

18 MARCH 2024

PR4-24 | LAND DATA

Introduction

We are writing in response to the Department for Levelling Up, Housing and Communities consultation on land data.

The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils.

Local councils and their 100,000 councillors are the first tier of local government, closest to the people, and play an essential part in delivering hyper local services, building strong communities, and strengthening social fabric.

Local councils cover more than 90% of the geography of England and over a third of the population and invest over £3 billion per year to improve and strengthen communities.

Summary

- It seems to us that one of the objectives of this consultation is to encourage more transparency in order to make it easier for developers to identify land suitable for developing on. This does however also ensure that more information is available in the public domain and that can only benefit local councils.
- We are aware that planning authorities are concerned that two previous secretaries of state for communities believed that the national shortage of homes is / was due to an alleged obstructiveness or tardiness in the planning system. However, in reality, we believe that plenty of land already has been given planning permission, and some further sites have begun to be developed (but very slowly), and more still have been allocated for development in statutory Local Development Plans. Arguably, more homes would be built, and more rapidly, if there were to be greater transparency in the world of property transactions, land-banking and investments. This is something we have communicated in our response to your predecessor department's consultation on transparency and control (2020) and to the Competition and Market Authority's recent housebuilding study (2023)
- In principle we do welcome the Department's shift to try to make land ownership and contracts more generally transparent and understood. And to that end we would want and expect local councils with contractual controls in

land and opt-ins to buy land / involved in a conditional contract – to be protected as well as to be transparent.

- The requirement in the National Planning Policy Framework (NPPF) for a five year land supply for housing needs to be amended and clarified in a way which prevents developers riding roughshod over Local Plans, contrary to the wishes of local communities, endorsed planning policies and emerging and ‘made’ Neighbourhood Plans.
- We believe the government’s original (2020) Transparency and Competition proposals for this additional data and information to be collected and held by HMLR, and to be freely available by searching the register, are now long overdue and are welcome. We fully support proposed primary and / or secondary legislation to bring this about at the earliest opportunity.
- It is our view that the primary interest of our members is likely to be in establishing who may have contractual control over land in their area when they are, for instance, developing a neighbourhood plan. We are against developers having the excuse of delaying for more than 6 months in registering changes to their contractual controls.

Consultation questions

NALC’s responses to the main consultation questions relevant to local councils in the consultation document are below:

About you

Question 1: What is your name?

National Association of Local Councils (NALC).

Question 2: What is your email address or mobile telephone number?

C/O chris.borg@nalc.gov.uk / 020 7637 1865.

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

Collective response on behalf of a firm, charity, public body or other organisation.

(3.1 - if responding on behalf of a firm, charity, public body or other organisation) What is your name or the name of your organisation / the group you are submitting a response for?

National Association of Local Councils (NALC).

(3.2) If submitting a collective response) Please can you provide a summary of the people or organisations you represent and who else you have consulted to reach your responding conclusions?

(See introduction). The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils. This response was framed by the NALC Policy Committee, with input from the Society of Local Council Clerks (SLCC).

Question 4: Type of respondent that best describes you.

Other – membership body for local councils.

(4.1 if developer) How many homes do you build on average per year?

Not applicable.

(4.3 if Local authority) What is your role within your local authority?

Not applicable.

Question 5: What is the first part of your postcode? If you are responding on behalf of a company or organisation, what is the first part of the postcode of the main office? [only provide first 4 characters]

WC1A.

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

Neither.

Our proposed scope

Question 7: We are intending to collect contractual control information on registered land only. Do you think excluding unregistered land from scope would still allow us to achieve our policy objectives?

Yes.

Please explain your choice

From our previous engagement with His Majesty's Land Registry (HMLR) it was clear that rolling out the government's programme to collate contractual control

information is a huge and long-term task. It is therefore sensible in the first instance to collate data for registered land only, then to commence a programme of work to collate contractual control information for all unregistered land.

Question 8. Do you agree that we should collect contractual control information on agreements whether or not they are protected by a notice or restriction in order to achieve our policy objectives?

Yes.

Please explain your choice.

We argued in 2020 in response to the government's Transparency and Competition for a presumption in favour of transparency and the public interest regarding the collation of contractual control information. So on balance it would seem sensible for the government to collate data for agreements (for registered land) whether or not they are protected by a notice or restriction.

Question 9: Do you think that restrictive covenants should be included in scope to achieve our policy objectives?

Yes.

Please explain your choice.

Restrictive covenants should be included in scope for the collation of contractual control information in interests of transparency and the public interest.

Question 10: Do you think that overage and clawback agreements should be included in scope to achieve our policy objectives?

Yes.

Please explain your choice.

For completeness, transparency and in the public interest – overage and clawback agreements for contractual contract information should be included.

The requirement in the National Planning Policy Framework (NPPF) for a five year land supply for housing also needs to be amended and clarified in a way which prevents developers riding roughshod over Local Plans, contrary to the wishes of local communities, endorsed planning policies and emerging and 'made' Neighbourhood Plans.

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

No.

Please explain your choice?

There should be no exemptions to the types of agreements the government is seeking to capture – in the interests again of transparency and the public interest.

Proposed process for providing and updating information about future contractual controls

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

Yes.

Please explain your answer.

There is no alternative to requiring the use of a solicitor's services for providing and updating information about future contractual controls if legal entities are involved. However, as NALC argued back in 2020 this would cause some additional work for local councils, 6000 of whom in England likely employ one full time equivalent clerk (officer) or less. Such work would involve (for clerks) liaising with their internal auditor, possibly engaging a solicitor and also paying additional fees to such a solicitor to identify contractual control interests that needed to be updated. Estimates are hard to provide as we did not hear from many local council land beneficiaries in response to the 2020 consultation. **However, indicatively, one local council respondent suggested one working week (37.5 hours) for each instance.**

Question 15: Would you be likely to apply to HMLR for a case-by-case exemption to provide the information without using a conveyancer?

Yes.

Please explain your answer.

Though NALC is not a landowner itself many of the local councils it represents are landowners and they would as such almost certainly be likely to apply to HMLR for a case-by-case exemption to provide the information without using a conveyancer.

Question 16: Assisted digital is support for people who can't use online government services on their own. The support can be someone guiding a user through the digital service or entering a user's information into the digital service on their behalf. It can then be provided by the private, voluntary or public sectors. Would you be likely to apply to HMLR for a case-by-case exemption to provide the information through an assisted digital process?

Yes.

Please explain your answer.

(See answer to 15). Local councils needing to provide contractual control information for registered land they own or manage would inevitably in most cases be likely to apply to HMLR for a case-by-case exemption to provide the information through an assisted digital process. This is also because we argued back in 2020 that the process should not be entirely digital as most of England's local councils are smaller councils with budgets of under £25,000 per annum (65%) and not all have websites.

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?

Yes.

Please explain your answer and any potential issues you foresee.

(See answer for 16). All local councils with budgets below £25,000 per annum should be allowed to apply to HMLR for a case-by-case exemption to provide the information through an assisted digital process. The process should not be entirely digital as most of England's local councils are smaller councils with budgets of under £25,000 per annum and not all have websites.

Keeping the information up to date

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?

Yes

How we plan to publish the information

Question 22: With the current systems in place, how easy is it to access and understand contractual control information on land?

Extremely difficult.

Please explain the reasons for your selection.

We are aware that planning authorities are concerned that two previous secretaries of state for communities believed that the national shortage of homes is / was due to an alleged obstructiveness or tardiness in the planning system. However, in reality, we believe that plenty of land already has been given planning permission, and some further sites have begun to be developed (but very slowly), and more still have been allocated for development in statutory Local Development Plans.

Back in 2020 NALC heard from local councils that the current systems make it very difficult even to identify who owns or manages parcels of land within their parish boundaries. The likelihood is that smaller local councils which are land beneficiaries (particularly in rural areas) – will incur disproportionate amounts of time and money relative to their officer capacity and annual budgets – trying to identify land affected by a contractual control interest. Estimates are hard to provide as we did not hear from many local council land beneficiaries in response to the 2020 consultation. However, indicatively, one local council respondent suggested then over £3000 including legal fees per unit.

Langham Parish Council told us that in preparation of the Neighbourhood Plan just identifying who thought they owned what parcels of land was a tortuous task and finding out who actually did own it was almost impossible.

Question 23: With the new proposed systems change, how easy do you believe it will be to access and understand contractual control information?

Moderate.

Please explain the reasons for your selection.

At least the government is now providing some limited digital support and guidance to entities wishing to provide contractual control information for registered land they own or manage – this must be made available to all local councils especially those limited capacity (with annual budgets of less than £25,000).

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

No.

Please explain your answer.

Clerks on smaller councils work limited hours and do not have time to wade through redacted bulk spreadsheets – a redacted version of the original agreement in digital format would be preferable. Councillors too will have a varying degree of capacity (our councillor census survey from 2019 confirmed that on average local councillors allocate around 12 hours per month to the role).

Compliance

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

Yes.

Please explain your answer.

It is NALC's belief that strict sanctions will need to be applied by HMLR to ensure that developers and private landowners do not provide incomplete and inaccurate data.

Question 28: What else should we do to ensure the information is provided in a timely and accurate way (if anything)?

Nothing. Strict criminal offences and non-registration are sufficient sanctions for HMLR to use to ensure that data is provided in a timely and accurate way, remembering that this should be a stepped approach and ensuring that full support and guidance should be provided to local councils by HMLR.

Question 29: What other information would be useful to include in the guidance to successfully implement the new process into current practice?

Information on why contractual control information is required, how it can best be provided in a timely and accurate way, and support (e.g. digital) and guidance sources available.

Benefits and impacts

Question 30: Is our understanding of the potential benefits of the proposal, correct?

Yes.

Please provide more information about your response.

We agree that communities will benefit from being able to better understand likely developments coming forward for planning permission through more easily accessible data – but this depends on the effective implementation of the new system. It will be important for the government to monitor this and ensure this achieves its intended objectives.

Question 31: Are there any further benefits that you anticipate would be seen from the proposed new measures?

Yes.

Please explain your answer and any further benefits.

If the new system works well, it could help local councils better identify the owners of land within their parish boundaries.

Costs

Question 34: Are the estimated costs, assumptions and workings set out above and in the consultation stage impact assessment realistic?

No.

Please explain your answer.

Local councils are the first tier of local government in most of England and a type of local authority but are not local planning authorities and have not been factored into the costs table by the government. As local councils are not usually either land promoters or developers and as such are more likely to be involved in accessing data on land in their council area in the process of representing their community in, for example, the preparation of a neighbourhood plan.

Question 35: Are there any other organisations who would need to familiarise themselves with the new legislation that we should include in this analysis?

No.

Unintended consequences

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

Yes.

Please explain your answer.

Yes – communities will be better informed and the democratic planning process will be strengthened.

Question 39: Can you think of any other likely unintended consequences?

No.

Regulations

Question 40: (To note, this is not our final policy position. Points of detail are pending finalisation, and these are indicated in square brackets). Would you like to review the draft regulations?

No.

Public sector equality duty

Question 42: Are you happy to be contacted to discuss your response further if necessary?

Yes.

For further information on this response contact Chris Borg, policy manager, on 07714 771049 or via email at chris.borg@nalc.gov.uk.

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