



Castle |||| Green

Housebuilding Market Study
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

17th March 2023

By email only housebuilding@cma.gov.uk

Dear Sir

HOUSING MARKET STUDY

Castle Green Homes and Carden Group Plc are pleased to be afforded the opportunity to comment on the CMA's study into the housebuilding market. Both companies are vastly experienced in housing delivery and the operation of the planning system.

Carden Group is owned, led and run by Steve Morgan CBE, Will Heath and Harry Aubrey-Fletcher. Between them, they have over 80-years' experience of strategic land investment and housebuilding. They have worked together for over 15 years through various business associations and collaborations. Both collectively and individually they have delivered a long list of successful projects and have been responsible for building almost 200,000 homes. Martyn Twigg, Planning Director has over 30 years planning experience, and for 17 years he ran the planning function of the UK's largest land promotion business. These are not the comments of purists or academics with ideological or political motivations. Rather, they are informed from many years of practical experience of the housing market.

Castle Green is a forward-thinking homebuilder with a 35-year heritage which operates in North Wales and the North West of England. The Company is led by Gwyn Jones. Castle Green is a small housebuilder delivering approximately 250 homes per year. Castle Green design and build exceptional new build homes, as well as providing a professional and personal service to customers. This has made the company one of the most recognised and well-respected housebuilders across North Wales and North West of England.

SCOPE OF STUDY

Paragraph 1.13 of the study states *"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.”

It is difficult to see how a review of the housebuilding market can exclude the primary constraint of the supply land with planning permission for residential development. Land is the raw material for housebuilding and its supply is heavily influenced by government policy and local planning authorities through plan-making and decision taking. We believe the scope of the study should be expanded to understand the role of planning policy in the operation of the housing market.

Some of the questions also reveal a lack of knowledge and understanding of the planning process. We would be happy to meet with you explain this in detail.

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?

We do not have any comments to make on this question.

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?

We do not have any comments to make on this question.

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;

There are no areas in the UK where the housebuilding market can be described as “working well.”

b. The housebuilding market is not working well, and explain what factors are driving this in each area;

Linked to question 3a above, the housebuilding market is not working well in any area the UK. The main reason for the dysfunction of the housing market is the shortage of supply of suitable land with planning permission. The shortage in supply is linked to the influence of Government policy announcements and the failure of local planning authorities to maintain up to date local plans and 5 years’ worth of housing land supply. This is key to a functioning housing market – but has been excluded from the CMA study (see above in relation to paragraph 1.13).

c. There is a high degree of concentration in housebuilding activity;

The highest degree of concentration of housebuilding activity is the South East of England. This concentration is linked to housing demand/need and concentrations of population.

d. There is a significant under-delivery of housing relative to local need;

The North West of England is an area of significant under-delivery of housing relative to demand. The causes of this are linked to the shortage of supply of suitable land with planning permission. The shortage of land is due to several factors:

1. Many councils have old (or soon to be out of date) local plans and most allocations in them have now been built out. The only remaining source of supply tends to be smaller, brownfield windfall sites which may be unviable. These sites also tend to be in locations of lower housing need, or locations where house purchasers do not want live.
2. The Government's Standard Housing Method figures for many North West councils are lower than the adopted requirement in local plans. This means that there is not a requirement to release additional land to maintain a rolling 5-year housing land supply because the housing target has been reduced.
3. The absence of a 5-year supply of housing can be an incentive for a council to produce a new local plan because of the consequences for decision making through the appeal system. This incentive is nullified when a housing requirement has been reduced to create an 'artificial' supply of housing land.
4. When a North West council does decide to prepare a new local against the new Standard Method housing requirement, it is doing so in the knowledge that it will not need to allocate as much land (and in some case no additional land) compared to the existing local plan.

These all factors combine to mean far less land is available in the North West relative to housing demand.

e. LPAs are more or less proactive in the planning conditions they impose, particularly in relation to affordable housing;

It is unclear what the question is seeking to understand.

f. Small and medium housebuilders are more prevalent compared to other areas.

The number of small and medium house builders has reduced dramatically over the past 15 years across all regions. The reasons for this are numerous. As we mentioned in our response to the LURB consultation, none of the measures proposed provide any mechanism or ability for SMEs to enter the land and housing market, because only larger sites are allocated in local plan, and these will be controlled by larger Plc housebuilders as they have the resources acquire and promote land.

The planning system needs to rethink what constitutes a small site and SME. Essentially the current system characterise any development over 10 homes as a major development, whereas an SME is a housebuilder who may deliver 500 homes per year with an aspiration to grow production to 1,000 homes.

SME's require a housing market that allows access to land which is not already controlled by larger house builders. The current complexities and costs of the planning system conspire against SME house builders.

Local government reorganisation has also conspired against the ability of SMEs to compete for land. This is because larger combined councils inevitably have a larger combined housing requirement. Combined councils inevitably look to meet this larger housing requirement through a few larger local plan housing allocations which inevitably are controlled by larger Plc house builders or land promoters, whereas before reorganisation smaller district councils would have looked to spread the smaller housing requirement across a number of smaller allocations in more settlements. This created an environment with choice and competition of more housing opportunities which would have been suitable for SMEs. We have now a planning system geared towards fewer, larger housing allocations.

The chronic shortage of housing land also means that suitable opportunities for SME are reduced because:

- First, simply there are fewer small sites (say 50 homes) coming to the market.

- Secondly, because of the shortage of land, when a small site (say 50 homes) does come to the market it is also attractive to larger Plcs who are also short of land opportunities. Smaller sites are no longer the sole preserve of SME house builders.

4. How can competition in this market be strengthened?

Competition can be strengthened by the supply of land with planning permission for smaller housing sites of sub-100 homes.

5. How can the functioning of the market be improved?

Access for housebuilders to more suitable allocated and approved housing land is required to improve the function of the housing market.

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.

We do not have any comments to make on this question.

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.

The land promotion sector has grown dramatically since 2010, in particular since publication of the NPPF in 2012 and the increased emphasis on councils to maintain a 5-year supply of deliverable housing land.

Land promoters work in partnership with landowners, most commonly under the terms of a Promotion Agreement, to secure planning permission for housing and commercial development. The costs and risks of securing planning permission are met by the land promoter. The land is then sold on the open market to housebuilders. Land promoters therefore have an important role in the supply of land to the open market. Promotion Agreements tend to be short term as land promoters' business models work by bringing land to the market and selling it as quickly as possible.

This is different from the traditional Option model which is used by larger housebuilders to secure medium/long term interests in land with potential for housing. These are one-one contractual arrangements between a landowner and a housebuilder. Consequently, land secured under an Option is not often brought to the open market.

The Promotion Agreement allows the landowner to achieve a higher market value for their land than the traditional Option and is often the preferred route recommended by land agents who act for landowners.

b. The propensity for land promoters and land agents to be used as part of securing planning permission and land transactions.

Land agents are almost universally used in the sale of land with planning permission. Their value added to the process varies massively.

Land promoters also use land agents to sell land with planning permission because the terms of a Promotion Agreement will require a competitive open marketing exercise.

c. The structure of the market for land promoters and land agents.

The Land Promoters and Developers Federation is the trade body for land promoters. They will have useful comments on this question.

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.

The time and cost of securing planning permission have both increased significantly over time. The increased costs and time are both due to increased bureaucracy and environmental controls. Planning applications are accompanied by thousands of pages of supporting technical information – much of which is never read.

Twenty-five years ago an outline planning application for a 100 home planning application could be submitted with red-line plan, covering letter and transport assessment. Decisions could take 8 weeks. High quality, beautiful developments have been built on the back of these short and simple planning applications.

The length of time taken to process planning applications has increased dramatically because local planning authorities are hugely under resourced with experienced and competent professional staff.

b. Likelihood of success in securing planning permission.

The likelihood of success has become a lottery due to local political interference in decision-making. It is commonplace for planning applications on land allocated for housing in a local plan to be refused planning permission by elected members at committee contrary to the recommendation of professional officers.

c. Propensity for developers to negotiate s106 requirements to reduce affordable housing requirements.

It is not routine for developers to seek to reduce affordable housing requirements unless in extreme cases where the planning permission has become unviable.

d. Propensity for developers to be successful in negotiating s106 requirements to reduce affordable housing requirements.

The propensity for developers to be successful depends on the circumstances of the case. Negotiating lower levels of affordable housing for viability reasons is not commonplace in the first instance.

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?

We do not believe there is a link between size of development and reductions in affordable housing provision due to viability concerns. Some larger schemes cannot afford full level of affordable housing because of substantial infrastructure costs (roads, schools, community buildings etc), while some small schemes may also be susceptible to viability issues for different reasons.

b. Size or identity of applicant (eg small developer, large developer, land promoter)?

There is no correlation between size and identity of the applicant. But generally, smaller house builders are likely to be susceptible to viability concerns which could be influenced by external factors such as materials costs.

Experience also suggests that land promoters are unlikely to reduce affordable housing levels. In fact, in many cases land promoters increase the level of affordable housing to create an additional benefit of the scheme to support the case to grant planning permission.

10. What are the main barriers (if any), to the provision of affordable housing for

(a) LPAs and

Expertise, access to funding (Homes England grant) and land would appear the main barrier preventing local authorities (not LPAs) delivering affordable homes. You should note that LPAs cannot provide affordable housing.

(b) developers?

Access to land and viability of projects (which cannot be bridged by Homes England grant) are the main barrier to affordable.

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).

We do not have any comments to make on this question.

b. Estate charges, and their materiality.

We do not have any comments to make on this question.

c. Restrictions and/or obligations placed on freeholders via deeds of covenant.

We do not have any comments to make on this question.

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?

See answer to questions above.

There are two components to the question – securing land with potential for development and securing land with planning permission.

Securing land with future potential for development is about creating a landbank of sites that can be promoted over time for development either as allocations in local plans or as speculative planning applications. Securing such land is often done by in house teams of land buyers and site finders. This type of land sourcing is therefore more likely to be undertaken by larger house builder and most land promotion companies.

Identifying future land is complex and involves understanding the direction of travel of planning policy in a local authority and timescales and balancing these against risk. This has become a very competitive market because of the shortage of suitable future land opportunities and because of the number of housebuilders and land promoters chasing fewer opportunities.

Securing land with planning permission is more straightforward (in relative terms). This land is often advertised for sale in industry journals or by invitation to tender.

b. What issues (if any) do landowners face in finding purchasers of land for development and how do they navigate these?

The question does not appear to understand the land market.

There are a number of aspects to the land market which appear to be relevant to the question.

Landowners of land with future potential are regularly approached by housebuilders, land promoters or land agents to enter into Options or Promotion Agreements to hopefully obtain planning permission in medium/long term. The land is only sold after planning permission is obtained.

Selling land with planning permission is straightforward (relatively) as a landowner will usually have a land agent involved or land promoter who will undertake the sale process on their behalf.

Landowners do not often sell land without planning permission to house builders or land promoters.

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

The future land market has become far more competitive since 2012 because of the increased use of Promotion Agreements and more entrants in the land promotion market.

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?

We do not have any comments to make on this question.

b. What influence (if any) do homeowners have over the companies managing their estates?

We do not have any comments to make on this question.

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?

We do not have any comments to make on this question.

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?

We do not have any comments to make on this question.

MARKET INTERACTIONS

14. How do land promoters and land agents compete to secure contracts with

(a) landowners and

Land promoters secure contracts with a landowner by legal agreements which are often registered with Land Registry as a charge on the land. A Promotion Agreement is in effect a contract for professional services. The fee (which is typically 15-20% of the land sale value) is only paid by the landowner once the land is sold.

(b) developers (or vice versa)?

Land promoters (who use Promotion Agreements) do not secure contracts with developers (by which it is assumed means the developer who buys the land with planning permission). The land promoters' contract is with the landowner who is responsible for paying the land promoter's fee.

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?

Sadly, in our experience, local political issues are key factors which influence how decisions are taken on housing planning applications. Local politics also have a huge influence on the housing requirement and location of allocated sites in local plans.

Local politics often means that housing requirements in local plans are too low and suitable sites in areas of highest demand are not allocated.

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?

Both LPAs and developers negotiating powers are restricted by planning policy. Strict rules control what can reasonably be secured by S106 agreement.

Differences can arise because of different interpretations of planning policy and whether a development is acceptable against policy.

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.

The question suggests a misunderstanding of how planning applications and S106 agreement are determined.

Section 106 agreements are not negotiated after a planning permission has been issued - that would be like trying to shut the stable door after the horse has bolted.

The broad heads of terms of a S106 agreement are always negotiated before the grant of planning permission because that is necessary for a planning committee to be able to make an informed decision. The detail of the heads of terms may be negotiated after the resolution to grant planning permission.

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?

We do not have any comments to make on this question.

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

a. LPAs,

b. developers,

c. house buyers.

We do not have any comments to make on this question.

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?

Larger PLC housebuilders have more resource which means they are well equipped to secure medium/long term future housing land. This has the effect of excluding smaller and medium house builders from securing options on land.

20. What factors influence the size of land banks held by developers?

Land is the raw ingredient of housebuilding. The larger the housebuilder, the bigger their requirement for a bank of land with future potential for allocation and securing planning permission.

21. Have any of the following aspects changed significantly over time? If so, how and why?

The shortage in supply of suitable land with potential for housing has seen some volume housebuilders acquiring some of the largest land promotions businesses so that they can gain access their land portfolios. This a very recent trend and indicative of the shortage of land faced by the volume housebuilders.

a. The concentration of housebuilding at local level, in particular whether concentration is high in specific local areas.

We do not have any comments to make on this question.

b. The size of land banks held by developers and differences between developers in this respect.

See above.

c. The rate at which new properties are built-out.

We do not have any comments to make on this question.

d. The propensity for land with planning permission not to be built-out.

It is unusual 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?

We do not have any comments to make on this question.

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).

House builders of all sizes build product to meet their customer needs. The range of product in terms of house size and number of bedrooms do not vary markedly between small, medium and large house builders. What can vary is the quality of product and specification. Some small house builders provide bespoke house building services.

b. The type of land they develop on (eg size of site, propensity to use greenfield vs brownfield sites, urban vs rural).

Most house builders are experienced in developing green and brownfield sites in rural and urban areas.

24. What are the key challenges for small and medium developers in:

a. Securing sites for development?

The biggest obstacle for small and medium house builders is access to land. Larger sites tend to be secured under Option to large housebuilders. Access to strategic land with future potential is very difficult for small housebuilders. As a result, most land allocated in local plans is already controlled by large housebuilders and so is unlikely to come to the open market.

b. Securing planning permission?

Securing planning permission is lengthy, costly and uncertain - irrespective of the size of the house builder.

c. Building-out sites?

Building out sites is far more straightforward than identify and sourcing land and obtaining planning permission.

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?

This is a difficult question to answer. All housebuilders will say their product is different from every other housebuilder and they will all say they build high quality homes. Speed of delivery should not be at expense of quality.

Thank you for allowing us the opportunity to respond to this study and we hope you find our submissions helpful. We would be very happy to meet with you expand on the points we have raised.

Yours faithfully

Carden Group Plc & Castle Green Homes