of data on a specific end date as proposed in the consultation is simply unworkable.

Question 13.8 - Do you think that the territorial extent for the land involved in the agreement should be collected and published, if available?

It is agreed that if the government wish to proceed with the collection of data on contractual controls on land, then the territorial extent of the land involved in the agreement would be useful to all end users. However, the government are proposing to collect and publish this data by way of a .csv file which presents significant problems about how the geographical extent of land is described in a text format. Many agreements do not match the full extent of a landowners title and using a text based description process will cause confusion and may increase the potential for the misinterpretation of the data. A more practical solution would be for the extent of an agreement to be captured in a graphical map based format, which is more accurate and can be understood by all end users.

Question 13.11 - Do you think that whether the agreement is extendable should be collected and published?

No. See our answer to **Question 13.7** above.

Question 14 - Do you think it is proportionate/feasible to require use of a conveyancer's services to provide the information?

The use of a conveyancer to provide this information is a burden upon the sector as it will place an additional cost upon the grantee which will need to be taken into account. Whilst this cost may be acceptable for the registering of new agreements, the proposal is for the collection of information to be backdated for a period of 5 years from the system's introduction date. For some of the larger organisations in the development sector, this backdating will be a considerable undertaking as they will have a large number of agreements in place across the country. This will place a significant burden upon those organisations in terms of both workload and, if a conveyancer is required to submit the information, it will be a considerable additional cost for the sector, particularly during the difficult economic period the industry is facing currently. There is no need for the system to involve the services of a conveyancer as the government could simply place the obligation to provide the information upon the individual grantees, with any penalties for the supply of that information falling upon those individual organisations (see our response to **Question 27** on the appropriateness of the proposed penalties). This approach will ensure that the cost that needs to be borne by the development sector is minimised.

Question 18 - We intend to require information be provided digitally through Digital Registration Service/Business Gateway to HM Land Registry, except where the registrar directs otherwise. Do you foresee any issues with this approach?

Whilst the LPDF do not have an issue with the proposed collection method, it does beg the question as to why a whole new system is required when the Land Registry already have a system that could be adapted to collect the extended range of data. It would be a much more cost-effective solution to place an obligation on the grantee to register agreements with the Land Registry within a certain timeframe from when the agreement has been entered into. The Land Registry could operate this system with data on land ownership and contractual controls being included on one system. This would reduce the cost of implementing the system for the government and would use the experience and knowledge of the Land Registry in operating such a system to ensure that it was successfully implemented. It would also avoid the issue that finding out information on the ownership of land would be subject of a fee, but finding out whether agreements are in place in relation to that land would be free.

Question 20 - Do you think that 60 days to provide updated information to HMLR is reasonable and the correct length of time to ensure balance between time to comply and having updated information on the public dataset?

It is considered that an appropriate and practical length of time to provide the information would be 90 days in order to allow for the additional workload involved in information provision.

Question 24 - Is publishing structured data in bulk spreadsheets (rather than, for instance, a redacted version of the original agreement) the correct approach?

The publishing of this information in a large structured bulk spreadsheet has the potential to be unwieldy and not a particularly user friendly format for the end user. It will need to be processed by a third party (possibly a PropTech company) to make the data manageable and understandable. This is likely to come at a cost for the end user, potentially defeating the object of the government of making this data freely available to all stakeholders. It is considered that if the data is required to be processed by a PropTech company, then this should come at no cost to the end user of the data. However, the LPDF would strongly object to the publishing of a redacted version of the original agreement as this would add considerably to the cost and workload of compiling this information and would make the system overly complex, unwieldy and unworkable.

In addition, we have significant concerns about collecting the geographic extent of any agreement by this method. We have set out our concerns on this matter in answer to our **Question 13.8** above.

Question 27 - Do you think criminal offences and non-registration will be sufficient to ensure that information provided is complete and accurate?

Making the provision of inaccurate information a criminal offence is completely out of proportion to the seriousness of the offence. It is totally unnecessary. Data of this nature, particularly the geographical extent of any agreement for example, is prone to small discrepancies in the accuracy of the plotting. As a result, to make this a potential criminal offence, with a possible custodial sentence attached, is draconian. A better compliance method would be to use a warn / fine / Increase fine process, whereby a first offence is a warning with an increasing level of fines for repeat offenders. This will achieve the government's objective of ensuring compliance, without the need for criminal offences.

Question 37 - Is our understanding on the potential unintended consequences of the proposal correct?

Yes. The potential unintended consequences identified by the government in paragraph 53 of the consultation document are all real consequences that are likely to occur, as a result of the proposed new system. However, the severity of the impacts of each of these consequences will depend upon how the system is implemented.

Impact on land values – It is difficult to say with any degree of accuracy, whether land values will be impacted by the proposed system, as many factors have an influence on land value, particularly the operation of the planning system as highlighted in the CMA's Final Report of the 'Housebuilding Market Study'.

Pressure on landowners – As we set out in our answer to **Question 13.4** above, the impact of publishing data about agreements could negatively drive landowners to not enter into such agreements. The concern is that once the local community becomes aware that a landowner has entered into an agreement with a grantee, they may react negatively towards the landowner, particularly if they are an active part of the community. This could have a significant impact on the landowner themselves, and may be sufficient for them to reconsider bringing the land forward for development at all.

Communities – Whilst the government set out that their intention is that communities will use the greater transparency to stimulate earlier constructive engagement with developers, this is only likely to happen in a limited number of cases. The much greater concern will be the misuse of this information by local groups, wider organisations representing these groups, and the press, to mobilise pressure groups, report misleading statistics on controls on land, and to generate unhelpful and damaging articles in local areas, and at a national level, which will negatively impact on the delivery of new local plans and potential development schemes.

The use of this information, once it is made available, is very difficult to police, and the opportunities for the misinterpretation of the data and misreporting of the statistics, are great. If this data is used in such a negative way, then the opportunities to reverse the situation will have already been lost. This is probably the greatest of our concerns and is an issue that

the government should think about very carefully before deciding to proceed. If the ultimate aim of the government is to increase transparency whilst ensuring that the planning system is not negatively impacted and made even more difficult, then they need to consider if the very real risks highlighted above, outweigh the benefits of the increased transparency. On the basis of the last point alone, the LPDF consider that the risks associated with the misuse of the information are so significant to the potential future supply of development land, that the government may wish to completely reconsider its proposals.

I hope that you find these comments to be helpful and if you require any further information, then please do not hesitate to contact the LPDF at the email address shown below. The LPDF would be happy to discuss the issues raised in this representation in depth with the Land Transparency team at DLUHC, if they feel that this would be of assistance.

Yours sincerely



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