



HM Government



# CUTTING RED TAPE

Review of house building

February 2017

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# Introduction

This report summarises the findings of the Cutting Red Tape review of the house building sector which took place during 2016.

The review was launched in order to examine whether legislation and its implementation can be simplified or improved to aid compliance and to reduce unnecessary burdens on business. The review aims to support the building of more homes, a key priority as set out by the White Paper on Housing, by identifying burdens on house-builders so that steps can be taken to address them. It is one of a series of Cutting Red Tape reviews that aims to address issues such as overlap and duplication between regulators, or to identify instances where the legislation, guidance or the approach to implementing regulations is unclear, confusing or unnecessarily burdensome.

Evidence was gathered predominantly from house builders via an online call for evidence and in face to face meetings. We also heard from a wide range of other stakeholders involved with the sector, including planning consultants, architects, surveyors, housing associations, Local Authorities and interest groups.

We held 41 targeted interviews and received 133 comments via the Cutting Red Tape website. We also received a number of detailed emailed submissions from key interest groups. This included submissions from the sector's large trade associations, such as the Home Builders Federation, whose members deliver around 80% of new build houses each year, and the Federation of Master Builders (FMB), who represent 9,000 construction companies.

House builders and trade bodies in the sector told us that there were significant burdens in the sector linked to regulation and enforcement of planning and other consenting regimes. The response of industry was that these add to the overall build cost of housing units and delay the commencement of development. Both large and small builders consistently raised similar issues, although small house builders tended to voice additional concerns over the proportionality of requirements at smaller development sites, as they tend not to be able to commit the same level of staff resource to regulatory and information requirements.

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# Findings

The review evidence identified 6 thematic areas as the cause of burdens on the sector. These areas are planning, highways, environment, utilities, building regulations and burdens on SMEs.

## Planning

The sector felt that there is a **lack of high quality skilled staff in Local Planning Authorities (LPAs)** to process planning applications, provide accurate and consistent planning advice, and take risk-based and proportionate decisions. While around four-fifths of major applications are determined on time, the sector felt that under-staffing and a lack of high quality, well trained and experienced planning officers are causing inefficiency and delay for a significant proportion of projects in the planning system.

The Royal Town Planning Institute, LPAs and private sector consultancies also report concerns about an increasing shortage of planning professionals, driven by an increasingly ageing population of planners that is retiring and an insufficient supply of new graduates who will be able to replace them in the future.

It was reported that the **pre-application advice processes made available by Councils vary widely in their quality, consistency and length**. It was reported that advice can take too long to appear and the cost of the process may outweigh the benefit. Developers submitted that pre-application advice can be inconsistent and there is a lack of information that can be relied on: advice may be issued that is later contradicted during the planning application process. This can be because another planning officer has a different interpretation or view concerning the local requirements, or a change of staff within the planning department.

It was reported that the **information required to be submitted with a planning application is often not proportionate to the specific size and technical details of the site involved**. This results in unnecessary burdens and upfront costs for SME builders.

It was reported that Planning Authorities tend to not take a risk based approach to deciding which reports are required and may not proactively consider whether they are necessary. The requests for reports are staggered, rather than being requested definitively and at a single point which makes financial planning difficult, particularly for smaller builders.

Before the determination period begins, a planning application must be validated and registered by the LPA. If the information provided is incomplete, inadequate or insufficient, the LPA will require the applicant to amend and resubmit the application. **It was reported**

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**that the validation and registration of planning applications are often delayed by a period of several weeks.** The reasons given for such delays were typically because of staff shortages or the requirement for additional ecological or technical reports, not previously requested, to be submitted.

There was a substantial consensus amongst house builders that the six policy tests in the National Planning Policy Framework for the implementation of planning conditions are not being properly practised by Local Planning Authorities. **They believed that too many unnecessary planning conditions are imposed and they can take too long to be discharged.** Examples provided of unnecessary planning conditions included:

- where the relevant information had already been submitted as part of the planning application (for instance, a condition requiring a landscaping plan);
- conditions that were too onerous for a particular site (due to its size or location);
- conditions that were unnecessary as pre-commencement conditions (as they could have been dealt with after commencement); and
- conditions that were already covered by other regulations or consenting regimes (e.g. building regulations).

House builders reported that typically there are delays in the region of 3 to 9 months due to the time it takes to deal with and discharge all pre-commencement planning conditions. To discharge a condition, applicants submit a request to discharge to the LPA. House builders reported that often the LPA will not have the expertise in-house to be in a position to properly assess or validate whether the conditions have been appropriately met and should be discharged. As a result they may have to consult experts or bodies such as the Environment Agency or Natural England which can cause significant delays and add costs.

It was reported that **agreements necessary under Section 106 of the Town and Country Act 1990 are subject to lengthy delays**, typically of 5 or 6 months, but exceptionally it can be over a year. House builders blame a lack of staffing resource in Council legal departments as being the key cause of delays. They also cited the involvement of parish, district and county councils as a contributing factor.

House builders complained that there was often a **lack of transparency about where the money that they paid via the Community Infrastructure Levy (CIL) was going.** There were also concerns raised concerning the impact that high levels of CIL can have on the viability of smaller schemes. It was reported that no consideration was given in viability assessments for the higher relative costs that developers of sites under 10 units faced. Evidence was submitted that for a typical 1-10 unit development of houses, the extra base construction cost amounts to over £100,000.

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## Highways

Responses to the review highlighted **that the need to agree provisions around highways with local authorities and with the relevant Highways Authority can add significant delays, and costs, to the process.** Industry informed us that it can take a significant amount of time to get designs approved by the local authority, as there is currently no incentive for local authorities to adopt roads in a timely manner.

## Environment

The sector reports that that **regulation relating to some protected species can lead to costs and delays to housing developers.** Any delays in protected species mitigation can have a knock on effect, creating further delays for the house builder. For example, any archaeological surveys that might be required cannot begin until protected species have been dealt with appropriately. The sector also reports that specific protected species related costs can be burdensome. One house builder reported the cost of dealing with great crested newts in 2013 at an average of £2,261.55 per newt relocated. This took into account consultant fees, land purchase for the relocated newts and contracting costs for the physical relocation. Another large builder reported a sum of £500,000 spent on one site where just five newts were found.

Some house builders reported that the **Environment Agency takes too long to respond to Local Authorities on the discharge of conditions on hydrology, flooding and environmental contamination remediation strategies.**

There is confusion and uncertainty in the sector concerning Sustainable Drainage Systems (SuDS) caused by the lack of a single responsible authority. SuDS have to be provided if not already on site. In one particular case, SMEs record a delay of over three months to reach an agreement on drainage due to the number of parties involved - ecologists, flood risk managers, landscape managers and Highway Authorities.

## Utilities

Section 106 agreements between Local Authorities and developers are drafted when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. **Respondents have highlighted a growing number of instances where water and sewerage companies are seeking to avoid their statutory obligations under the provision of the Water Industry Act 1991 by pressurising Local Planning Authorities to impose planning conditions.**

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## Disproportionate burdens on SMEs

Several submissions to the review highlighted the important role SMEs had to play in helping the Government to achieve its ambitious house building targets. The National House Building Council (NHBC) has reported that the number of SME house builders delivering 30 or fewer homes has more than halved since 2007. Despite signs of house-building growth in the UK, the prospects for smaller builders remain difficult. Contributors to the review emphasised the importance of helping these businesses to return to the market.

Evidence received highlighted several key and interrelated areas acting as barriers to increased supply by SME house builders. These include: access to finance; procurement regulations; land availability and; compliance with regulations and technical standards. These are described in detail below:

**Access to finance.** Many respondents to the review flagged the contraction in bank lending to SMEs since the recession as having hit small house builders particularly hard. They reported that some major lenders reduced the number of development finance packages on offer, while others have withdrawn from the sector altogether. Submissions to this review indicate it continues to be difficult for smaller developers to secure initial project backing and even when this is achieved to receive ongoing finance and support.

**Land availability.** The issue of land availability for SME house builders was raised by a number of contributors to the review. A key issue highlighted was the tendency of local authorities to focus on large strategic sites rather than the smaller sites preferred by SME builders. There was a perception that local authorities believed it was easier to meet housing targets by identifying large strategic sites in five year land supply plans.

**Public Sector Procurement.** A number of respondents raised public sector procurement regimes and the inability of SMEs to compete effectively through these, particularly SME house builders looking to build on public sector sites.

A key issue identified was the need to complete long and detailed pre-qualification questionnaires. This is difficult for smaller house builders that often have scant administrative resources. Smaller developers may also find it difficult to demonstrate that their annual turnover is sufficient in relation to the size of contract being offered. This is felt to often discourage potential public sector clients from awarding smaller developers the contract.

Respondents did highlight some specific concerns about the way building control system interacts with the planning system and the need to consolidate and simplify the Building Regulations. In particular, there is unnecessary overlap between building control bodies and planning authorities. Several respondents raised the issue of planning conditions being imposed (with a fee to discharge) that are already covered by the Building

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Regulations. One respondent stated that “developers are paying fees needlessly for conditions which are discharged without being checked by planners”.

The findings of the review formed a significant input into the white paper ‘Fixing our broken housing market’ - <https://www.gov.uk/government/collections/housing-white-paper> - published on 7th February 2017, which sets out a broad range of reforms that government plans to introduce to help reform the housing market and increase the supply of new homes. The White Paper sets out how government plan to encourage local authorities to plan for the number of homes their areas need; and outlines plans to give local authorities the tools they need to get homes built, including through maximising use of brownfield and public sector land, and ensuring new developments are supported by the infrastructure they need.



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# Background

## The Scope of the Review

We asked businesses, developers, local authorities, trade associations, planning consultants, and other external stakeholders in the house builder sector to identify unnecessarily burdensome regulations. We asked for instances where both the implementation of the regulations, as well as the regulation itself, was causing problems.

We attempted to get as representative a sample of observations and comments as possible, including hearing and recording the views of smaller sized businesses and representative bodies with an interest in the sector had not previously engaged with Government.

This review covers the whole regulatory landscape within the house building sector, including how and where house builders access information, what information is needed to support their compliance, the cumulative impact of complying with different regulatory regimes, businesses' experience of regulatory activity across different local authorities, times and costs associated with regulatory activity, the interactions house builders have with regulatory authorities, and the consistency of compliance and enforcement decisions and the ease of appealing them.