

# Housebuilding market study

## Statement of Scope

28 February 2023



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## Appendices

Appendix A Use of information provided to the CMA

# 1. Introduction

- 1.1 Finding somewhere to live is important to all consumers.<sup>1</sup> The number and nature of homes that are built shapes communities. The CMA proposes to undertake a market study to consider the housebuilding sector – how it functions, how well it performs for consumers and other stakeholders, including local communities, and how it might work better.
- 1.2 This document sets out the purpose and proposed scope of the market study. It provides an overview of the sector and the proposed themes to be explored in the market study and outlines the CMA’s intended approach to evidence-gathering. This is a consultation, and we invite submissions on the matters raised.
- 1.3 Market studies are one of the tools the CMA can use to examine possible competition or consumer protection issues and seek to solve them.<sup>2</sup> In a market study, the CMA asks whether a market, or elements within it, are working well. If it is not working well, the CMA can look at different ways to address the problems identified in the market study. For example, the CMA can issue guidance to businesses, provide information or guidance to consumers, and/or make recommendations to Government (the UK government and/or the devolved administrations) or other regulatory authorities. The CMA could also open an enforcement case if it identifies evidence that consumer or competition law has been breached and enforcement action is necessary, or a market investigation reference if it identifies problems that could most effectively be resolved through use of its order making powers.<sup>3</sup>
- 1.4 A market study begins with the publication of a Market Study Notice by the CMA.<sup>4,5</sup> The CMA must within 12 months of publication of a market study notice publish a market study report setting out its findings and the action (if any) it proposes to take.<sup>6</sup>

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<sup>1</sup> See the [CMA Annual Plan consultation 2023 to 2024](#), which sets out the CMA’s ambitions to promote an environment where, among other things, people can be confident they are getting great choices and fair deals, and recognises that having somewhere to live is one of the most important areas for people.

<sup>2</sup> Further information on market studies can be found in the following guidance documents: [Market Studies Guidance on the OFT Approach \(OFT519\)](#) and [Market Studies and Market Investigations: Supplemental Guidance on the CMA’s Approach \(CMA3\)](#).

<sup>3</sup> The CMA may also accept undertakings in lieu of a market investigation reference.

<sup>4</sup> A Market Study Notice must be published where the CMA is proposing to carry out its functions under section 5 of the Enterprise Act 2002 (the Act) for the purposes of: considering the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the UK has or may have effects adverse to the interests of consumers; and assessing the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects (section 130A of the Act).

<sup>5</sup> Under section 5 of the Act the CMA has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions, with a view (among other things) to ensuring the CMA has sufficient information to take informed decisions and carry out its other functions effectively.

<sup>6</sup> As set out in section 131B(4) of the Act.

## Context for the market study

- 1.5 Land and housing are not ordinary goods. As well as providing accommodation – a social necessity – they are also financial assets. The provision of housing also has a major impact on the wider economy and on local communities. The ownership and use of land and housing are shaped by political choices that go well beyond matters of economic efficiency and seek to balance the wider public good and benefits of housing provision relative to other uses of land, with the environmental considerations and individual enjoyment of rights that may be impacted by development. The planning system which regulates development in the UK seeks to ensure this balance is met at both a national and a local level and, given the scarcity of land, to optimise its use in line with policy.
- 1.6 Against this background, housebuilding has been the focus of much government policy over the past 20 years, as well as numerous research papers and reviews by academics and others – notably the Barker Review of 2004,<sup>7</sup> the Callcutt Review of 2007,<sup>8</sup> the Office of Fair Trading (OFT)’s market study of 2008,<sup>9</sup> and the Letwin Review of 2018.<sup>10</sup> The planning system is widely recognised as an issue, with many proposals for reform put forward over the years and various changes to the way the planning regime operates having been made since 2012.<sup>11</sup> Most recently, the Levelling Up and Regeneration Bill (LURB),<sup>12</sup> which had its second reading in the House of Lords on 17 January 2023, is on course to introduce several changes to the planning system (discussed further at paragraph 1.31).
- 1.7 In its 2019 manifesto the Government set a target to deliver 300,000 homes (in England) per year by the mid-2020s and at least a million more homes by the end of the current Parliament, thus reflecting estimates of the number of new houses that needed to be built annually in order to meet the housing shortage that had been identified in previous studies.<sup>13</sup> Thus far, these targets have not been met, and there are concerns about whether they are attainable and/or can adequately meet future needs and demand.<sup>14</sup>

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<sup>7</sup> See Barker, K (2004), [Review of Housing Supply – Delivering Stability: Securing our Future Housing Needs, Final Report – Recommendations](#).

<sup>8</sup> See Callcutt, J (2007), [Report: Callcutt Review of Housebuilding Delivery](#).

<sup>9</sup> The OFT was merged with the Competition Commission in 2014 to form the CMA. The OFT market study is available in the [national archives](#).

<sup>10</sup> See Letwin, O (2018), [Independent review of build out: final report](#).

<sup>11</sup> For example, the introduction of a National Planning Policy Framework in 2012 and its subsequent modifications in 2018, 2019 and 2021.

<sup>12</sup> See the [Levelling Up and Regeneration Bill](#).

<sup>13</sup> See for example Barker, K (2004), Review of Housing Supply – Delivering Stability: Securing our Future Housing Needs, Final Report – Recommendations and House of Lords (2016), [Building more homes](#).

<sup>14</sup> See for example House of Lords (2021), [Meeting housing demand](#). This report cites factors including skills shortages, lack of available land, resources for local planning authorities (LPAs), the reduced role of SME builders, inadequate support for social housing provision, and barriers and delays in the planning system. The report also notes concerns that this target may not be enough to address future trends.

- 1.8 The Secretary of State for the Department for Levelling Up, Housing and Communities (DLUHC) wrote to the CMA in 2022 in support of a study into the housebuilding sector, noting the importance of making sure the housebuilding market is working in the interests of consumers and that the UK government would welcome recommendations for measures that it, industry, and the regulators could take to make sure the sector is operating effectively.<sup>15</sup> The CMA also received calls to carry out a review of the sector from members of parliament and industry bodies.
- 1.9 In light of the fundamental relevance of the sector to everyday life, the various concerns raised by stakeholders we have engaged with across England, Scotland, and Wales, and the length of time since the last study by the OFT, we consider that this is the right time to carry out a new market study.

## Summary of proposed scope

- 1.10 The focus of our market study is the supply of new homes to consumers ('housebuilding') in England, Scotland, and Wales.<sup>16</sup>
- 1.11 We are proposing to obtain evidence and carry out analysis that will enable us to:
- (a) understand how the market is structured, the relationships between key participants, and other aspects of the way the industry operates, at each key stage of the housebuilding process (see paragraphs 2.6 to 2.20);
  - (b) establish whether there may be market distortions in the supply of new homes (see paragraphs 2.21 to 2.26); and
  - (c) explore and seek to measure, where possible, whether and to what extent any of the competition issues that we may identify, as described above, may lead to consumer harm, by looking at prices, profitability, quality, and innovation in the sector (see paragraphs 2.27 to 2.31).
- 1.12 Figure 1.1 provides an overview of the key issues that the Market Study thus will seek to understand. These are set out in more detail in paragraphs 2.21 to 2.26.

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<sup>15</sup> See [published correspondence](#) between the Secretary of State for Levelling Up, Housing and Communities and the Competition and Markets Authority.

<sup>16</sup> As described in the Market Study Notice, 'housebuilding' encompasses all aspects of the construction and sale of new houses, flats and any other accommodation, including securing land for future development (whether greenfield or brownfield), obtaining planning permission, putting in place agreements with the appropriate authorities, and the imposition of post purchase charges or restrictions on freeholders where this occurs. It excludes conversions or changes of use of existing buildings. It also excludes the repair, renovation and remodelling of existing housing stock. In relation to the imposition of post-purchase charges or restrictions on freeholders (see paragraphs 2.17 and 2.24(b)), it excludes charges or restrictions in respect of private gated residential estates, but otherwise includes the process of providing ongoing services or approvals in respect of such post-purchase charges or restrictions.

**Figure 1.1: Key questions and areas to explore in the Housebuilding Market Study**

Are distortions in the housebuilding market harming consumers, eg because companies achieve higher profits, prices are higher or quality/innovation is lower than if the market worked well?		
Does the behaviour of any market actor lead to unnecessary costs or distortions in the market?	Can buyers at different stages in the housebuilding process exercise effective choice?	Is there effective competition between housebuilders?
<ul style="list-style-type: none"> <li>• Effect of interaction between land market and planning process on developer incentives</li> <li>• Role and incentives of intermediaries</li> <li>• Incentives and pressures on LPAs in planning process</li> </ul>	<ul style="list-style-type: none"> <li>• Transparency and relationships in land market</li> <li>• Transparency of freehold estate maintenance charges and additional obligations on freeholders</li> <li>• Transparency and influence in the selection of freehold estate management companies</li> </ul>	<ul style="list-style-type: none"> <li>• Barriers to entry and expansion for smaller developers</li> <li>• Effect of land banks and build out rates</li> <li>• Concentration of developers and competition at point of build out, including at local level</li> </ul>

*Note: In this document, the term 'freehold estate' is used to refer to a development which includes any housing of a freehold tenure. As such, mixed tenure estates that include freehold homes would also be classed as freehold estates for the purposes of our analysis.*

1.13 In scoping this study, we are taking account of the large body of research that has preceded it and the statutory timetable of 12 months that market studies are subject to, which necessarily limits the scope of what we can investigate in this complex market. Thus, in this study we are proposing to focus on the aspects of the housebuilding market where we consider that the CMA can provide most insight and have greatest impact, such as structural and behavioural barriers to the market working well and the implications of these for customers, rather than fundamental aspects of the planning regime or government policy.<sup>17</sup> For example, we do not propose to:

- (a) test the validity of the actual targets set by governments across the UK and whether the UK is building enough homes to meet demand;
- (b) explore the constraints on new home supply resulting from broad policy choices that weigh various costs and benefits to society, such as the preservation of green belts;
- (c) question the fundamental aims of the UK's planning regimes, including the way in which they seek to balance housing needs and other societal needs; or
- (d) weigh the costs and benefits of the changes proposed through the LURB.

1.14 Also as part of the scoping process, we have consulted with stakeholders in Northern Ireland and carried out desk research, which together indicate that there are differences in the structure and functioning of the housebuilding sector in

<sup>17</sup> This does not imply that we either support or disagree with the aspects that we are proposing to exclude from the study.

Northern Ireland compared with England, Scotland, and Wales. This means that Northern Ireland appears unlikely to face the same market or supply-side issues as the rest of the UK. Given this background, we are not proposing to include Northern Ireland in the scope of this market study but remain open to revisiting our decision to exclude Northern Ireland from scope if we see evidence that leads us to reassess our initial view. Also, as it appears to us that certain outcomes may be better in Northern Ireland than the rest of the UK, we will consider whether there may be lessons we can learn from Northern Ireland. This is explained further in paragraphs 2.32 to 2.35.

- 1.15 The consultation process and specific questions the CMA is asking in this consultation can be found in section 3.

## Industry background

### *Background statistics*

- 1.16 In 2021-22, over 205,000 new homes were completed in the UK, equivalent to around 18% of the total number of residential homes sold in the UK for that year.<sup>18,19</sup>
- 1.17 The volume of housing built in any given period is influenced by a variety of macroeconomic, social, and political factors. These include movements in property prices; government schemes intended to boost housing supply; and underlying sentiment in the housing market, which influences property investment and mortgage market activity.
- 1.18 The volume of new houses built in England declined sharply following the financial crisis of 2008 (falling from 171,000 in 2007-08 to 108,000 in 2010-11) but has progressively recovered to its pre-2008 levels over the past ten years and stood at 171,000 in 2021-22. Figure 1.2 shows the overall 10-year trend across the UK.<sup>20</sup>

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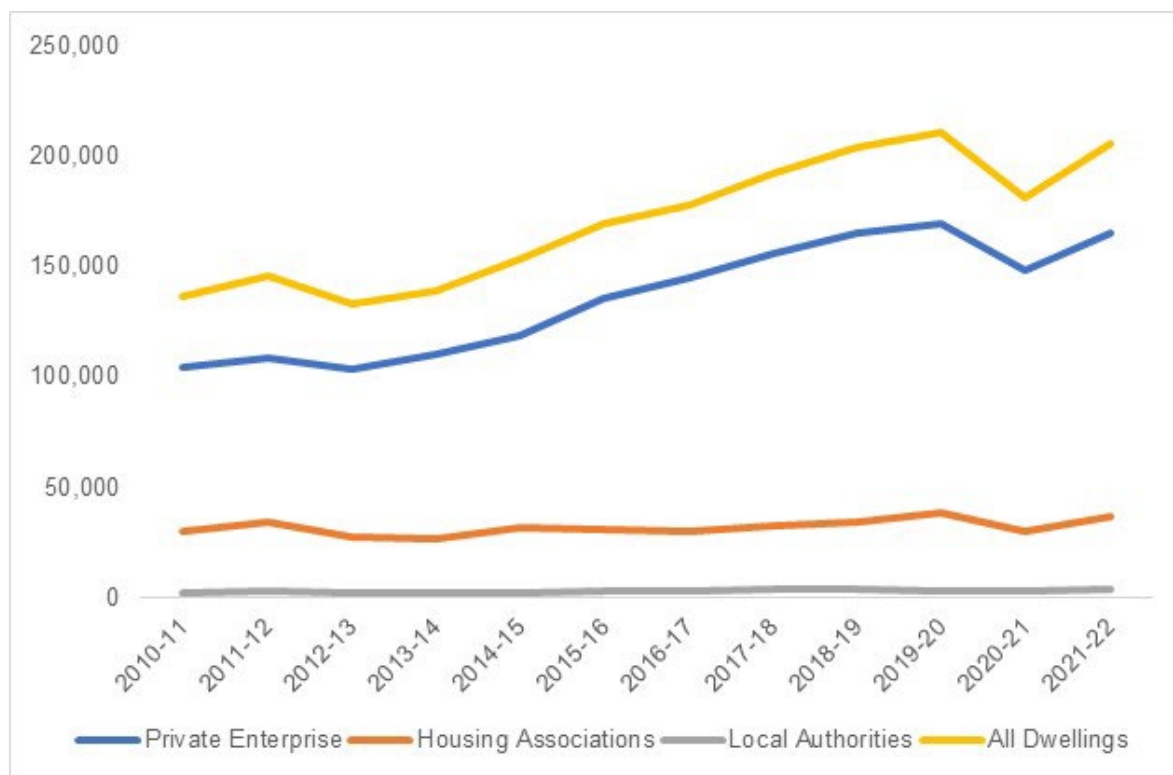
<sup>18</sup> Sources: [DLUHC Live tables on housing supply: indicators of new supply](#); [Scottish Government Housing statistics quarterly update: new housebuilding and affordable housing supply](#); [Welsh Government Housing supply statistics](#); and [Northern Ireland Housing Statistics report 2021-22](#).

<sup>19</sup> Note the total net additional dwellings which measures the absolute increase in stock between one year and the next (including new builds, conversions, changes of use, other gains/losses and offset by demolitions) will be different from the number of housing completions.

<sup>20</sup> Data for Wales and Northern Ireland is not available for the period before 2010-11.



**Figure 1.2: Number of housing completions by tenure<sup>21</sup> in the UK 2010-11 to 2021-22**



Sources: [DLUHC Live tables on housing supply: indicators of new supply](#); [Scottish Government Housing statistics quarterly update: new housebuilding and affordable housing supply](#); [Welsh Government Housing supply statistics](#); and [Northern Ireland Housing Statistics report 2021-22](#).

- 1.19 Housing completions differ in respect of the tenure by which they are occupied: the private sector accounted for 80% of UK housing completions in 2021, with the public sector (ie housing associations<sup>22</sup> (18%) and local authorities (2%))<sup>23</sup> delivering the remaining 20%.<sup>24</sup>
- 1.20 Estimated UK revenues in the housebuilding sector were around £59 billion in 2022-23.<sup>25</sup> The sector comprises some large firms (also referred to as ‘volume housebuilders’) operating across Great Britain, alongside many smaller firms focusing on specific local areas. We estimate that the 5 largest firms (Barratt Developments plc, Taylor Wimpey UK Limited, Persimmon plc, Bellway plc and Vistry) accounted for a little over 30% of new houses built in the UK in 2021.<sup>26</sup> Available data, relayed in a House of Lords report published in January 2022,

<sup>21</sup> The tenure defines the conditions under which the home is occupied, whether it is owned or rented, and if rented, who the landlord is and on what financial and legal terms the let is agreed.

<sup>22</sup> Housing associations are not-for-profit social landlords. They offer similar types of housing as local councils, often to people on a low income or who need extra support.

<sup>23</sup> Sources [DLUHC Live tables on housing supply: indicators of new supply](#); [Scottish Government Housing statistics quarterly update: new housebuilding and affordable housing supply](#); [Welsh Government Housing supply statistics](#); and [Northern Ireland Housing Statistics report 2021-22](#).

<sup>24</sup> An additional number of new homes are delivered via self-build; we have not included this as the data is not readily available and it is believed to be a very small proportion.

<sup>25</sup> CMA estimate based on data from IBIS World (2022), Residential building construction in the UK.

<sup>26</sup> Approximation based on figures released by the companies in their most recent annual reports and government statistics on number of new houses built.

appears to suggest that the share of supply accounted for by small- and medium-size (SME) builders has declined significantly over the past few decades, from 39% of new homes in England and Wales in 1988 to 10% by 2020.<sup>27</sup> The decline in small builders has been commented upon in earlier reports as well, with one noting that the market share (in Great Britain) of small builders (those building fewer than 100 units) had declined from 28% in 2008 to 12% in 2015.<sup>28</sup> The market structure in Northern Ireland differs, however, as the volume housebuilders do not operate there, and Northern Ireland is served entirely by SME builders (and we understand this to be predominantly made up of small builders).<sup>29</sup>

- 1.21 Public sector provision tends to focus on affordable housing – that is, housing for sale or rent, for those whose needs are not met at an affordable level by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers).<sup>30</sup> While some affordable housing receives grant funding,<sup>31</sup> a significant proportion is funded via planning obligations included in the planning consents for residential developments (see paragraphs 1.27 to 1.30 for a description of this planning mechanism).<sup>32</sup>
- 1.22 Statistics for England and Scotland<sup>33</sup> show that the number of additional affordable homes fell between 2010-11 and 2015-16 but has begun to increase since then (see Figure 1.3).<sup>34</sup> Since 2010-11 the composition of the tenure of affordable homes has changed with the number of social rent homes (where the home is owned by a Local Authority or Housing Association) having declined substantially. More affordable homes are being provided as affordable rent homes (where it is owned by a private landlord) or via a shared or affordable ownership scheme.

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<sup>27</sup> Source: House of Lords (2016), [Meeting Housing Demand](#), paragraph 92, citing a report by Savills and LDS.

<sup>28</sup> Source: Government White Paper in 2017 on [Fixing our broken housing market](#), quoting data from NHBC registrations.

<sup>29</sup> See for example Three Dragons and Heriot-Watt University (2015), [Developer Contributions for Affordable Housing in Northern Ireland](#).

<sup>30</sup> In England, this includes houses sold at a price that is at least 20% below market value, starter homes, houses with a rent set at least 20% below market value, shared ownership and social rents. (See [National Planning Policy Framework \(July 2021\)](#), annex 2 for the definition of affordable housing used in England.) Note that the definition may vary slightly across the nations.

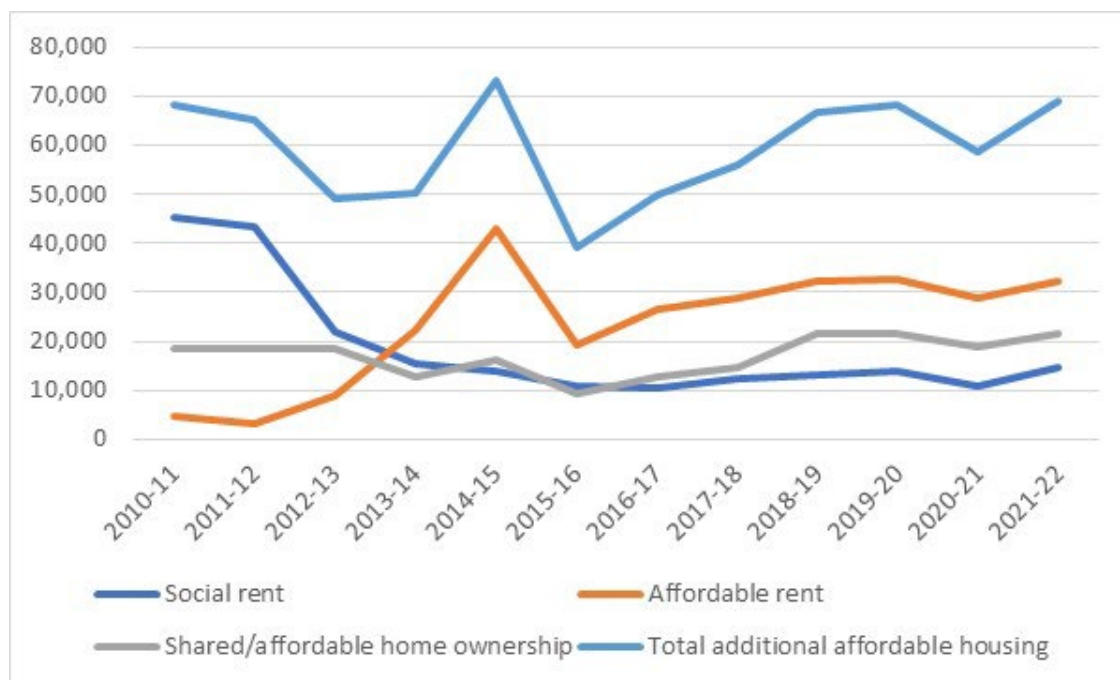
<sup>31</sup> See [Guidance: Apply for affordable housing funding](#).

<sup>32</sup> See [Guidance: Planning obligations](#) for more information on Section 106 agreements. Section 106 agreements fully funded 44% of affordable homes in England in 2021-22. See: [Affordable housing supply in England: 2021 to 2022](#).

<sup>33</sup> Note that Wales and Northern Ireland are excluded as comparable statistics on additional affordable housing are not published for Wales and Northern Ireland.

<sup>34</sup> Affordable homes can be a new-build property or a private sector property that has been purchased for use as an affordable home. In England in 2021-22 91% of additional affordable homes were new-build properties.

**Figure 1.3: Additional affordable housing in England and Scotland 2010-11 to 2021-22**



Sources: [DLUHC Live tables on affordable housing supply](#); and [Scottish Government Housing statistics quarterly update: new housebuilding and affordable housing supply](#).

Note: data for Wales and Northern Ireland is not included in this chart because statistics are compiled on a different basis.

### ***The planning and regulatory framework***

1.23 Housing, the environment and planning are devolved to the respective legislatures in Northern Ireland, Scotland, and Wales. The Town and Country Planning Act 1990 sets out the main legislative framework for planning in England and Wales. In Scotland, planning legislation and policy is distinct from the rest of Great Britain and the Town and Country Planning Act (Scotland) 1997 is the basis for the planning system. Similarly, the Planning Act (Northern Ireland) 2011 sets out a separate framework for Northern Ireland. In this section, we highlight the aspects of the framework which we consider particularly important for the scope of the market study.

1.24 Each of the nations of the UK requires Local Authorities to produce local development plans. In England, the National Planning Policy Framework (NPPF) was introduced in 2012 to streamline the planning system and introduce a ‘presumption in favour of sustainable development’.<sup>35</sup> Under the NPPF, Local Planning Authorities (LPAs) should produce development plans which identify sites for new development and set out policies that guide decision-making on planning applications.

<sup>35</sup> See [National Planning Policy Framework - Guidance](#).

- 1.25 The Welsh Government sets out its national planning policy framework in *Planning Policy Wales*,<sup>36</sup> and in Scotland the National Planning Framework (NPF) sets the context for planning.<sup>37</sup>
- 1.26 In Northern Ireland, the 2011 Planning Act reformed the planning system in Northern Ireland by returning certain planning functions to local Councils, effective from 1 April 2015. The Strategic Planning Policy Statement (SPPS) sets out how planning matters should be addressed across Northern Ireland and provides the core planning principles that underpin the planning system.

### *Planning conditions and obligations*

- 1.27 Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. England, Wales, and Scotland all use these to require developers to contribute to the cost of infrastructure required to support new developments, including the provision of affordable housing. Northern Ireland does not use planning obligations to the same extent to fund affordable housing, which is a significant difference from the rest of the UK.
- 1.28 In England and Wales, section 106 of the Town and Country Planning Act 1990 sets out that agreements can be negotiated between developers and LPAs to meet concerns that an LPA may have about meeting the cost of providing new infrastructure (referred to as s106 agreements). Section 106 agreements are legally binding and may either be in cash or kind, to undertake works, provide affordable housing, or provide additional funding for services.
- 1.29 Alongside s106 agreements, in England and Wales, the Community Infrastructure Levy (CIL) is a levy that LPAs can charge new developments in their area to help pay for the supporting infrastructure.
- 1.30 In Scotland, section 75 of the Town and Country Planning (Scotland) Act 1997 sets out the framework for agreements that can be negotiated between Local Authorities and developers.

### *The Levelling-up and Regeneration Bill*

- 1.31 The LURB is expected to introduce a series of changes to the planning system in England. This includes certain changes relevant to this market study, including:
- (a) Infrastructure Levy: to replace the current system of planning conditions with a new Infrastructure Levy. The levy will be charged on the value of the property when it is sold and applied above a minimum threshold – rates will be set as a percentage of gross development value. Unlike the CIL system,

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<sup>36</sup> See [Future Wales: The National Plan 2040](#).

<sup>37</sup> See [National Planning Framework](#) 4 for Scotland.

the new Infrastructure Levy will be mandatory. The details of the system will be decided through regulation.

- (b) Land ownership – the Bill aims to increase the transparency of contractual and other arrangements about control over land. The Government will also have the power to collect additional real-time ownership, funding, and transaction data, enabling a fuller understanding of who owns and controls land and property in England and Wales.

## 2. Scope of the market study

### Overview

- 2.1 Our proposed market study will focus on the supply of new homes. Where relevant to an assessment of competition in this market, we may also consider how it interacts with the wider housing market.
- 2.2 The CMA's purpose, as set out in its draft Annual Plan 2023-24, is to help people, businesses, and the UK economy by promoting competitive markets (where fair dealing businesses can innovate and thrive) and tackling unfair behaviour. The CMA assesses the functioning of a market within the context of the policy objectives in force: its assessment focuses on whether there are barriers (that are higher than they need to be) to the market functioning well within that framework. In the context of this particular market, relevant policies forming the backdrop to our assessment would include planning objectives as well as housebuilding targets both generally and for affordable housing. We will consider whether there are issues in how the market functions in response to these policies that may adversely impact outcomes for consumers such as the volume, choice, quality, and innovation in new build housing and if so, the extent to which this may result in consumer detriment.
- 2.3 Thus, our evidence-gathering activities and analysis will comprise three complementary elements:
- (a) Understanding the nature and functioning of the housebuilding market, across different parts of the supply chain (see paragraphs 2.6 to 2.20);
  - (b) Assessing whether there are any specific competition issues (see paragraphs 2.21 to 2.26); and
  - (c) If any competition issues are identified, considering how these may harm consumers (see paragraphs 2.27 to 2.31).
- 2.4 Should the above assessment identify distortions of competition, we will consider what remedial action could be taken to address such issues (see paragraph 2.39).
- 2.5 Given that the market study concerns matters that are devolved, throughout the study the CMA will seek to identify and take into account any significant relevant differences by nation in the functioning of the market and any competition and/or consumer issues that may arise.

## **Analysis of the structure and functioning of the housebuilding market**

2.6 As part of its assessment of whether there may be competition issues, the CMA normally seeks to understand the main characteristics of the market being studied, including the number and sizes of market participants, their business models, and roles within the market. This helps the CMA to frame the analysis of competition issues, as well as to assess the practicability of potential remedies, should they be needed.

### ***The analytical framework***

2.7 In thinking about dynamics in the housebuilding market, we consider it helpful to split the complex process through which land is brought forward for development and housing is delivered, into four key stages:

- (a) securing land for future development,
- (b) obtaining planning permission (and putting in place various agreements with the appropriate authorities),
- (c) building the properties, and
- (d) selling the properties.

2.8 A short, stylised description of each stage follows.<sup>38</sup>

### ***Securing land for future development***

2.9 To start the housebuilding process, housebuilders have to identify and secure land on sites where there is a good likelihood of obtaining planning consent. Housebuilders may buy land outright or agree options on land that can be exercised at certain trigger points, for example, if and when the land is awarded outline planning consent.

2.10 Key intermediaries involved at this stage include land agents and land promoters. We understand their roles to be broadly as follows:

- (a) Land agents value the land and facilitate the sale of the land (or options on land) to housebuilders for a fee.
- (b) Land promoters typically seek outline planning permission (and may therefore be involved in the negotiation of conditions with local authorities)

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<sup>38</sup> We are aware that the process of land moving through the stages described is complex and generally not a simple linear progression, eg land may change hands several times before housing is built, or may require a number of iterations to planning permissions before consent is granted. We have therefore provided a simplified version of this process to aid understanding of the key stages involved.

before marketing the land to housebuilders. We understand that land promoters typically receive a commission linked to the price paid by the housebuilder who purchases the land.

### *Obtaining planning permission and putting in place various agreements*

- 2.11 Planning is a critical stage in the housebuilding process. Obtaining planning permission for a new housebuilding site typically involves three stages: obtaining inclusion of the site on the development plan (thus increasing the likelihood of obtaining planning permission), seeking outline planning permission and finally obtaining detailed planning permission.
- Where promoters are involved in the land marketing process, they typically obtain the outline planning permission, with the housebuilder being responsible for completing the process.
  - The process may involve the negotiation of site-specific planning conditions (see paragraph 1.27), which are typically negotiated when seeking outline planning permission and may be renegotiated as part of the viability assessment that is often part of the negotiations between housebuilders and LPAs that take place following the award of the outline planning permission. Thus, the level of much affordable housing provision is agreed via such site-specific negotiations between LPAs and housebuilders.
  - Planning applications are also subject to statutory consultation, through which the local communities or other stakeholders may raise objections.
- 2.12 Before construction commences, where the housebuilder wishes the local authority (in its role as the highway authority) to adopt the roads and other public local amenities on the newly built estates once they are finished, they also need to put in place specific agreements (including in relation to funding) with the local authority and build such amenities to the standard required by the local authority.

### *Construction*

- 2.13 This stage involves the construction of housing in line with the site planning permissions granted. Housebuilders often carry out such construction in stages, and some large sites may be split between several house builders (sometimes with a master developer overseeing the overall construction of larger sites).
- 2.14 The speed at which new houses are released into the local market is referred to as the build-out rate.



## *Sale*

- 2.15 At this stage, the new homes are marketed and sold to investors or owner-occupiers. This may run concurrently with the actual construction (or even before construction where off-plan sales are a significant element of the funding of the development scheme), with completion occurring once the new homes are built.
- 2.16 We understand that sales on large sites are typically carried out directly by the housebuilders via their own outlets (rather than through estate agents), with the pace of release of homes for purchase being typically driven by the housebuilder's view of the volume of new houses that the market can absorb at current prices.
- 2.17 Where agreements for the adoption of roads and other public amenities have not been put in place in the planning/pre-construction phase of the development, responsibility for the on-going maintenance of the roads and public amenities on the newly built estate is often passed on to the new homeowners as part of the sales process (for example, through a covenant on the deeds). Under this scenario:
- On-going maintenance of public amenities requires the on-going payment of an estate management fee<sup>39</sup> in perpetuity.
  - This fee may be payable to the housebuilder itself (at least until the estate is finished), to an estate management company appointed by the housebuilder as part of the overall process, or to a residents' association.
- 2.18 We understand that there are differences across the nations in the way the systems operate. For example, in Scotland joint ownership as well as responsibility for the maintenance of the public amenities may be transferred to the homeowners. Homeowners typically appoint a factor/estate management company to carry out the maintenance. Homeowners also have a statutory right (under Title Conditions (Scotland) Act 2003 ss 28 and 64) to remove the factor and appoint a new one.

### ***Proposed analysis of the way the market operates***

- 2.19 We will seek to understand market dynamics and the process of competition at each of the above four stages.
- 2.20 Our assessment of how the market operates will include the following:
- (a) information on the structure of the housebuilding market, including trends in the share of supply by SMEs and the underlying drivers for this. Given that

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<sup>39</sup> These fees may take the form of a rentcharge, which the [Rentcharges Act 1977](#) in section 1 defines as an annual or other periodic sum charged on or issuing out of land.

demand for housing is generally acknowledged to be of a local nature (ie location is a significant factor in people's purchasing decisions and they mostly look for a property within a local area), an assessment of competition within this market is likely to involve a degree of local analysis.

- (b) In relation to the land market, we propose to examine:
  - (i) how much land is held under agreements between housebuilders or intermediaries and landowners,
  - (ii) how land is brought to market and how ownership may change during this process,
  - (iii) how rights to land are acquired and structured (eg the use of option agreements),
  - (iv) how price for land is established, and
  - (v) the roles played by intermediaries such as land agents and land promoters, and by financial investors.
  
- (c) In relation to the planning stage, we propose to examine:
  - (i) trends in housing delivery against targets, planning approval timelines and proportion of houses within new developments accounted for by affordable housing,
  - (ii) the relevant policy frameworks, in order to understand how they may have shaped the market, and how proposed changes via the LURB may impact on the market in the future,
  - (iii) how local authorities make planning decisions,
  - (iv) the planning process, including the different legal mechanisms available for agreeing supply (including the supply of affordable housing) and how negotiations are carried out, and
  - (v) the process through which local authorities agree to adopt public amenities such as roads and the reasons why this may not always occur.
  
- (d) In relation to the construction stage, we will seek to understand:
  - (i) the size and role of housebuilder land banks,
  - (ii) how build-out rates are set, including whether assumptions made about future house prices when bidding for land may affect this rate,

- (iii) other factors which might limit the rate of housebuilding such as resource constraints, and
  - (iv) consumer demand for, and the policies of housebuilders relating to, sustainable housing, including their plans for meeting consumer demand and new and future government standards as well as their responsiveness to local initiatives aimed at meeting net zero targets.
- (e) In relation to the sale process, exploring the considerations that prospective house buyers take into account when choosing a newly built home and their interactions with the housebuilders and other advisers or intermediaries within this process. We will seek to understand:
- (i) the extent to which the existence and impact of future estate management charges attached to freehold properties is taken into account as part of the process and the reasons for that.

## **Assessment of potential distortions of competition**

2.21 Stakeholders who contacted us raised a range of concerns, including that:

- (a) Distortions in the land market resulting from a lack of transparency and excessive speculation may have led to inflated land prices, barriers to entry and expansion by smaller developers, and a sub-optimal quantum of land being brought forward for development.
- (b) Inefficiencies due to a complex planning process, alongside an increasing regulatory and policy cost burden, may create barriers to entry and expansion and unduly constrain supply.
- (c) There may be weak competition between housebuilders to supply new housing, reducing the quantum and diversity of homes being brought to market.
- (d) As in other sectors, recent inflationary trends, for example, in the cost of building materials and labour, have placed pressure on the supply chain.
- (e) Information asymmetries between housebuilders and house buyers, coupled with sub-optimal planning outcomes and weak competition to supply homes, may result in a lower-quality offer for consumers as well as exposure to high maintenance charges for public spaces on freehold estates where not adopted by local authorities.

2.22 Taking into account the above concerns and our own desk research, we have identified a number of potential competition issues that we propose to investigate.

- 2.23 First, we will consider whether the behaviour of any market actors leads to unnecessary costs or distortions in the market. The potential issues that we propose to explore include:
- (a) The lack of clarity over the business models of some intermediaries in the land market and the effect these operators may have on land transactions and subsequent stages of the development process. One issue raised is that where land promoters obtain outline planning permission, because they do not have responsibility for delivering the proposed housing development, they may agree to planning conditions that are not deliverable at the price at which the land is sold. This could lead to stalled site permissions and in some cases the government having to step in to fund infrastructure and affordable houses.
  - (b) The concern that the interactions between pricing in the land market and the planning process distort the incentives of housebuilders in planning condition negotiations and in bringing land forward for development in a timely manner.
  - (c) The effect that the pressures to meet supply targets may incentivise LPAs to favour large developments and/or large housebuilders over smaller ones, thus distorting competitive dynamics in local markets.
  - (d) In turn, whether reliance on large sites and/or large housebuilders to deliver their local plans, combined with pressures on resources, may potentially diminish LPAs' bargaining power in negotiations and re-negotiations of planning conditions (including in relation to affordable housing).
  - (e) More generally, whether there are unnecessary costs and delays in the planning process arising from the incentives and actions of those involved in negotiations (eg the local authorities, the housebuilders, or land promoters) beyond those costs that are inherent to the overall planning systems adopted across the UK.
  - (f) Whether the nature of the process designed to facilitate the adoption of roads and public local amenities, combined with economic considerations, disincentivises housebuilders and local authorities from entering into agreements.
- 2.24 Second, while our study will largely focus on the supply side, we will explore whether buyers at different stages in the housebuilding process can exercise effective choice given the level of transparency at key stages in the process. This may have different causes and different effects at different stages in the housebuilding process and may include the following:
- (a) In the land market, lack of transparency about what land may become available for sale and pre-existing relationships between

landowners/intermediaries and established housebuilders may be a significant factor in limiting the access to land needed for firms to enter or grow. Land is not necessarily marketed openly as for sale, which is likely to increase search costs and make it more difficult to put together effective proposals for development.

- (b) At the stage of selling homes, there are concerns about the transparency of estate maintenance charges and obligations imposed on freeholders where the public roads and public local amenities have not been adopted by the local authorities. We have heard of allegations by homeowners that such charges can be high, can increase significantly over time, and are not commensurate with the nature and quality of services provided. There are also concerns about additional obligations imposed via deeds of covenant required as a condition of sale – for example, charges ('permission fees') may be levied in the event that a freeholder seeks to alter, re-mortgage, or sell their property.<sup>40</sup>
- (c) Further with regard to management companies of freehold estates, we will consider whether there is sufficient transparency as to how such companies are appointed and what alternative options may be available to freeholders, including the extent to which they are able to switch away from the appointed company.

2.25 Third, we will explore whether there is effective competition between housebuilders. It is often claimed that strategic land banking by large housebuilders restricts the land that is made available for the construction of homes (although a number of studies have suggested this is not the case) and also the rate at which homes are constructed is restricted by the rate at which they can be sold onto the market without leading to a reduction in the price at which they can be sold. We will consider:

- (a) Whether housebuilders face weak competition at point of build-out. Understanding concentration is likely to require examining housebuilder presence and strength in different locations rather than at national level, and we are considering how to approach such analysis at local level.

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<sup>40</sup> As noted in Figure 1.1, in this document the term 'freehold estate' is used to refer to a development which includes any housing of a freehold tenure. As such, mixed tenure estates that include freehold homes would also be classed as freehold estates for the purposes of our analysis. Our analysis will focus on freehold estates which are not gated, ie estates where the facilities paid for by the freeholders are also used by the general public. While similar complaints have arisen in the past in relation to potentially excessive leasehold maintenance fees, we will not be focusing on leasehold estate fees, in light of separate ongoing CMA work (see the [Leasehold case page](#) on the CMA website) and differences in regulation. We will also not be focusing on gated communities as there is a clearer case for management fees on such estates in light of the likely perceived benefits brought to the estate residents by restricting public access.

- (b) Whether established housebuilders' control of large land banks enables them to strengthen their position in local housing markets (ie excluding other possible builders).
- (c) Whether there are barriers to entry and expansion limiting competitive pressures on volume housebuilders and diversity in the housebuilding sector, and whether they may be higher than one might expect in a well-functioning market. We will be particularly interested in hearing about the impact of potential barriers that we have heard about on small- and medium-size builders, for example:
  - (i) whether local authorities, through their processes, may be favouring certain categories of housebuilder;
  - (ii) whether planning processes or other regulatory requirements, their complexities, and lack of resourcing of local authorities may disproportionately affect smaller builders' ability to bring developments forward; and
  - (iii) whether limited access to essential resources – land, labour, materials, and finance – may be disproportionately affecting smaller builders.

2.26 In our study we will seek to understand the relative importance of these and other issues for SME builders' ability to enter and compete in the market.

## **Assessment of potential consumer detriment**

2.27 As part of our study, we will also analyse the outcomes of the competitive process for consumers in this market. Observations on these outcomes for consumers helps to determine whether there is any distortion to competition and, if so, the extent to which consumer welfare may be harmed by it, ie the degree and nature of 'consumer detriment' or 'consumer harm'. This can be an important factor in any later consideration of possible recommendations or remedies.

2.28 Outcomes may include both those that are more observable and measurable, such as prices and costs, and those that may be less quantifiable yet also important to consumers, such as quality and innovation. Although the outcomes of the competitive process may differ in character, there may be linkages between them, so that it is important that each is not considered in isolation.

2.29 In particular, outcomes the market study may consider include:

- (a) supply (the volume of new homes built, including the volume of affordable housing within that),
- (b) choice of new build homes,

- (c) quality of new build homes, which could relate to a wide range of parameters including but not limited to construction defects/levels of snagging, aesthetic value, or sustainability, and
- (d) innovation, for example in relation to sustainable design and construction, and other aspects of the move towards net zero housing.

2.30 As part of this analysis, we will seek to understand the role of diversity of supply, and in particular of SME housebuilders in driving quality and innovation (including in the development of more sustainable homes).

2.31 We will also consider pricing and profitability within this market. However, we will not seek to assess what the 'right' price is given that pricing is driven by many other factors beyond housebuilding levels, in particular the extent to which property is seen as an attractive financial rather than functional asset. Instead, we will consider the way in which prices are set by housebuilders, including whether and how this may be affected by:

- (a) the price paid for land and other inputs,
- (b) projections made when the development is first conceived, and
- (c) local market conditions at the time of construction.

## **Geographic scope of the market study**

2.32 We propose that the market study focuses on the supply of new homes only within Great Britain. This is because we understand from conversations with various stakeholders in Northern Ireland that the market situation there is significantly different from the rest of the UK. To the extent that there are issues in the planning process, these do not appear to relate to the incentives and/or behaviours of market participants. Further, there are a number of differences between Northern Ireland and the rest of the UK which means Northern Ireland appears unlikely to face the same market or supply-side issues:

- (a) The supply structure is characterised by a large number of small- and medium-sized firms and none of the volume housebuilders operates in Northern Ireland. The concerns relating to the decline in SME builders that we have heard about in relation to the other nations, and barriers to entry that suppliers may face, do not appear to apply here.
- (b) The Planning Act (NI) 2011 reformed the planning system in Northern Ireland transferring the responsibility for the majority of planning functions from central government to local authorities from 1 April 2015. Our understanding is that the main issues relate to the bedding-in of the new system. This has already been identified by the Department of Infrastructure and has been

considered in its Review of the Implementation of the Planning Act (NI) 2011.<sup>41</sup>

- (c) The pace of house building (measured in terms of new dwellings completed per 1,000 population) has been significantly higher in Northern Ireland than in the rest of the UK since 2008/09.<sup>42</sup>
- (d) Affordable housing is largely funded directly by housing associations and government grants. Developers do not contribute to the cost of affordable housing through developer contributions as they do in Great Britain and so the level of affordable housing provided appears not to be subject to negotiation between public sector bodies and house builders.
- (e) In Northern Ireland, the provision of roads is managed centrally via the Department for Infrastructure's roads service (DfI Roads)<sup>43</sup> and The Private Streets (Northern Ireland) Order 1980 was brought in to protect homeowners from unfinished roads on private developments arising. Developers have a statutory duty<sup>44</sup> to consult with DfI Roads on street design and specification prior to beginning construction.<sup>45</sup> Further, developers are required to enter into an upfront agreement with DfI Roads to provide roads and sewers to the Department's prescribed standards,<sup>46</sup> and it is an offence to commence building works without making prior provision for street works expenses.<sup>47</sup> This process reduces the scope for roads to remain unadopted given the statutory requirement to consult and the stringent requirements relating to the quality of the roads placed on housebuilders upfront. We have not identified any evidence that freeholders may be faced with estate management fees for public roads (or public local amenities to any significant extent) and the local stakeholders we spoke to did not see this as an issue.

2.33 Given this background, we are not proposing to include Northern Ireland in the scope of this market study.

2.34 We welcome any views on the rationale that we have set out in paragraph 2.33, however, and remain open to revisiting our decision to exclude Northern Ireland from scope if we see evidence that leads us to reassess our initial view.

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<sup>41</sup> See Department for Infrastructure (2022), [Review of the Implementation of the Planning Act \(NI\) 2011](#).

<sup>42</sup> See [Northern Ireland Housing Statistics 2021-22 Section 1 Tables - Supply](#).

<sup>43</sup> Via the Department for Infrastructure whose roads service (DfI Roads) is the sole Road Authority in Northern Ireland, responsible for public roads, footways, bridges, and streetlights.

<sup>44</sup> Under the [Private Streets \(NI\) Order 1980](#).

<sup>45</sup> See Northern Ireland Assembly Research and Information Service Briefing Paper 155/11 (2011), [Adoption of New Roads in Private Developments and the use of Bonds](#).

<sup>46</sup> As set out in the [Private Streets \(Construction\) Regulations \(NI\) 1994](#).

<sup>47</sup> See the [Northern Ireland Department for Infrastructure website](#).



2.35 In addition, based on conversations with local stakeholders and our desk research, it appears to us that certain outcomes are better in Northern Ireland than in the rest of the UK, including the amount of affordable housing being built and more generally the pace of housebuilding. Therefore, we will consider whether there are any lessons we can learn and continue to engage with stakeholders in Northern Ireland accordingly.

## How the CMA will carry out the market study

2.36 We aim to publish an update on the study in summer 2023. As required by statute, we will also confirm at this time whether or not we propose to make a market investigation reference.

2.37 To inform our market study, we will use a variety of methods to gather information from a wide range of parties. We invite comment from any interested parties, including by way of consultation on this statement of scope, as outlined further in the next section. We will be engaging in detail with key stakeholders. We propose to use our formal statutory powers to issue requests for information, and to conduct more informal evidence-gathering sessions such as meetings and roundtables. We also anticipate commissioning market research into the sector.

2.38 We will also draw extensively on the wide range of data, third-party research, and analysis already available on this sector, given that – by its nature – it is of wide public interest and thus subject to regular data collection and review. In particular, we propose in the interests of efficiency to refer to, rather than recreate to any significant extent, the following analyses:

- (a) The Lichfield ‘start to finish’ report<sup>48</sup> which examines factors affecting build-out rates;
- (b) Letwin independent review of build-out;<sup>49</sup>
- (c) MHCLG research on the Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England 2018-19.<sup>50</sup>

2.39 Following our evidence-gathering and analysis, we will consider whether there are problems in the sector, and – if so – what action could and should be taken to address them. Such outcomes could include making recommendations to the UK government and/or the Scottish and Welsh Governments and/or industry, or making a market investigation reference.<sup>51</sup> Should we find evidence of any

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<sup>48</sup> See the [Lichfields website](#).

<sup>49</sup> See Letwin, O (2018), [Independent review of build out: final report](#).

<sup>50</sup> See Ministry of Housing, Communities and Local Government (2020), [The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19](#).

<sup>51</sup> A market investigation is a more in-depth, longer investigation in the sector and potentially enables us to impose orders on and accept undertakings from stakeholders.

breaches of competition or consumer law, we would consider initiating separate enforcement action.

2.40 We will publish a final report on our findings and the outcomes of our study within 12 months following the launch of this market study.

2.41 Information and updates on this market study will be published on the CMA website.<sup>52</sup>

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<sup>52</sup> See the [Housebuilding market study](#) page.

### 3. Consultation process and next steps

- 3.1 The CMA welcomes comments on any of the issues raised in this Statement of Scope and the accompanying Market Study Notice<sup>53</sup> from all stakeholders, including consumers, businesses, and other interested parties. The CMA particularly welcomes responses, supported with evidence where available, to the following key questions.
- 3.2 Where applicable for any given question, in responding please specify which geographic area(s) your response covers and/or indicate any relevant material differences between nations.

#### Consultation questions

##### General questions

1. Do you agree with our proposed geographic scope for the market study, as set out in paragraph 2.32? If not, why not? In particular, do you think that Northern Ireland should be included in the scope of the market study?
2. Do you agree with our areas of focus for the market study, as set out in paragraphs 2.1 to 2.31? If not, what other matters should we focus on and why?
3. We may carry out case studies during the course of the market study. Can you suggest any local areas across the UK we should look at where you consider:
  - a. The housebuilding market is working well, and explain what factors are driving this in each area;
  - b. The housebuilding market is not working well, and explain what factors are driving this in each area;
  - c. There is a high degree of concentration in housebuilding activity;
  - d. There is a significant under-delivery of housing relative to local need;
  - e. LPAs are more or less proactive in the planning conditions they impose, particularly in relation to affordable housing;
  - f. Small and medium housebuilders are more prevalent compared to other areas.
4. How can competition in this market be strengthened?
5. How can the functioning of the market be improved?
6. What, if any, are the key differences in housebuilding in each of England, Scotland, and Wales that should be reflected in our analysis? Please explain any such differences and how each may affect the analysis.

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<sup>53</sup> Including on whether the CMA should make a market investigation reference under section 131 of the Act.

### ***The operation of the market***

7. Have any of the following aspects changed over time? If so, how and why?
  - a. The role of land promoters and land agents in transactions.
  - b. The propensity for land promoters and land agents to be used as part of securing planning permission and land transactions.
  - c. The structure of the market for land promoters and land agents.
  
8. Have any of the following aspects changed significantly over time? If so, how and why?
  - a. Time and cost for developments to go through different stages of the planning process.
  - b. Likelihood of success in securing planning permission.
  - c. Propensity for developers to negotiate s106 requirements to reduce affordable housing requirements.
  - d. Propensity for developers to be successful in negotiating s106 requirements to reduce affordable housing requirements.
  
9. How do the aspects referred to in questions 7 and 8 vary (if at all) by:
  - a. Size of development the application is for?
  - b. Size or identity of applicant (eg small developer, large developer, land promoter)?
  
10. What are the main barriers (if any), to the provision of affordable housing for (a) LPAs and (b) developers?

In relation to freehold estates:

11. Please comment on the extent to which each of the following may currently be problematic, and how (if at all) each has changed over time:
  - a. Non-adoption of roads or other public amenities, and the different ways in which unadopted amenities may be managed (eg by housebuilders, estate management firms, or resident-led companies).
  - b. Estate charges, and their materiality.
  - c. Restrictions and/or obligations placed on freeholders via deeds of covenant.

### ***Constraints on buyers' choices***

12. As regards land:
  - a. What issues (if any) do developers face in identifying and securing land for development and how do they navigate these? Do these issues differ depending on the size of the developer?
  - b. What issues (if any) do landowners face in finding purchasers of land for development and how do they navigate these?

- c. Have any issues described above changed over time? If so, how and why?

13. As regards charges made to freehold owners on residential estates:

- a. How transparent are estate charges and covenants (including how they may change over time) to prospective house buyers on freehold estates at all stages up to the point of sale?
- b. What influence (if any) do homeowners have over the companies managing their estates?
- c. Post-sale, what safeguards exist to ensure the quality of the management service or that the estate charges applied are fair, reasonable, and transparent?
- d. Are freeholders' rights (including to redress) in relation to estate management services and charges, and how covenants are applied, adequate? If not, what are the key gaps?

### ***Market interactions***

14. How do land promoters and land agents compete to secure contracts with (a) land owners and (b) developers (or vice versa)?

15. What are the key factors or objectives LPAs need to balance in taking decisions on housebuilding, and what drives these requirements? To what extent (if any) do these factors conflict, either with each other or with housebuilders' objectives?

16. Are there differences in the bargaining power between LPAs and developers when negotiating with each other? If so, what are the key differences and why do they arise?

17. Where s106 agreements are negotiated after the award of outline planning permission, what are the implications for a) LPAs and b) developers, compared with negotiations before outline planning permission is awarded? Please explain with reference to costs, benefits, and any other outcomes.

18. How and when are decisions made about the ownership and management of public amenities on freehold estates, including whether they are adopted? What are typically the key factors in such decisions? What are the key barriers to adoption?

Where relevant, please indicate in your response how the above may differ among:

- a. LPAs,
- b. developers,
- c. house buyers.

### ***Exploitation of market power***

19. Do any of the participants in the market (including but not limited to housebuilders, land agents, and land promoters) have market power? If so, what drives this and how (if at all) do they exploit it?
20. What factors influence the size of land banks held by developers?
21. Have any of the following aspects changed significantly over time? If so, how and why?
  - a. The concentration of housebuilding at local level, in particular whether concentration is high in specific local areas.
  - b. The size of land banks held by developers and differences between developers in this respect.
  - c. The rate at which new properties are built-out.
  - d. The propensity for land with planning permission not to be built-out.
22. What are the key factors that determine the incentive and ability for developers to build-out new sites at a certain rate?

### ***Barriers to entry and expansion***

23. What differences (if any) are there between small, medium and large developers in:
  - a. The types of developments they develop (eg types of housing provided).
  - b. The type of land they develop on (eg size of site, propensity to use greenfield vs brownfield sites, urban vs rural).
24. What are the key challenges for small and medium developers in:
  - a. Securing sites for development?
  - b. Securing planning permission?
  - c. Building-out sites?
25. What differences (if any) exist between the developments built by large, medium and small builders, eg in terms of quality of housing built, speed of build, diversity of housing built?

3.3 Please email or post written submissions on the market study by **20 March 2023** to:

- **Email:** [housebuilding@cma.gov.uk](mailto:housebuilding@cma.gov.uk)
- **Post:** Housebuilding Market Study  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

- 3.4 Please ensure that all personal data, other than your contact details, is redacted or excised from your response and any documents you submit to us.<sup>54</sup>
- 3.5 The CMA intends to publish responses to this Statement of Scope or, where appropriate, a summary. Therefore:
- (a) Please supply a brief summary of the interests or organisations you represent, where appropriate.
  - (b) Please consider whether you are providing any material that you consider to be confidential and explain why this is the case. The factors that the CMA must have regard to in these circumstances are set out in Appendix A. Please provide both a confidential and non-confidential version of your response where applicable.
- 3.6 If you are an individual (ie you are not representing a business or other organisation), please indicate whether you wish your response to be attributed to you by name or published anonymously.
- 3.7 An explanation of how the CMA will use information provided to us can be found in Appendix A. This Appendix sets out how the CMA may use information provided to it during the course of this market study, including where it may need to refer to information in order to pursue enforcement action against a business in this sector.

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<sup>54</sup> Personal data is defined in the UK General Data Protection Regulation (Article 4(1)) as ‘any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’.

# Appendix A

## Use of information provided to the CMA

- A.1 This annex sets out how the CMA may use information provided to it during the course of this market study.

### ***Why is the CMA asking for information?***

- A.2 The information you provide will help the CMA to understand the market for the supply of new homes to consumers in England, Scotland and Wales and identify any competition and consumer issues.

### ***What will the CMA do with the information I provide?***

- A.3 Your information will inform the CMA's final market study report, and any interim updates. The CMA may publish information you provide and identify you as the contributor of it in those reports, or alongside them on our website. The final market study report will set out the CMA's findings and any proposed remedies to any existing or potential issues it finds.
- A.4 The CMA may disclose any information provided by you for the purposes set out in sections 7, 170 and 241 to 243 of the Enterprise Act 2002, where it considers such disclosure to be appropriate. In particular, the CMA may choose to put information provided by you to third parties, such as other Government departments and other parties providing information to the CMA, for the purpose of facilitating any further related work.
- A.5 The CMA may share your information within the CMA to facilitate the performance of its functions. The CMA may use information you provide to take enforcement action, including against businesses operating in the markets within the scope of this study, using its competition or consumer powers. The CMA may also share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary.
- A.6 Unless an exemption applies, the CMA may disclose the fact that you have provided information to it, and the information you have provided, in accordance with its obligations under the Freedom of Information Act 2000.

### ***Will the CMA take steps to protect my information?***

- A.7 The CMA may only publish or share information in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, it must have regard to (among other considerations) the need for excluding, so far as is practicable:



- (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or
- (b) any commercial information which, if published or shared, it thinks might significantly harm the legitimate business interests of the undertaking to which it relates.

A.8 The CMA will redact, summarise, or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.

***How will the CMA handle any personal data I provide?***

A.9 Any personal data you provide to us will be handled in accordance with the CMA's obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. The CMA's [personal information charter](#) sets out the standards you can expect from it when it collects, uses or shares personal data and provides details of your rights in relation to that personal data and how to contact it.

***What should I do if I have concerns about how the CMA will use any information I provide?***

A.10 You should make clear to the CMA any information that you consider to be confidential when you provide it to the CMA and set out why you consider it to be confidential.

A.11 If the CMA wants to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact you prior to publication to give you an opportunity to tell it about any concerns you may have regarding that publication.

***Where can I find further information?***

A.12 Further details of the CMA's approach can be found in in Transparency and Disclosure: Statement of the CMA's Policy and Approach ([CMA6](#)).