Home Builders Federation

Response to the CMA's Statement of Scope in relation to the Housebuilding market study

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HOME BUILDERS FEDERATION RESPONSE TO THE CMA'S STATEMENT OF SCOPE

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A. Introduction

The Home Builders Federation (HBF) is the representative body of homebuilders in England and Wales, and its members comprise a wide spectrum of housebuilders, including large, regional and local developers, with the majority of the membership categorised as small or medium-sized housebuilders. As HBF members account for around 80% of all new housing built in England and Wales, HBF considers that it is uniquely positioned to help the CMA in better understanding the housebuilding sector and, in particular, the main hurdles it needs to overcome to tackle the under-supply of homes and affordability challenges, while fostering diversity of supply.

The evolution of the housebuilding sector is largely influenced by the broader regulatory, policy and political framework set by national, regional and local government and agencies. Every step of the process of designing, planning and building homes is shaped by Government planning policy, Government and agencies' regulation, local planning authority (LPA) policy and decision-making, as well by other stakeholders such as utility providers and highways authorities. And in relation to sales, the position occupied by new homes is a small part of a much larger series of local housing markets. The scope of the market study needs to reflect these adequately.

The role of policy in the housebuilding sector

As noted in HBF's letter to Sarah Cardell dated 12 January 2023, the current housing market is the function of a complex set of policy factors, a unique reliance on local and national policies and services which inevitably have a political dimension, numerous industry-specific taxes and levies (subject to frequent change), and the dynamics of associated markets such as development finance, land and materials on the supply-side and, most notably, mortgages on the demand-side.

At the macro level, we consider that the Market Study needs to explore the broader challenges facing the industry as a whole, such as:

(i) the impact of Government policies and in particular planning on the availability of new housing;

(ii) entrenched inefficiencies and inconsistencies in an under-funded planning process which create risk and uncertainty for a plethora of stakeholders, and which have ultimately led to an unpredictable system that has stifled house building since the post-war period;

(iii) financing challenges which many smaller housebuilders face as a result of regulatory and planning risks when reliant on project-by-project financing and which impact SMEs most significantly; and

(iv) lack of appropriate consideration of profitability (which needs to take into account the significance of raising costs, including those driven by Government-led taxes and levies, but also the constraints posed by the second-hand market in price-setting, and the role played by lenders in the availability and attractiveness of new build mortgages).

Housebuilders' ability to provide affordable, sustainable options to consumers requires them to navigate this complex matrix, in a climate where policy changes can have sudden and significant impacts on strategy and firms' ability to deliver reliable results for customers and communities. HBF considers that a detailed analysis of these broader political, regulatory and structural components is paramount to understanding the functioning of the housebuilding market, identifying the sources of its underlying issues and addressing these effectively and at source.

HBF notes that the statement of scope has indicated that the CMA: *"Does not propose to: test the validity of the actual targets set by governments across the UK and whether the UK is building enough homes to meet demand; 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; 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 weigh the costs and benefits of the changes proposed through the LURB."*[1] While HBF welcomes the CMA's proposed engagement in relation to each level of the supply chain, HBF is concerned that a near-exclusive focus on housebuilders and other players in the supply chain without engagement with wider actors and the factors influencing the environment in which they operate would lead to an incomplete and potentially incorrect assessment of the underlying issues affecting the housebuilding market, thereby impairing the CMA's ability to tackle these efficiently.

An effective review would require consultation, information gathering and detailed engagement with multiple actors such as local planning authorities, other governmental and regulatory bodies and agencies (at national, regional and local levels), and lenders (both at the supply and demand ends of the planning, development and sales process), etc. HBF strongly encourages the CMA to broaden the scope of its Market Study to ensure that the extensive analysis it intends to undertake in relation to housebuilders and other players of the supply chain is not undermined by a lack of proper consideration of the wider factors which underpin the sector.

Developments over time: An increasing focus on scale[2]

As is explained below, and in **Annex 1** entitled a "Recent History of the Housebuilding Sector: 1960s to 2020s", policy, regulatory and economic changes have shaped the housebuilding industry so as to *de facto* prefer scale through increased cost, complexity and risk in relation to planning and development. The plan-led system which was introduced in the 1990s has increased the temporal, financial, and knowledge investment required by builders to meaningfully progress development, imposing significant challenges for many capital-constrained SME builders. The current planning landscape also displays a preference to grant permission on larger site, and recent years seen an emphasis placed on the release of larger sites. For example, permissioned plots in 2022 were 13% higher than in 2006, but comprised of 20% fewer sites. Within this landscape, large housebuilders are in not only a better position

1 Housebuilding market study, Statement of Scope, CMA, 28 February 2023, para 1.13.
2 See also **Annex 2** entitled "Industry changes since the 2008 OFT Report" for an overview of whether and how the recommendations set out in the OFT's 2008 market study have been implemented.

than their SME counterparts, but often represent the only players feasibly able to develop large plots of land and offer the multiplicity of plots which the market demands.[3]

The housebuilding sector in the UK is subject to a number of both supply- and demand-side constraints, many of which exacerbate the challenges faced by housebuilders. On the supply side, policy developments, explained in detail below and in **Annex 1**, have introduced greater complexity to the market and have often been introduced with little notice to housebuilders. Local planning shocks, notably those related to Natural England's environmental interventions have introduced significant challenges for builders in certain geographic locations, which may be placed under moratorium (as is the case for 74 LPAs due to nutrient neutrality requirements), halted (as has been the case in recreational impact zones, where development around national parks and ecological areas has been restricted by Natural England) or face restrictions on development (as is the case in the Arun Valley area due to ecological interventions to protect a breed of aquatic snail). These sudden policy changes can have significant impacts on all housebuilders, but are felt most acutely by SME builders, in part due to the nature of by-project funding models, and the typical focus of their activities in smaller geographies.

On the demand-side, the importance of the second-hand market cannot be understated. Indeed, as the CMA has recognised in its Statement of Scope, new homes accounted for less than 20% of house sales in the UK from 2021-2022.[4] This dynamic has a significant impact in shaping the housebuilding sector in the UK. As explained more comprehensively in our responses to the CMA's questions, below, although products are heterogeneous in respect of both new and second-hand homes, residences are subject to the same market factors over time. Notably, the pricing of new homes is significantly shaped by the second-hand market with valuations conducted by professionals working on behalf of mortgage lenders and the lenders' customer.

Mortgage availability also plays a pivotal role in facilitating (or limiting) growth in the housebuilding sector. As explained in more detail below, mortgages for new-build properties have sometimes attracted a premium or have been offered at significantly lower loan-to-values (LTVs). However, this approach of the lending industry fails to account for the overall cost saving which consumers make due to the sustainable benefits consumers gain when purchasing a new-build in comparison to a second-hand home which will require subsequent retrofitting to achieve equivalent performance to new-builds. While new build homes will improve further in the coming years in terms of their energy efficiency, the gap between the average new build and second-hand home will widen in terms of performance but the pricing of the homes sold by housebuilders will continue to be guided by certain properties in the existing housing stock perceived as comparable.

3 See: Independent Review on landbanking, led by Rt Hon Sir Oliver Letwin MP.
4 Housebuilding market study, Statement of Scope, CMA, 28 February 2023 para 1.16.

__B. General questions__

1. **<u>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?</u>**

Yes, the Home Builders Federation (HBF) agrees with the geographic scope proposed by the CMA (i.e. Great Britain). HBF is not in a position to comment authoritatively on the relative merits of a market study covering Northern Ireland, as the representative body of the housebuilding industry in England and Wales exclusively,[5] but would be interested to see the basis for the CMA's view that 'certain outcomes may be better in Northern Ireland' to the extent that this conclusion has been drawn from reasons other than those set out in paragraph 2.32 of the CMA's Statement of Scope.

2. **<u>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?</u>**

When reporting on its market study of the homebuilding market in 2008, the Office of Fair Trading (OFT) in 2008 stated:

> *'a full market definition for the homebuilding industry would need to consider such questions as whether new homes are in the same market as existing homes (that is, do homebuilders compete against the sale of existing homes)'.*[6]

It is our view that a study of the housebuilding market should be part of a broader housing market review that considers the interaction of the various sectors, including mortgages for new homes, mortgages for existing homes and the full range of services and the taxes and costs involved in transacting across the entire industry.

With regard to the marketing and sale of new homes, the industry is part of a broader market and a market study of the housing market in general would help to draw out key issues most clearly, particularly in relation to the intersection of the housing market and other, complementary, markets such as the market for the supply of mortgages.

The housebuilding industry's place in the wider housing market is illustrated clearly in relation to sales, where pricing is determined in accordance with the views of valuers working on behalf of mortgage lenders and their clients, the homebuyer. Indeed, the need to compare new homes with existing properties in the market increasingly presents new challenges for housebuilders but is a reality of the sales process. New homes are already significantly more energy efficient than the average existing property, bringing huge financial advantages to purchasers over an extended period, as well as reducing the need for future enhancements to improve the efficiency of the property.[7] However, this sustainable benefit brings no

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[5] See: https://www.hbf.co.uk/about/.

[6] *Homebuilding in the UK: A market study* (September 2008), Office of Fair Trading (OFT1020), para 4.2.

[7] Greener, Cleaner, Cheaper: How new build homes are saving buyers money and cutting emissions, HBF, 18 March 2022. The report analyses government data and found that buyers of new build homes are saving more than £400 per household on their energy bills and collectively doing their bit to reduce the country's carbon emissions with almost 600,000 tonnes less carbon emitted than if last year's new build homebuyers had chosen to purchase an older, less efficient property. Report accessible at: https://www.hbf.co.uk/documents/11628/33271_HBF_Report_final.pdf?pk_campaign=newsletter_5273

discernible uplift in the value ascribed to new build properties by the mortgage lender or its valuer and, conversely, fewer mortgage options are available to purchasers opting for the long-term cheaper to run home by purchasing new builds.

As explained above, HBF would propose that the CMA's focus should be broadened to consider the role housebuilders play in the wider ecosystem of housing delivery which is governed by local land supply and release, under an overarching policy framework set by national government.

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;

As was noted by the OFT in its report on the housebuilding market in 2008, the most useful definition of a local market would relate to a Housing Market Area,[8] which is rarely fully contiguous with LPA geography. The development of planning policy since 2008 has generally moved away from the consideration of Housing Market Areas as the unit for assessing housing need or land allocations. The Duty to Cooperate, introduced through the National Planning Policy Framework (NPPF) was introduced to engender collaboration between LPAs on these matters but is widely considered to have had minimal success in doing so.

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

In addition to the broader issues that housebuilders face in navigating the planning system nationally, in recent years we have increasingly seen the importance of local and regional issues and their capacity to delay housing delivery in specific areas. There have also been examples of compliance failures by local authorities and an absence of enforcement action in response to such failures.

Long-term absence of a local plan:

While 90% of local authorities have now adopted a local plan, many of these are not kept up to date. As of January 2023, Savills found that just 80% of LPAs in England are covered by an NPPF compliant plan.[9] Despite a deadline of December 2023 for full up-to-date local plan coverage, after which the government has stated it will prepare to intervene, in recent months the flurry of delayed or withdrawn local plans suggests that some LPAs may have taken the calculated risk not to comply.

St Albans last adopted a new local plan in 1994, and recently cited a lack of resources, specifically a lack of staff as the reason behind its failure to implement a new local plan In 2017, the Council was threatened with central government action, alongside several other local authorities, for failure to progress its local plan. A new draft local plan was prepared and submitted for examination in March 2019, however, this draft local plan was suspended in January 2020 amid concerns over its legal compliance and soundness. The local plan is now not expected to be adopted until December 2025, two years after the Government deadline.

[8] *Housebuilding in the UK: A market study*, para 4.6, page 45.
[9] Planning Data Update 2023, Savills, 11 January 2023, available at: https://www.savills.co.uk/research_ articles/229130/338073-0.

The impact of this can be seen in St Albans' performance in the Housing Delivery Test. At the most recent results, St Albans delivered just 69% of its housing requirement and as such has the presumption in favour of sustainable development applied (meaning that the LPA should plan positively for new development and approve development proposals unless the adverse impacts "significantly and demonstrably" outweigh the benefits of such plans).[10]

Research from Lichfields finds that the majority of authorities that face the presumption mechanism have a housing land supply evidence base which is out of date or agree that they cannot demonstrate a 5-year housing land supply (5YHLS).

NPPF local plans affected areas:

Policy uncertainty over the last three years, and particularly over the last year, has slowed local plan-making significantly. Such uncertainties have been further compounded by publication of the NPPF consultation at the end of 2022, which attracted significant engagement from LPAs and subsequently had a knock-on impact in the number of local plans which were adopted throughout the year. During 2022, only 15 English LPAs adopted a new or revised local plan, in comparison with previous years where on average 27 new plans were adopted each year between 2012 and 2022.

Since the Housing Secretary's Written Ministerial Statement (WMS) on 6 December 2022, 22 LPAs have delayed or amended their local plan. This is in addition to a further 30 LPAs which had delayed local plans due to general policy uncertainty prior to the WMS. Since last October, 26 local plans, affecting 45 LPAs in total, have been delayed or withdrawn.

Many of the local authorities that have delayed local plans since the WMS have explicitly stated that they hope to take advantage of the flexibilities to reduce housing numbers offered by the proposed policies.

Among the local authorities affected by these delays, a significant majority of these are in areas that can be deemed politically significant, and where development generally faces opposition notably in places such as Horsham, Gravesham, Surrey Heath and West Suffolk and in the South East more generally (41% of delayed local plans are located in the South East).

Nutrients affected areas:

In 74 local authorities across England, the housebuilding market has largely ground to a halt, due to uncertainties and developmental challenges related to nutrient neutrality requirements. Since 2019, the building of an increasing number of homes has been delayed due to new rules on 'nutrient neutrality', following the European Court of Justice in 2018 known as 'Dutch N' which led Natural England to revise its guidance to local authorities. The current advice is that local authorities should apply the 'precautionary principle', whereby it is necessary for all new development of any kind involving overnight stays (e.g. new housing and hotels) to be 'nutrient neutral', i.e., the amount of nitrates entering the water system as a result of a new development must be offset by the removal of an equivalent amount of nitrates.

The requirements to achieve nutrient neutrality are exceptionally difficult for housebuilders to achieve such that housebuilding has been *de facto* paused in these areas, with an estimated c.120,000 homes currently held up in the planning system as a result.

Initially impacting only the Solent on the south coast, over the course of 2019-20, the nutrient neutrality requirements broadened to include areas across Somerset South, Mendip and Sedgemoor, Herefordshire, Wiltshire, East Kent, Cornwall and Shropshire covering seven

[10] NPPF, paragraph 14; *Barwood Strategic Land II LLP –v- East Staffordshire BC and SSCLG [2017] EWCA Civ 893.*

catchment areas and 32 local authorities in total. In March 2022, the Government announced that a further 27 catchments covering an additional 42 local authorities would now be subject to nutrient neutrality requirements.

Water neutrality:

In the autumn of 2021, Natural England introduced restrictions on development in the Arun Valley area, with the building of new homes blocked because of the perceived impact of new homes on water use and, potentially, the habitats for a breed of aquatic snail. While presently confined to a small geographic area, similar restrictions could emerge in other areas of the country in future.

There is not presently a centralised strategic offsetting scheme has been created to address water neutrality issues. As such, developers are required to create their own offsetting schemes to show local authorities that water usage in the water catchment area has been reduced by the relevant amount at their own cost. This can have significant implications on both budgeting and timing of developments and presently cover the entirety of Mid Sussex and Crawley and part of Chichester.

West London energy deficiencies:

In July 2022, all residential schemes for 25 homes or more in the London Boroughs of Hillingdon, Ealing and Hounslow were unable to connect to the electricity grid due to insufficient capacity. The Greater London Authority (GLA) has said that this announcement by Scottish and Southern Electricity Networks (SSEN) will not stop planning applications being determined by the three local authorities concerned, however, the absence of an adequate power supply presents a *de facto* moratorium on development in the affected areas.

The three local authorities had been expected to provide 10% of the all new homes to be delivered across Greater London for the next decade (2019/20-2028/29). This would be in keeping with output over recent years as during 2019/20, Hillingdon, Hounslow and Ealing contributed 11% of London’s net housing supply.

A solution has been designed under which larger sites will re-phase delivery to limit the number of new homes provided each year. We can expect the homes previously planned to materialised, however this will likely occur over a longer timeframe.

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

Analysis shows that there is not a high degree of concentration in housebuilding activity at a national level, with the proportion of new homes completed by the largest ten housebuilders remaining fairly constant over time and the overall number of companies delivering more than 1,000 homes per annum also consistent, albeit with some variation depending on market conditions.

As a result of the increasing average size of permissioned land and the tacit preference in most local plans for larger sites, it can be challenging for smaller firms without the resource, finance or available timescales for a return on investment to consider bigger sites.

In summary, the larger the site, the smaller the potential market for development of that land.

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

In 2018, to tackle under-delivery of housing and to encourage LPAs to meet local housing need, the then Ministry for Housing, Communities and Local Government (MHCLG) introduced the Housing Delivery Test (HDT). The HDT is the Government’s official assessment of areas where there is significant under-delivery and monitors whether LPAs are building sufficient homes to meet their housing need. Depending on the level of under-delivery over a three-year period, LPAs may be required to take further action:

- If net housing delivery was less than 95% of the housing requirement, an action plan should be prepared to assess the cause of under-delivery and identify actions to increase delivery in future years.
- If net housing delivery was less than 85% of the housing requirement, in addition to preparing an action plan, a 20% 'buffer' is added to the housing requirement of the LPA
- If net housing delivery was less than 75% of the housing requirement, the presumption in favour of development applies, in addition to preparing an action plan and applying a 20% 'buffer' to the five-year housing land supply. This means that, 'presumption' authorities must grant planning permission for housing developments unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or where NPPF policies protect key areas or assets.

In 2018 and 2019, the Housing Delivery Test results were published in February for the previous financial year. In 2020, 2021 and 2022 the equivalent figures were published in January. To date no Housing Delivery Test measurement has been made for local housing delivery performance in 2021/22.

The most recent results of the HDT, published in January 2022, found that in 51 local authorities, housing delivery was less than 75% of the requirement, and so they faced the presumption in favour of development. Of these 51, 16 delivered less than 50% of their housing requirement.[11] Lichfields found that among those liable for the Presumption in Favour of Sustainable Development as a result of persistent under-delivery, four out of five were already subject to such a measure on account of having an out-of-date local plan and therefore could not evidence a 5YHLS in any case.[12]

Additionally, 19 authorities delivered under 85% of their housing requirement. A further 23 authorities failed the test, recording between 85% and 95%.

Of the 51 local authorities that achieved housing delivery of less than 75% of the housing requirement, 39 faced the same outcome in 2019 and 33 have failed all four HDTs to date to some extent.[13] The majority of LPAs which failed the HDT and face the most severe 'presumption in favour of development' penalty are located in the East of England or the South East.

Some of the councils with the lowest rates of housing delivery as a percentage of housing requirement in the recent results have been Southend-on-Sea (31% of requirement), Eastbourne (32%) and Epping Forrest (35%).

It should also be noted that according to Savills[14], 116 LPAs (over a third) cannot demonstrate a 5YHLS, 53% of which are in the South East. Savills has further calculated that the difference between actual supply (315,018 homes) a 5YHLS (448,312 homes) is 133,294 homes, equivalent to 26,659 a year.

[11] Housing Delivery Test: 2021 Measurement, 14 January 2022 https://www.gov.uk/government/publications/housing-delivery-test-2021-measurement.
[12] Effective or Defective: The Housing Delivery Test' (27 April 2021), Lichfields https://lichfields.uk/content/insights/effective-or-defective/.
[13] https://www.cbre.co.uk/insights/articles/what-do-the-results-of-the-housing-delivery-test-mean-for-future-housing-supply.
[14] https://www.savills.co.uk/research_articles/229130/338073-0.

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

Affordable housing is typically provided pursuant to a S106 Agreement rather than under a condition (and any such condition typically requires a S106 Agreement to be implemented) and the 'proactivity' of the LPA should be measured by the extent to which it expedites arrangements between the applicant and the Registered Provider and drives S106 negotiations. The percentage and type and tenure of affordable delivered is controlled by the LPA by way of policy.

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

Paragraph 69 of the NPPF states that LPAs should identify land to accommodate at least 10% of their housing requirement on sites no larger than one hectare, but, by and large, this is accommodated in the windfall component of future supply and not on sites specifically allocated for residential development under local plans. The windfall component is usually predicated on historic rates of windfall development projected forward with reference to sites in strategic housing land availability assessments (SHLAAs) in areas that have been considered as potentially developable. Such an assessment in a SHLAA is not a sufficient basis for a SME builder to invest in bring a site forward.

HBF welcomed the introduction of the HDT in 2018 as a means through which local authorities that were shown to be providing an insufficient number of homes needed for their communities could be subject to sanctions, including the release of more sites for development. The industry had been expectant that if implemented effectively, the local impact would involve the release of more sites, including small sites to plug gaps in local housing delivery (including between plan-making periods) and allow SME housebuilders greater development opportunities. However, before a meaningful introduction and implementation of the HDT could take place, an alternative approach was adopted by Government, and the recent consultation on reforms to the NPPF will see oversight of local housing delivery by ministers significantly relaxed.[15]

HBF has previously advocated for a presumption in favour of development for small sites within settlement boundaries.[16]

4. How can competition in this market be strengthened?

There is a large number of housebuilders, who compete to develop new sites with one another and also face competition in selling new homes from the considerably larger existing housing stock.

We believe that while little has changed for a segment of the industry since the OFT published its report on housebuilding in 2008, the prospects of SMEs have seen a pronounced deterioration owing to deeply entrenched challenges for which policy solutions are necessary. Addressing the problems that prevent small companies from enjoying the competitive space in the market that medium-sized and larger firms can access will require:

- Reducing planning risk;

[15] *Levelling Up and Regeneration Bill: reforms to national planning policy,* December 2022.
[16] *The Case for a Presumption in Favour of Residential Development on Brownfield Land*, (August 2015), HBF.

- Maintaining successful sanctions on LPAs that fail to plan for the needs of their communities (and those who fail to deliver on plans which meet the needs of their local communities);
- Supporting achievable and sustainable development in areas where housebuilding has *de facto* ground to a halt due to regulatory and policy challenges associated with environmental safeguards; and
- Providing more lead-in time ahead of major policy, regulatory and tax changes for the sector.

The past decade can largely be seen as a success for the housebuilding industry. Supported by planning policies and other interventions designed by Government to increase the delivery of new homes, net housing supply doubled between 2013 and 2019, rising from the lowest peacetime figure ever recorded in 2012/13 to a sustained period of net supply at levels surpassing those recorded during the 1950s and 1960s.[17] While the outlook for the sector has changed dramatically, it should also be noted that the unprecedented increases in housing delivery have been tempered by a challenging business environment, particularly for the smallest housebuilders.

HBF has long-argued that the business environment for housebuilders which has developed over the past 30 years has disadvantaged smaller housebuilders. Although a sector that once had minimal barriers to entry for prospective developers, something which had allowed for consistent growth of new entrants to grow from local builders to national developers over a period of just a couple of decades,[18] the industry is now a highly complex, expensive and risky business proposition.

A strong focus on the role and challenges of SMEs and prospective new entrants is vital to foster diversity of supply. In the context of new build housing, as a small part of the overall housing market, there is strong competition between national and regional developers particularly for land and on sales, but the pathway from small developer into a larger regional business is less clear.

Housebuilders expect to manage different market cycles in relation to demand, albeit the dynamics of the mortgage market make the question for developers one of *effective demand*, rather than headline demand. However, recent decades have seen the proliferation of additional costs, the requirement for greater levels of technical and specialist knowledge and the performance of the planning process. All of these factors, combined with a planning system which has in effect preferred larger sites over time, have incentivised scale. At a certain size developers will be able to access economies of scale by, for instance, employing specialists in key emerging technical areas.

Regulatory impact

Recent reforms in building regulations specifically relating to energy and sustainability impact all housebuilders and in a recent survey HBF completed among SME housebuilders, 86% cited these as a barrier to growth. In the long-term, it is often the complexity and uncertainty of delivering new standards that causes the greatest disadvantage to small firms. HBF has worked with Government and other stakeholders to found the independent Future Homes Hub which will support the industry in the delivery of the Future Homes Standard, which will represent a huge step-change even from recent building regulations changes. While the Hub's

[17] DLUHC Live Table 104.

[18] Several of the largest housebuilders active in the current market were either established in the 1960s and 1970s or saw significant growth throughout this period, increasing from small businesses potentially driven by a single entrepreneurial individual to national housebuilders. These include, for example Bellway (1946), Barratt (1958), Crest Nicholson (1963), Bloor (1969), Persimmon (1972), Redrow (1974), Berkeley (1976).

work has been actively supported through funding and expertise by the largest housebuilders, the outputs, including via a specific working group, will support all participants in the market. In practice, the Future Homes Hub is engaged in several types of activity, including developing technical solutions for regulatory changes and facilitating sharing and learning across the sector. Government funding for the Future Homes Hub was provided only on the basis that activity included sector-wide collaboration to overcome barriers to successful implementation and communicating with all parts of the homebuilding sector. The effect of this work will help to ensure that housebuilders are better prepared for regulatory changes and have easier access to the supply chains and skills needed to design, specify and build homes to meet them.

Planning risk

Planning risk has grown for all developers in recent years through a combination of reduced local planning authority resources, the highly charged political atmosphere around housing supply and the addition of shocks to housing delivery in the form of environmental requirements such as nutrient neutrality requirements.

A recent HBF survey, conducted in conjunction with Close Brothers Property Finance and Travis Perkins plc, found that delays in securing planning permission/discharging planning conditions and LPA resources were considered a major barrier to housing delivery for 93% of SME housebuilders.

Longer-term, phased introduction of regulatory, tax and planning changes would always be welcomed by all businesses regardless of sector, but the political position occupied by housing supply and planning issues leads to more frequent and often highly unforeseen changes. It should be pointed out that not all of these changes need necessarily to be negative to present additional business costs and complexity. Between 2010 and 2018 the Government took a broadly pro-development position and sought to increase housing supply. However, the intentions occasionally had other consequences, sometimes in the long-run but certainly in the short-term. For instance, the creation of the NPPF in 2012 was generally a positive change that held LPAs to account more readily for meeting the housing needs of their communities. In the period prior to its implementation the effect was probably detrimental in terms of the number of LPAs developing and adopting local plans.

Policy, tax and regulatory upheaval and a lack of forewarning

Coherence and consistency of policy approaches may be challenging, however the level of change in recent years is unprecedented. Some of this can be attributed to the political upheaval that has seen 10 changes in the individual with Cabinet-level responsibility for housing and 17 housing ministerial changes in the past 13 years. There is also a sense across the industry that policymakers consider the development sector as one that is relatively easy to extract funds from, and an industry through which other policy goals can be achieved. The residual land valuation model enables those with an understanding of its operation to levy additional costs and policy measures on housebuilders with an overly-simplistic view that land value will flex to take account of these additional costs with no impact on supply.

As mentioned elsewhere in this response, the lack of lead-in time before the announcement or application of new taxes, regulations or policy interventions has significant consequences for businesses of all sizes, but impacts small firms hardest, given their lack of resources to engage with and interpret changes, and bring these to bear on planned developments within the necessary timeframes. By way of example, the announcement of new drainage requirements was made in January 2023 and will take effect in 2024, leaving little time for site re-designs and absorption of additional costs.

The Building Safety Levy (BSL) is expected to be payable on all new developments; there are no planned transitional arrangements in place at present. A consultation on the design and implementation of the BSL, which is set to raise £3 billion for building safety expenditure, was published by the Department for Levelling Up, Housing and Communities (DLUHC) in November 2022. At the time of writing, it is now more than one month after the close of the consultation on the BSL and just a year away from its expected implementation for all developers, yet the rate of the Levy and how many different rates there will be, remains unknown. It is likely that there will be multiple rates at an LPA level, and therefore potentially several hundred different charging rates around England. It is unknown therefore how much each site will be liable for but the consultation document suggested that sites in Southern England will be expected to pay more per plot than those in other parts of the country. Likewise, greenfield sites are expected to attract a higher rate. HBF's consultation submission argued that using this new tax to exact multiple policy objectives was overly simplistic and ultimately inadequate, suggesting that if Government intends to promote non-greenfield development it should do so via the planning system rather than a new levy which appears to be aimed at collecting funding for building safety remediation purposes.

First announced in February 2021, the BSL was originally set to be payable on buildings of over 18 metres to ensure that the taxpayer and leaseholders do not pay for the necessary remediation of building safety defects. However, the Government later confirmed that it was to be extended to all residential buildings requiring building control approval in England.

While policymakers routinely claim that residual land values will balance out viability concerns, the sheer and unprecedented burden of new policy and tax has already pushed this calculation to breaking point, threating viabilities and, inevitably, leading to fewer homes being built over the coming decade.

HBF is concerned about the impact the BSL will have on housebuilders, including prospective SME developers, amid a period during which significant additional taxes, levies and regulations are being introduced or increased. The BSL consultation document said that the Government intends to exempt developments under 10 units or the square metre equivalent however this will only be of benefit to a very small number of micro developers. As such, HBF has asked the Government to consider introducing a higher site size threshold. When the cumulative impacts of the BSL, RPDT and corporation tax are taken into account, research for HBF by WPI Economics found that around 70,000 affordable homes will be lost over the ten years of the Levy. While the Government has committed to a 'polluter must pay' principle, it is only the private home building industry that has been required to make contributions. Other actors with a responsibility for resolving the building safety crisis, such as overseas developers and product manufacturers, have not been pursued by the Government with the Secretary of State telling the House of Commons Levelling Up, Housing and Communities Select Committee:

> *'It is just a statement of truth, and it applies to construction product manufacturers as well, that companies that are domiciled and do business in the UK are easier to engage with and it is easier to be clear with them about what the consequences of non-engagement might be.'*[19]

As well as ongoing and much more frequent changes to policy, the potential for Government to shift the fundamental framework underpinning the entire planning system is always a threat. This has been experienced in recent months in the form of the DLUHC) consultation on

[19] Oral evidence: Building Safety: Remediation and Funding (HC1063), 21 February 2022, Question 177.

reforms to national planning policy,[20] through which ministers are proposing to remove the effective requirement for LPAs to maintain a five-year housing land supply. This has followed the introduction to Parliament of an entirely different set of planning reforms and emerged through negotiation with backbench Members of Parliament. Furthermore, although the proposals have only recently been consulted on, the impact on LPA actions and approaches has been immediate. More than 50 LPAs who were in the process of developing or adopting new local plans have suspended this work and at least one with an adopted plan has made representations to ministers to disregard that plan.

The activist approach of agencies like Natural England has contributed to a major increase in planning risk. Because of concerns around the health of England's rivers, Natural England has imposed moratoria on planning permissions in 74 LPAs. Having started with a ban on development in a small number of LPAs in Southern England in 2019, by 2021 this had expanded to almost one-third of England.

As explained in response to Q2 above, the impact of regulations introduced by Natural England are significant, especially for SME housebuilders. Natural England have legally prevented the occupation of new housing, citing the phosphate and nitrate loads in waterways. These measures have significant consequences for housebuilders and many in the industry consider disproportionate when it is acknowledged by Government that only around 5% of the nutrient load is derived from residential properties and only a very small addition to this is caused by the occupation of new homes. It is accepted that the primary causes of this pollution are agricultural practices and the failure by water companies to adequately treat wastewater.

This intervention could not have been foreseen by any company prior to 2019, and for some developers has had the effect of entirely stopping their operations. For many SMEs, their active footprint for land opportunities and development is within a small geography and some HBF members report that all of their active sites are affected. Larger developers are similarly affected on a site-by-site basis, but their diffused footprint has spread the burden across a wider range of sites. Larger housebuilders have also been able in some places to redirect investment to regions where development in still possible, maintaining their capacity over a different geography. In some areas, solutions such as the purchasing and fallowing of pig farms have presented opportunities for developers to meet nutrient neutrality requirements, though this option is unlikely to be one available to a smaller developers who are reliant on project-based financing. As such, Government interventions via Natural England on nutrients and other issues in large parts of the country can be seen as a driver of market concentration.

Because the moratorium has been applied for a prolonged period of time it has also had consequences for the land market. With no prospect of short-term housing delivery in areas impacted by the moratorium, developers with enough capital to spare have sought to identify sites outside of affected catchments or at sites of different sizes compared with their normal specialisation. This has led to reports that the market for land on the outskirts of affected catchments has been particularly competitive, with more players in the mid-sized range bidding for development of those areas.

The much-awaited nutrient mitigation schemes that Government expects to be part of the solution to break the impasse are still yet to emerge at any scale or consequence. If and when this does occur, the industry will welcome the return to development but the potential costs, especially in relation to phosphate mitigation are likely to be significant on a plot-by-plot basis.

On a more limited basis, the same effect can be seen with Natural England's other interventions into block development in whole market areas. As detailed in response to Q2

[20] https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy

above, through water neutrality requirements, the agency has blocked development in parts of Sussex because of water availability and the potential for damage to the habitats of an aquatic snail species. Natural England has also restricted development within 15km of national parks and woodlands because of the potential for new occupants of homes to use those locations for recreational purposes. Similarly, a consultation has commenced at Natural England related to potential restrictions on development because occupants of new homes may use cars that cause air pollution.

The unifying features of all of these actions by Natural England are that they:

- could not have been foreseen or planned for until restrictions were imposed;
- have proportionally greatest impact on smaller firms in affected areas;
- seek to meet policy objectives which are not always closely related or objectively proportionate to housing or housebuilding activities.

The unique involvement of political actors at a national and local level in the rationing of land and the granting of development rights has significant consequences for businesses in the sector, for whom certainty and foreseeability are important; the extent and speed of planning and policy changes recently has proven extremely difficult for developers seeking to deploy investments.

Market structure

In 2008 the OFT found the housebuilding industry to be 'broadly competitive'. Since then, fundamentally little has changed in terms of market structure and level of concentration. The OFT report referenced the share of new build completions provided by the largest 10 developers (by volume) as the metric through which to explore concentration dynamics. Since 2008, the proportion of new homes developed by the largest 10 and the largest 25 developers respectively have remained fairly constant and appears to be lower than the figures reported by publications during the 2000s.

It should be noted that in 2008, the OFT derived market share estimates by comparing the number of homes built by the 10 largest developers against 'total private output' (DLUHC Live Table 211)[21]. However as has recently been communicated to the CMA, the accuracy and reliability of these statistics is very limited so the market shares expressed for pre-2008 may have been overstated. In 2017 the UK Statistics Authority intervened as part of a wider review of housing statistics. The figures undercount housing delivery by as much as 20% with particular issues around the collection of data in urban areas and, likely, on homes built by smaller developers.

After peaking in the 1970s and 1980s, the number of large builders in operation (defined as those completing more than 1,000 homes per year) has shown a high degree of consistency and there are a similar number of builders delivering more than 5,000 homes per year as was recorded in 2004. There has been a small increase in the number of developers building more than 10,000 homes per year, but as we approach a more challenging supply-side and demand-side environment, we might expect this to flex, as in previous cycles.

[21] OFT report, page 23.

Output of 10 largest housebuilders by volume, 1960 to 2022[22]

Year	Output of largest 10	Share of new build completions	Share of total housing market	Firms building more p.a. than:					Source
				1,000	2,000	5,000	10,000	20,000	
1960	16,000	9%		5	2	0	0	0	Wellings 2006 (page 105)
1965	18,000	9%		12	1	0	0	0	Wellings 2006 (page 105)
1973	33,000	18%		26	6	1	0	0	Wellings 2006 (page 105)
1980	36,000	28%		13	4	2	0	0	Wellings 2006 (page 105)
Late 1980s	51,000	27%		29	14	5	0	0	Wellings 2006 (page 105)
1995	48,400	32%		28	14	4	0	0	Wellings 2006 (page 105)
2000	63,300	44%		25	14	5	0	0	Wellings 2006 (page 105)
2004	76,100	46%		24	14	6	3	0	Wellings 2006 (page 105)
2008	82,222	35%		24	12	4	3	1	HMI report and housing stats (HBF)
2010	48,928	33%	5%	20	8	3	2	0	HMI report and housing stats (HBF)
2012	48,773	33%	5%	18	9	3	2	0	HMI report and housing stats (HBF)
2014	59,048	39%	5%	19	11	4	3	0	HMI report and housing stats (HBF)
2016	71,835	37%	6%	22	16	4	3	0	HMI report and housing stats (HBF)
2018	80,794	37%	7%	25	17	5	3	0	HMI report and housing stats (HBF)
2019	84,065	35%	7%	21	16	6	4	0	HMI report and housing stats (HBF)
2020	87,899	36%	8%	21	16	6	4	0	HMI report and housing stats (HBF)
2022	90,077	38%	7%	22	16	7	5	0	HMI report and housing stats (HBF)

The politics of housing and the views of policymakers have changed significantly in recent years. Following 10-15 years in which a broad consensus around the need to build more homes had been established, that consensus has broken down with the subject has become increasingly party political.

There are a similar number of developers completing more than 1,000 homes per year, but within this group, there has been a slight increase in developers completing more than 2,000 dwellings. This indicates a small shift from regional businesses to multi-regional businesses.

Since the publication of the OFT market study on housebuilding in September 2008, there have been frequent and often significant changes in the political, policy and regulatory

[22] The analysis presented in the table from 2008 onwards puts the total delivery by the largest 10 housebuilders in the context of total New Build Completions derived from DLUHC Live Table 120 for England (November 2022); Housing Statistics Quarterly Update for Scotland (January 2023); and New Dwellings Completed (March 2023) for Wales. Previous calculations for 1960 to 2004 appear to be based on a proportion of 'private housing completions'. However, for reasons outlined in answer to Q5, this measure for England is inaccurate and undercounts housing delivery because of an over-reliance on one private building control provider.

environment for housebuilders. This has inevitably proven challenging for all developers, but especially difficult for smaller businesses as has been explained in the responses above.

Politics

Since the 2008 OFT report was published, there have been:

- Two changes to the name and branding of the department responsible for housing;
- Two changes to the name and branding of the Government's principal housing agency;
- 10 changes in the individual with Cabinet level responsibility for housing; and
- 17 changes to the Housing Minister.

As explained above, these political fluctuations have had an impact on the sector, increasing uncertainty and the regularity of planning and policy changes which impact the housebuilding sector.

Planning

Changes to the planning regime since 2008 include:

- Publication of the NPPF followed by related Government proposals for reform.
- The enactment of the Localism Act 2011 which abolished regional planning and gave communities the right to create Neighbourhood Plans
- The Housing and Planning Act 2016 which introduced Starter Homes (see below) and gave powers to the Secretary of State to force LPAs to have a local plan where they do not have one
- The Levelling Up and Regeneration Bill, introduced to Parliament in May 2022 and which is expected to be granted Royal Assent in 2023 will make significant changes to the current operating of the planning system
- Two White Papers on housing delivery - 'Fixing our broken housing market' and 'Planning for the future'
- The Independent Review on landbanking, led by Rt Hon Sir Oliver Letwin MP
- The reclassification of back gardens which has restricted land opportunities for SMEs
- The first nutrient neutrality requirements imposed on development in the Solent
- The formalisation of Biodiversity Net Gain requirements

S106, CIL and Affordable Housing

The volume and type of Affordable Housing contributions required through policy and legislation has changed in several ways since 2008:

- Two significant changes to developer contributions - the introduction of the Community Infrastructure Levy (in 2010) and the announcement of the forthcoming Infrastructure Levy
- A shift from non-Affordable Housing projects to Affordable Housing delivery within the S106 funding envelope
- Increased reliance on S106 to deliver England's Affordable Housing, with the proportion provided via cross-subsidy rising from 16% of the total in 2007/8 to more than 50% by 2019/20
- The introduction in 2015, via legislation of a new tenure of Affordable Housing, Starter Homes, which would be sold to qualifying buyers at 20% below market value. Following considerable time and effort on the part of lenders, developers and local authorities, following political changes, Starter Homes have not been delivered and are no longer a part of government policy
- The introduction of First Homes, a new Affordable Housing tenure to support households onto the housing ladder. In a Written Ministerial Statement confirming the changes, the then Housing Minister stated that First Homes should account for a minimum of 25% of all

new affordable housing units secured through developer contributions'. Despite numerous pilots and considerable support offered by the development sector, the tenure is still not yet fully operational.

Regulation

Since 2008, there have been four new building regulations introduced and a total of 38 amendments across all the Approved Documents:

- Approved Document A Structure was amended in 2010 and 2013.
- Approved Document B Fire Safety was amended in 2010, 2013, 2018, 2019, 2020, and 2022.
- Approved Document C Site preparation and resistance to contaminants and moisture was amended in 2010 and 2013.
- Approved Document D Toxic substances was amended in 2010 and 2013.
- Approved Document E Resistance to the passage of sound was amended in 2010, 2013 and 2015.
- Approved Document F Ventilation was amended in 2010, 2013 and 2021.
- Approved Document G Sanitation, hot water safety and water efficiency was amended in 2010, 2015 and 2016.
- Approved Document H Drainage was amended in 2015.
- Approved Document J Heat producing appliances was amended in 2010, 2013 and 2022.
- Approved Document K Protection from falling, collision and impact was amended in 2013.
- Approved Document L Conservation of fuel and power was amended in 2010, 2011, 2013, 2016, 2018 and 2021.
- Approved Document M Access to and use of buildings was amended in 2015, 2016 and 2020.
- Approved Document O Overheating was introduced in 2021.
- Approved Document P Electrical Safety was amended in 2013.
- Approved Document Q Security – Dwellings was introduced in 2015.
- Approved Document R Physical infrastructure for high-speed electronic communications was introduced in 2016.
- Approved Document S Infrastructure for charging electrical vehicles was introduced in 2021.
- Approved Document 7 Materials and workmanship was amended in 2013 and 2018.

In a recent survey of SME builders, 86% reported that new and changing Building Regulations were presenting their businesses with either a major or minor barrier in the delivery of new homes.

Sales market

- The introduction of four different first-time buyer Government support schemes with the final one of these, Help to Buy closing in October 2022[23]
- At least 10 changes to Stamp Duty rates, thresholds and exemptions

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

Policy consistency

All businesses, regardless of sector, welcome certainty and consistency as they plan investments. For developers, this begins with a pragmatic and enforceable national planning

[23] Homebuy Direct (2008), FirstBuy (2011), NewBuy (2012), Help to Buy (2013).

policy. The plan-led system of planning only works when LPAs have up-to-date plans and an appropriately identified supply of land on which to deliver against local housing need, which is not always the case presently.

Historic literature on the housebuilder business model has described the vulnerability that developers have pertaining to local planning decisions, the commercial calculations that he or she makes and the economic cycle:

> *'Without wishing to minimise it, the housebuilder's risk is less related to the construction process but instead it centres on the possibility that land purchased may not obtain the desired planning permission, that houses do not sell, or that house selling prices differ from those originally expected: in other words, the housebuilder is vulnerable both to specific errors of judgement on his speculative land purchases, and to the vagaries of the housebuilding cycle'.*[24]

Although the period in which the above was relevant (1970s to early 2000s) saw multiple economic cycles and some major changes to demand and supply-side housing policies, the realities have changed in the 17 years since its publication with new risks layered on top of those expected by previous generations of builders and a growth in the complexity of housing delivery. Since 2006 it could be argued that the newest and most significant source of risk comes from the sudden and often highly impactful introduction of new policy costs at a national level.

Establishing the principle of development for a site early on in the planning process would improve the functioning of the market for all builders and have a disproportionately beneficial impact on smaller firms.

<u>Wider housing market</u>

Aside from planning-related issues, it is important to consider the supply of new homes in the context of the wider housing market of which new homes are just a small part. A well-functioning secondary market for housing with lower frictional costs or perceived frictional costs will, all things being equal, create the conditions for more activity in the new build market. Although a considerable focus is given to access to the market for first-time buyers, notably the linkage between mortgage availability and costs and housing delivery, a significant proportion of prospective homebuyers are home movers. For these households, the cost of moving and the perceived costs of selling factor into decisions about whether or not to switch. The fiscal drag effects of Stamp Duty thresholds are thought to have had a limiting influence on the turnover of ownership of existing homes which saw new housing as a proportion of total housing market increase during the middle part of the 2010s before falling back to historical norms. Certain types of developers and developments are especially sensitive to the secondary market for housing. This includes specialist retirement scheme buyers or renters who are often dependent on selling an existing property.

<u>Mortgages</u>

Wellings (2006) rightly noted the importance of the risks encountered by housebuilders at the point at which developers come to sell homes. The functioning of the mortgage market and the attitudes of mortgage lenders to new build housing are a crucial factor in considering the functioning of the new build market. In the years following the global financial crisis, after a shallower-than-expected recession, the economy began growing modestly in the years after 2010. Gradually this fed through into an increase in housing market activity, but this did not translate into more transactions on new build housing. The principal reason for this was the approach taken by mortgage lenders in relation to new homes.

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[24] *British Housebuilders,* Wellings (2006).

Even today, few lenders' policies advance loans to homebuyers at high Loan-to-Values (LTVs). Where lenders do offer 90% LTVs and 95% LTVs, these are often as part of schemes where risks are taken on by others. For instance, Halifax currently offers 95% mortgages to buyers of new *houses* but not flats, with support from the Government's Mortgage Guarantee Scheme.[25] Other lenders participating in this scheme exclusively use it to support lending on second hand properties. Elsewhere, following the creation by HBF and 17 of its members of the Deposit Unlock mortgage indemnity scheme, three participating lenders offer higher LTVs to buyers with effectively all of the risk borne by relevant developers who provide a cash guarantee and an indemnity.[26]

Lenders often argued that a lack of a significant back book against which to assess the performance of new homes and the presence of a 'new build premium' led to them taking a cautious approach to new build lending.

The introduction of the Help to Buy scheme in 2013 facilitated a significant improvement in the availability of affordable high LTV mortgages for first-time buyers purchasing new build properties. Sentiment surveys of house builders around the time of the introduction of the scheme bear this out. In the months before the announcement of the scheme in 2013, more than 8 in 10 developers cited mortgage availability and mortgage terms as a barrier to housing delivery. Within three months of the scheme becoming operational this had fallen to 10%.

Help to Buy was an attractive proposition for mortgage lenders. By bridging the gap between the 75% LTV loan provided by the lender with a 20% Government equity loan, lenders had fundamentally de-risked loans while taking onto their loan books a considerable number of new, highly energy efficient homes which have proven helpful (i) in meeting new regulatory requirements on energy performance of mortgage books; and (ii) building credentials relating to support for first-time buyer households.

By the time the scheme formally closes it will have supported almost 400,000 households onto the housing ladder and into new homes. More than 100,000 Government equity loans had already been fully repaid by March 2022 at an average increase in value of around 10% (generating a positive return to the Exchequer of around £500 million to date). However, since the scheme closed for new applications in October 2022, the number of high LTV new build mortgage deals available has reduced significantly.

Help to Buy had turned latent demand for housing and new build housing into *effective* demand by equalising the deposit requirements for buyers of new homes with those typically necessary for buyers of existing properties.

In the absence of a successor scheme to Help to Buy, NewBuy, FirstBuy and HomeBuy Direct that would equalise the position of new build mortgage applicants compared with those purchasing second hand properties, HBF has encouraged lenders and the Government to support a market for genuine 'green mortgages'. Several lenders claim to offer green mortgage products, but in some cases these involve a cashback award made at completion or a marginal preferential rate. Instead, a 'green mortgage' should be reflective of the significant efficiencies and sustainability achieved in new builds and second-hand housing which has been retrofitted to meet equivalent sustainability standards.

New build houses save purchasers around £3,000 on energy bills compared with the typical existing property[27], but in determining the affordability for a mortgage applicant and the amount

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25 https://www.halifax-intermediaries.co.uk/assets/pdf/mortgage-guide.pdf.

26 https://deposit-unlock.co.uk/.

27 *Watt a Save!* (HBF), February 2023. Figures derived from DLUHC Energy Performance Certificate data (Live Tables NB1 to NB7) and unit energy pricing based on British Gas and Energy Price Guarantee figures.

they can borrow, lenders will use national average energy bills as the relevant input. This presents a major disadvantage to new build homebuyers and to developers who are producing a superior product with a long-term and significant payback period but for which no additional value has been assigned (because valuers assess the home in accordance with local markets).

Through the Future Homes Hub, the industry is working with lenders and valuers to share knowledge on the standards and efficiency of new homes and the homes of the near-future. As the gap between new properties and existing dwellings grows bigger, it is important that all participants in the markets from lenders, valuers and especially buyers understand the differences in performance and running costs. A welcome start to this would be to put new build purchasers on an equal footing with purchasers of less efficient homes that may need retrofitting in the years to come. The alternative is a mortgage market in which buyers are incentivised to make short-term decisions to get on the housing ladder that have long-term cost implications.

A proper market for green mortgages which may need to be accelerated by Government regulation or guidance would promote environmentally conscious, long-term decision-making by homebuyers. It would evidently also create a competitive advantage for new build homes over older properties and incentivise further innovation among house builders as they seek to gain competitive advantages within the new build market.

Data

Finally, a welcome addition to the market would be the availability of better quality, more granular data on housing supply. There are several measures of housing supply in England, all of which are published by DLUHC and which are used by the industry, but all have flaws, and none present a fully accurate explanation of how and when housing supply is changing.

Net Supply of Housing: Government's 'most comprehensive' measure, these annual statistics are considered the most accurate measure of housing supply and break down gross and net housing supply by components (new build completions; changes of use; conversions etc). They are available at LPA level but are only published each November to cover the previous financial year. As such they present information on completions from 6-18 months before. They do not provide any breakdown of which types of developer/housing provider has completed the homes or what type of homes are built. The full dataset commenced in 2006 although headline net supply statistics (without a breakdown of components) is available back to 2000.

Indicators of Housing Supply: Published quarterly, this DLUHC dataset was previously named 'Housebuilding Statistics' and was used in the *Statement of Scope* as the basis for housing completions analysis and market share calculations. However, the accuracy of these figures has long been called into question.[28] Analysis of the 2021/22 dataset in comparison with the equivalent New Build Completions component of the Net Supply statistics shows a significant shortfall in recorded completions in London (13,821 completions unrecorded or 44% of all new homes built); Leicester (more than 500 homes or 66% of total completions)[29]; Birmingham (724 unrecorded completions totalling 27% of the overall number). In other recent years, more than half of all housing completions in cities such as Liverpool, Newcastle and Manchester have gone unrecorded by these statistics.

Following a UK Statistics Authority report in 2017, DLUHC renamed the data and took steps to improve the quality of the data. When comparisons are made for the same period between

[28] *Ghost Towns: The True Level of Housing Supply* (2016), HBF https://www.hbf.co.uk/news/ghost-townsthe-true-level-of-housing-supply/.

[29] DLUHC Live Tables 122 and 253.

the completion figures included in this dataset with the more accurate New Build Completions component of the Net Supply data, there is erratic and often very considerable variance. However, data has become less accurate over the past five years with almost 20% of completions uncounted. The shortfall in the past five years alone equates to the entire dwelling stock of Manchester.

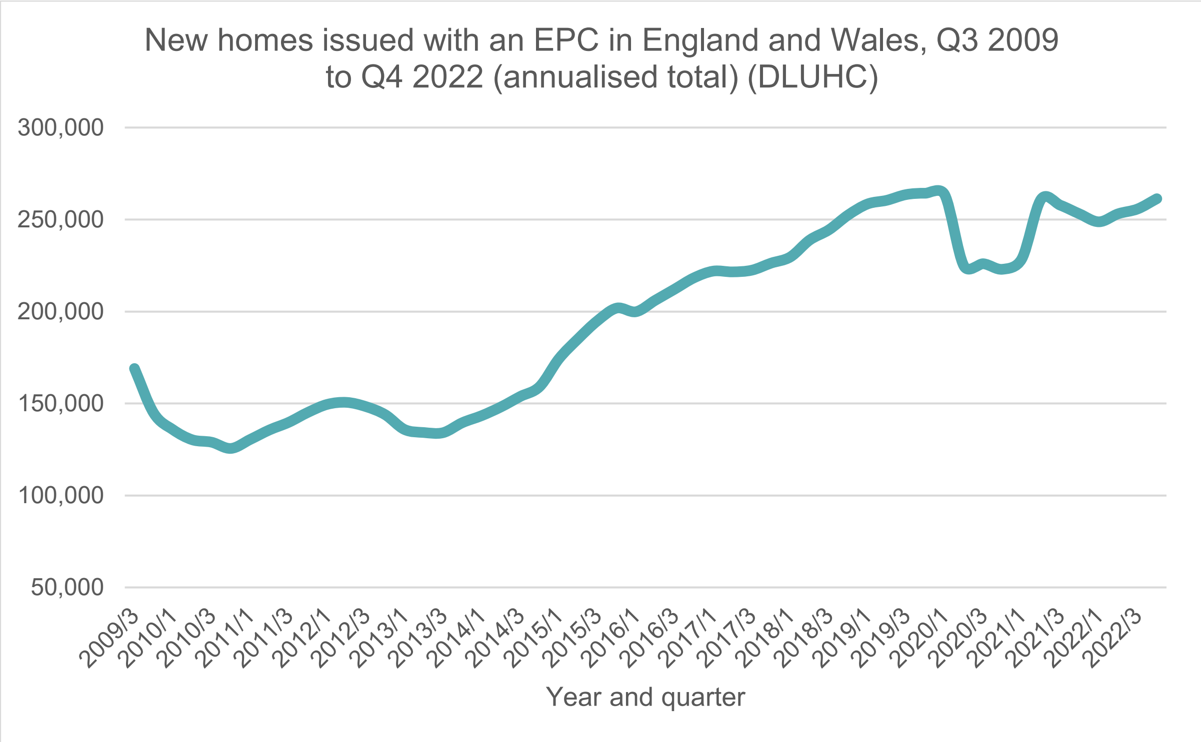
	Past 5 years total	Past 10 years total
Indicators of Housing Supply'	831,130	1,463,310
New build completions (Net Supply) (“most comprehensive estimate”)	1,030,810	1,782,280
Uncounted new homes	199,680	318,970
Percentage of new homes missed	19.4%	17.9%

Analysis of the areas responsible for the greatest shortfalls suggest that the mismatch may arise predominantly in urban areas. Since the data is provided by building control bodies on a voluntary basis it is possible that the disparities reflect shifting market shares, this may include a particularly small share of apartment and SME development.

The Indicators of Housing Supply statistics are the basis for other data measures published by DLUHC which are used to analyse of the type of new home completed and the developers responsible (public or private), but as it represents only a sample of the overall new build market, and excludes many smaller developers’ output as well as a large percentage of new homes built in cities, it cannot be relied upon. Further, the split of public and private development is a determined only by the status of the main developer and is therefore over-simplified. That is, S106 Affordable Homes built by a private developer will be considered ‘private’ while a home built by a Housing Association for private sale will be tagged as ‘public’.

Energy Performance Certificates: Since 2008, DLUHC has published data on a quarterly basis on properties issued with Energy Performance Certificates (EPCs). Although the majority of the data pertains to existing properties as they are marketed, a subset is available that is specific to new build properties (Live Tables NB1 to NB7). These have become the most reliable data on very recent housing supply and when compared to the Net Supply data published midway through each financial year, presents only minimal variance (and some of this appears to be lagging factors so that over a multi-year period the variance is reduced). The EPC statistics are published shortly after the end of each quarter, are available at a local authority level and provide information on some aspects of new build supply including EPC rating (A-G); CO2 emissions; floor area; type of property (flat, house, bungalow, maisonette, other). They do not provide breakdowns of developer type or the number of bedrooms per property. The chart below shows how output recorded through this proxy has changed over time.[30]

[30] DLUHC Live Table NB1.



Dwelling Stock: The Dwelling Stock statistics published by DLUHC in May each year provide a measure of net supply that correlates with the Net Supply of Housing Statistics and provide the historical context for this measure with some data in this dataset dating from 1801, albeit with updates made once per decade up to 1970.

Council Taxbase: This represents another measure that helps to triangulate net housing supply for England and correlates well with net supply statistics. It is published in September, after the Dwelling Stock series is updated and before the Net Supply statistics are published in November.

Given the political and attention around housing supply and the role of housebuilders, it is both surprising and disappointing that the quality and granularity of statistics remains poor. The addition in 2008 of EPC statistics as a proxy for housing supply data which arose as a by-product of regulation focused elsewhere is welcome, however the multitude of statistics, some of which fail to accurately reflect market realities, often sees false claims given credence.

It is also frustrating that no reliable source of data exists for the number or activity level of housebuilders in the market. Data presented as reflecting the position of SMEs or larger developers is, again, based on a proportion of the sector and influenced by shifting market shares of the building control providers who present the data.

An improved set of housing supply and housebuilder data would not only support better debate around the topic, it would also assist Government in setting policy; developers in making business decisions; and homebuyers as they enter the 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.**

The regulatory, tax and planning frameworks across all three areas of Britain have diverged considerably over past decades. While a separate tax and planning system has long existed in Scotland, recent years have seen a gradual divergence on planning and regulatory policy between England and Wales too.

One effect of this has been a reduction in the number of large developers operating across more than multiple territories in Britain.

Planning: The land use planning systems operating in all four UK territories are all now subject to separate primary planning legislation. All are, however, 'plan-led', which means that national and local planning policy is set out in formal development plans that describe which developments should and should not get planning permission; how land should be protected; and how to ensure a balance between development and environmental protection in the public interest. Decisions on individual planning applications are made on the basis of the policies in these plans unless there are other considerations that need to be taken into account. Each country has definitions of the types of development that are permitted without the need for a planning application and defines "use classes" where change of use within a class is normally permitted. An appeal system to review decisions on applications also operates in each country. Each country also has a system in place to enforce breaches of planning consent. Although the basic structures of the planning systems are similar there are differences in the detail and in how each system works.

Regulation: While a different regulatory system is a longstanding feature of the Scottish market, over recent years there has been growth in the divergence between England and Wales in regulation and its emphases. Examples include the introduction of a requirement for sprinklers in all new homes in Wales in 2013 and the Biodiversity Net Gain requirements (introduced via planning) or Electric Vehicle charging requirements (Approved Document S) both taking effect in England in 2023 and 2022 respectively.

Tax and sales process: As well as the different sales tax regime in operation in Scotland, the recent activist approach of the UK Government in relation to taxes and regulation for those building in England has created an increasingly different set of taxes for different territories. For example, ahead of larger developers signing the Building Safety Pledge self-remediation contract in March 2023, the UK Government consulted on the creation of a second new tax to raise money from developers to fund remediation of buildings developed by other actors. This planned-for £300 million per year tax will only be levied on new development in England.

Support for buyers:

As outlined in response to Q5 above, a major factor in the successful delivery of record housing supply numbers between 2016 and 2020 especially in England was the presence of the Help to Buy scheme which came to a close in 2022. Support schemes for first-time buyers to purchase new homes had, until then, been in place in England in one form or another for a period of almost 25 years.

The Help to Buy scheme with a different structure to that which was available in England is still operational in Wales.

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.

The land market can be divided into two elements:

- Immediate land is that upon which the principle of development has been established (i.e. planning permission has been granted) or where the principle of development should be readily established (such that land could be acquired with confidence by way of a 'subject to planning' contract).
- Strategic land is that which typically has neither the principle of development (and often has only the potential for future development) or a land value established at the point at which it is secured under contract. The majority of most builders' output will be on immediate land.

Both markets can be further divided into two elements based upon whether land is available on-market or off-market land. On-market land exists whereby a land agent has been appointed to market and dispose of land on behalf of landowners. Off-market transactions are those conducted between a landowner and a developer or promoter directly, often where representatives of the latter have approached the former about a piece of lands possible availability. Off-market transactions are relatively rare because maximising value is most typically an owners primary motivation and one that is best achieved on the open market.

The strategic land market until around 2000 was predominantly occupied by housebuilders with land under control by way of option agreements, an option being the contractual right to acquire land within a certain period of time and at a certain discount to open market value (OMV) should the option be success in securing a satisfactory planning permission. During this period, builders would enter the strategic land market for two principal reasons. Firstly, security of supply. If a whole appeared in Y3 of a 3 year plan, for example, it would be better to have a site dropping in from a strategic portfolio than to enter the immediate land market for a site capable of filling that gap. Secondly, profitability. Given the discount to OMV, development of strategic land should logically be more profitable than development of immediate land.

Not every strategic site that is promoted is in fact developed. A strike rate (the conversion of that land into a development site) of 1:2 would be considered poor, 2:3 par and 3:4 very good, but the performance of those sites that are successful should outweigh the costs of the one site that proved abortive.

Since around 2000 the strategic land market has been changed by land promoters operating by way of the Planning Promotion Agreement (PPA). Promoters' pitch to landowners is broadly that the costs of promotion through the planning system are borne by the promoter, but, rather than purchase at a discount, under a PPA the promoter has a right to market the land (usually when consent has been granted, but occasionally earlier) and to secure a pre-agreed proportion of the sale (usually to a builder). The emergence of the PPA model could be attributed to the increase in value linked to a planning permission attracting new capital, an increasingly difficult to navigate planning system which encourages builders to adjust risk profiles, and opportunities to win appeals on non Green-Belt sites through the 2012 NPPF's 'presumption in favour of sustainable development'. We consider that the merits of the option agreement versus the PPA for a landowner are broadly similar.

A land agent in this context is a professional advisor. Where the owners of a site with potential are unable to promote it themselves (an increasing trend as the costs of promotion have increased to an average of around £500,000 to secure full consent), they may instruct an agent to identify a promotion partner in exchange for a fee (a flat rate at the point of exchange and a percentage of the ultimate sale value).

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.**

Time and cost for developments to go through different stages of the planning process

The time and cost associated with securing a planning consent has grown significantly as the number and complexity of reports and planning requirements has grown. While much attention is given in the media and among policymakers to the pros and cons of the overarching planning system and its ability to provide an adequate supply of land, HBF members consistently report that the biggest challenge to their growth is the planning process.

Since the early 2000s, the reports and documentation needed to support planning applications, even for smaller developments have grown exponentially. All housebuilders are impacted by the increased volume of work involved, but this is patently an area where smaller housebuilders are again disadvantaged. The sheer number of specialisms and amount of expertise required comes at a considerable cost which is proportionately greater for those developing small numbers of units (on an annual basis).

Additional risk and complexity, along with the potential for delay, that has fundamentally changed the typical development finance terms available. Whilst larger housebuilders may have a multiplicity of funding options, this is more limited for SME housebuilders. Even where sites have allocations in local plans or outline planning consents, finance providers have insufficient confidence in the process to deliver within a reasonable and foreseeable timescale. As such, the 'pari passu' equity withdrawal dynamics that were a feature of development finance for previous generations of SMEs is no longer commonplace, meaning that small developers only receive a return towards the very end of the sales process. As a result, recycling equity at the rate that had been possible in previous decades is no longer possible for SME builders. In spite of multiple efforts to support SME developer finance by the Government, a cautious approach to planning risk for small sites and small builders has restricted the benefit of such reforms.

HBF can compile case studies in relation to the documentation required, even for relatively modest sized applications and share these with the CMA once available.

In a recent Post-Implementation Review (PIR) of its own Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (TCPA 2017), the DLUHC noted that its attempt to reduce administrative burdens relating to environmental regulation had had the opposite effect. The TCPA 2017 regulations were introduced with the objective of streamlining the burgeoning administrative burdens on developers, councils and other stakeholders involved in carrying out Environmental Impact Assessments (EIAs). EIAs had grown over time and gained increased prominence, forming an important part of the development management system in England.

The TCPA 2017 regulations modified the EIA production process in a way designed to reduce burdens while maintaining environmental safeguards. As part of the changes, the Government introduced a new requirement for the EIA to be produced by a 'competent expert'. The LPA also has a duty to ensure it has sufficient expertise. In a review published on 17 March 2023, DLUHC acknowledged that the regulations were contributing to 'the high costs and administrative burden associated with EIAs in the town and country planning system', stating:

> *'Contrary to the intentions of the regulations, there is still evidence of high costs and significant administrative burden associated with conducting an environmental assessment under the TCPA EIA regime, with a resulting impact on businesses.'*[31]

The Government's PIR of the regulations cited research showing that:

> *'An average environmental statement for a 500-home development cost £150,000-£250,000; took 8-18 months; and ran to 4,350 pages.'*[32]

The research found that the cost of EIAs on a Contracts Finder database ranged from £150,000 to £1 million. The coordination of EIAs is estimated to require between 0.2-3 full-time-equivalent (FTE) workers plus 6-10 technical specialists and take 'almost 55 days of effort on average'.[33] While these estimates are based on a typical 500 home site, the costs of providing EIAs on smaller sites will be proportionately similar on a per unit basis and perhaps even greater. All of these pre-permission costs are incurred at the company's own risk. For those reliant on project-based finance this will be prior to securing development finance on the scheme.

The Government PIR stated that the regulations had resulted in:

> *'Extended time periods for preparing EIA applications, increased costs and delays in the processing of EIA applications by authorities as they procure external support, all adding to the administrative burden of EIAs to business. An example from the Contracts Finder database shows £2.5m allocated for a 3-year EIA review contract by a London planning authority.'*[34]

The fear of legal challenge was deemed by the research to be the predominant reason for the expansion of materials produced through EIAs.

The Government plans to replace the current EIA process with a new process as part of proposals in the Levelling Up and Regeneration legislation first introduced to Parliament in May 2022. It is not yet known when this will be implemented and how it will change the landscape for housebuilders and LPAs.

HBF and the industry has long made the case to Government for better resourcing of LPAs and most developers are sympathetic towards authorities that have seen amounts spent on planning functions decline drastically since 2010 while dealing with an increased amount of activity as the industry and, until recently, Government also pursued higher levels of housing supply.

The Royal Town Planning Institute (RTPI) stated in 2022 that net expenditure on local authority planning departments fell from £844 million in 2009/10 to £480 million in 2020/21. In real terms, this represented a 55% reduction in local planning resource. Therefore, while resourcing for local planning authorities halved during the 2010s, the annual number of

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31 Post-Implementation Review: Town and Country Planning Act (Environmental Impact Assessment) Regulations 2017, 17 March 2023.
32 *Ibid.*
33 *Digitising the Environmental Impact Assessment Process* (March 2020), Digital EIA Project Partners, page 28.
34 Post-Implementation Review: TCP Act Regulations 2017.

schemes permissioned increased by 3% and the number of plots permissioned on an annual basis rose by 85%. This small increase in sites going through the planning and the considerable increase in plots points to a growth in complexity of planning applications and this is before the additional regulatory, environmental and policy requirements are factored in. Even with adequate resourcing, processing this workload on a consistent budget might have proven challenging, but with less than half of the resources available compared with a decade earlier, the result has been a collapse in planning performance and extended, more uncertain timescales for securing planning consents.

Planning department resources and workload: 2009/10 and 2020/21 compared[35]

	2009/10	2020/21	Change
Planning resource	£844m	£480m	-43.1%
Planning resource (2021/22 prices)	£1.07bn	£480m	-55.1%
Permissioned sites	13,582	14,011	+3.2%
Permissioned plots	169,496	314,031	+85.3%

The ‘planning process’ should be considered in a broad sense. One example of the challenges of the planning process relates to the need to have the design of new highways approved by Highways Authorities (which is touched on in response to Q11). In 2017, HBF published a report which looked in significant depth at the challenges facing SMEs in the sector.[36] Through surveys and detailed interviews with small firms’ representatives, the cost and delay of highways design approvals and adoption was consistently flagged as a major barrier to growth. Since then, HBF has conducted an annual survey of highways authorities to provide the Government with evidence of the inconsistent approaches employed around the country and the effects this has on businesses. In two-tier local authority areas, highways authorities may be entirely separate from the planning authority and will have little direct interest in the delivery of new housing. Highways authorities will also engage with applications at different points in the process, creating further opportunities for delays.

Forthcoming measures introducing Biodiversity Net Gain (BNG) and Sustainable Drainage Systems (SuDS), discussed in response to Q11 below, will compound these challenges, adding more phases to the planning process and necessitating ecological expertise and broader technical solutions which come at additional cost to all developers but will be another area in which smaller builders experience a disproportionate burden due to their lack of scale. The industry as a whole has supported the creation of BNG measures, but the risk of delays and costs, especially for smaller sites and developers is a concern that has been flagged with Government from the outset of these policy discussions.

Further to the time and cost for developers to prepare documentation to satisfy the new and forthcoming requirements, the addition of these steps will create new prospects for delay. In the case of BNG requirements, on-site and/or off-site measures will require approval by LPAs, many of which are already overstretched. For SuDS, a SuDS Approval Body (SAB) will need to be in place. This is likely to be a unitary authority or county council, which, based on recent experience of HBF and its members in relation to highways, is likely to lead to delays by virtue of the dislocation between the planning department and the body which overseas SuDS.

[35] Planning permissions data from Glenigan for HBF’s Housing Pipeline report, published December 2022; resourcing estimates from RTPI; real terms values using HM Treasury ‘GDP Deflators’ (22 December 2022).
[36] *Reversing the Decline of SME Home Builders,* HBF (January 2017).

The negotiation of S106 Agreements are often cited, too, as a part of the planning process where delays can occur. This can, in some cases, be attributed to the need for engagement across two local authority departmental functions – planning and legal when concluding a S106 Agreement.

Although it is often suggested that planning timescale targets are largely met by LPAs, these headline statistics fail to reflect the realities, based on the experience of HBF's members. The presence of such targets modifies behaviours and practices and it is not uncommon for developers to be encouraged to withdraw applications and re-submit them where target timescales are unlikely to be met.

HBF could facilitate a discussion between SME housebuilders and the CMA or provide case studies to the CMA.

Likelihood of success in securing planning permission

It is difficult to get a genuine sense of the proportion of planning applications that are successful. Statistics published by Government, and pointed to frequently by some commentators, suggest a high success rate for planning applications. However, the effect of targets on timescales means that applications that may be refused are often withdrawn before the point at which an application is heard in committee.

Since the implementation of the NPPF, there has been greater potential for applications to be granted on appeal. It is not uncommon for LPAs to refuse applications that are policy compliant and for such applications to later be granted at appeal. Such an outcome can enable local politicians to evidence their opposition to development while a consent is still granted. However, pursuing an appeal can cost businesses and taxpayers considerable sums and take many months or years. Councils can often spend hundreds of thousands of pounds per year fighting planning appeals that are ultimately granted. One LPA recently disclosed that it had paid £440,000 in costs, in addition to £235,000 in legal and consultant fees in relation to planning appeals in a single year.[37] A more efficient, expedient approach would be supported by developers to ensure that policy compliant applications are dealt with through the regular planning process without recourse to the appeals system which comes at considerable cost, delay and opportunity cost for SMEs with capital tied up over a prolonged period. Often such applications are refused by councillors against the recommendation of planning officers.

The Government's recent consultation on reforms to national planning policy[38] will close down some avenues for appeals from developers in areas where LPAs are not able to demonstrate a five-year land supply. Lichfields has recently calculated that permission for 26,813 new homes were granted on appeal in England during 2022.[39]

Propensity for developers to negotiate S106 requirements to reduce affordable housing requirements

Local authorities' policy requirements may impact viabilities for some sites in the local authority area. Given the different type of site (brownfield/greenfield/location/infrastructure requirements) the costs and likely returns for developing a site will differ considerably even within the same area.

An ambitious Affordable Housing requirement may work for one part of a borough, but not elsewhere. Without negotiation there would be no prospect of homes being built in some areas, since such development would not be commercially attractive to housebuilders. Negotiation also allows local authorities to assess different priorities across its geography,

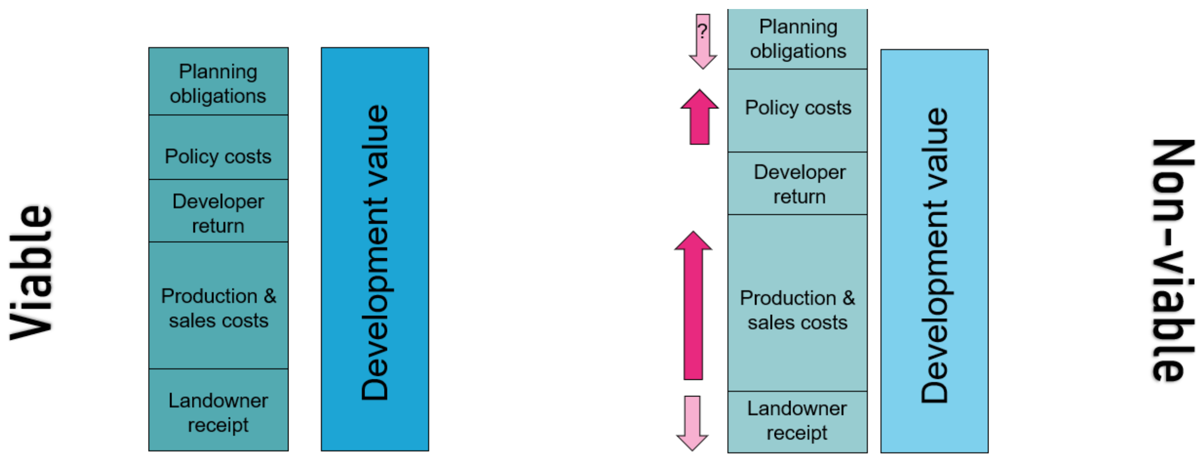
[37] Report on Wealden Council, *Sussex World,* 7 December 2022.
[38] Levelling Up and Regeneration Bill: reforms to national planning policy consultation.
[39] 'Making a bad situation worse', Lichfields, 27 February 2023.

balancing overall supply, Affordable supply but also other S106 and services and infrastructure funded through the Community Infrastructure Levy (CIL).

Negotiation around local Affordable Housing thresholds may be necessary where 'policy costs' imposed locally or nationally have increased in a way and to an extent that may have been unforeseeable by the developer. Without a reasonable return, appetite for investment will be restricted and fewer sites will be completed. Residential development is inherently risky and features many complexities and uncertainties, as has been detailed throughout this response.

Securing land for residential development is dependent on the 'viability' of a particular site and proposition. This viability is determined by a residual land valuation calculation. The valuation of the land, or its development potential is assessed by calculating the final development value minus total development costs. These costs include those relating to construction, regulation, taxes, marketing, affordable housing contributions, finance, interest as well as a necessary return on investment.

In certain market conditions, house price inflation can absorb some additional costs arising within the overall stack of considerations via an increase in the total development value of a site.



To illustrate the impact of additional policy costs, it is worthwhile considering the recent experience. For example, Government has introduced several irregular additional policy costs and taxes on UK housebuilders in recent months and years. While enhanced regulations are expected, between 2022 and 2025, many new and additional policy costs have been introduced without due notice to housebuilders, and in relation to which specific details have remained unknown until very late in the implementation process. Because of the timeline necessary to promote sites via local plans and secure planning consents, it is very common for sites to become liable for additional policy costs whilst housebuilders seek detailed, implementable consent from LPAs. However, the number and extent of recent policy, tax and regulatory interventions by the Government, all with planned implementation in a small window, has been the cause of substantial surprise to the industry.

Recent, current and forthcoming examples include, but are not limited to:

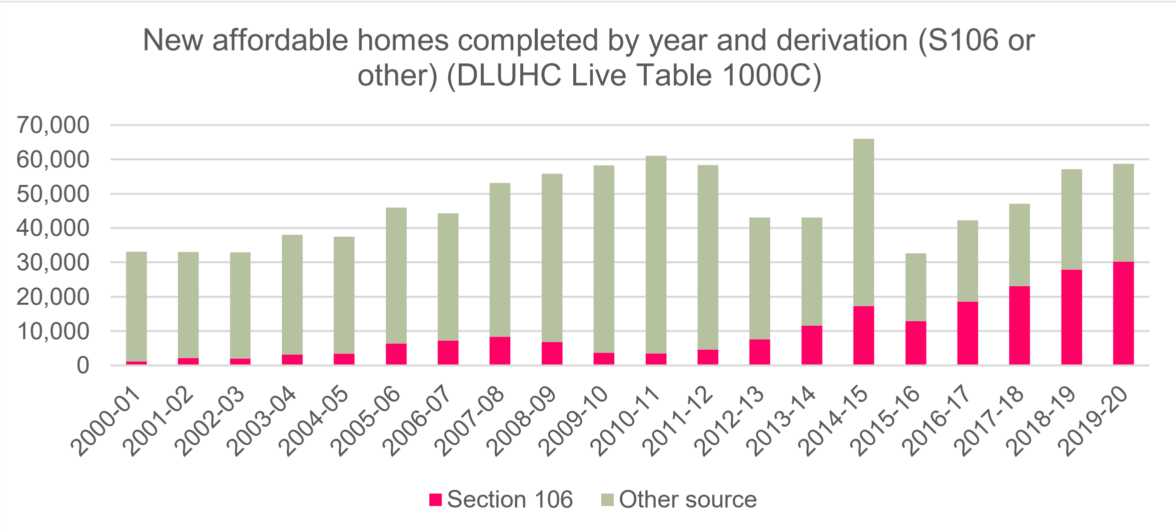
- The costs of delivering BNG and whether this can be achieved on a particular site or require offsetting elsewhere
- An industry specific Residential Property Developer Tax levied on UK builders only
- A BSL that had been expected to be high-rise specific until DLUHC announced plans in April 2022 to extend this to all developments to raise £3 billion over 10 years
- The costs of meeting the Government's nutrient neutrality requirements imposed following an unforeseeable EU court ruling in 2018 and which now affects the planning

status of more than 100,000 potential new homes, as explained in response to Q4. Mitigation schemes are few and far between but where they are available they are often very costly, especially in relation to phosphates.

- The Future Homes Standard is expected to come into force in 2025 but two years away from potential implementation, the precise standard is unknown and the metrics through which it will be achieved still undetermined
- SuDS will be required on new housing sites from 2024 following an announcement in January 2023. In some cases this may lead to re-planning of a site and considerable additional cost

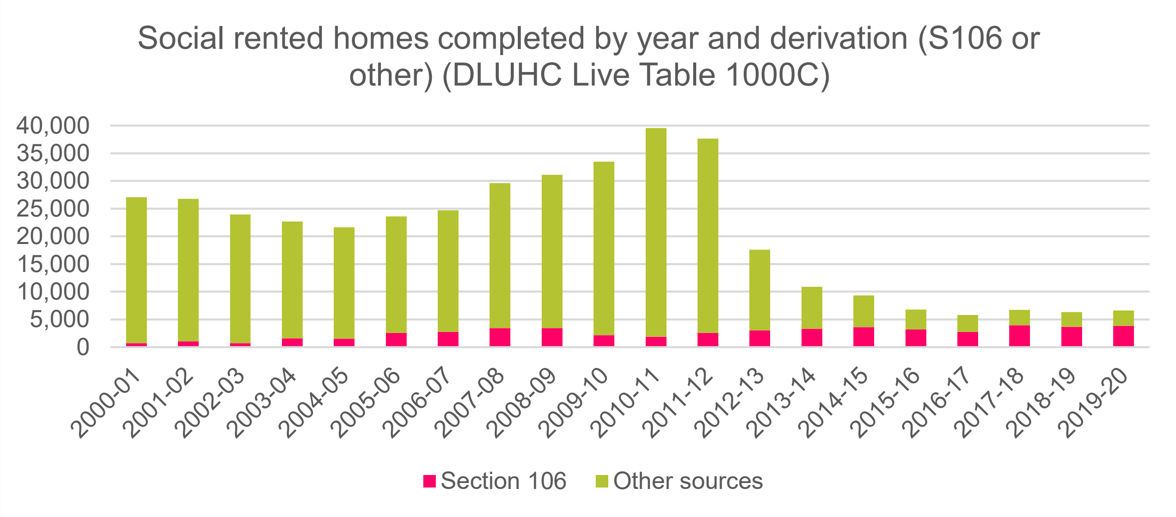
In 2022, HBF published research estimating the likely costs of newly implemented and forthcoming Government policy costs. A conservative estimate of the costs arising from 12 new measures, mostly drawn from the Government's own relevant Impact Assessments, totalled £4.5 billion per year. The greatest potential for flexibility in the land valuation model comes from either the landowner receipt or the developer contribution envelope. For sites already in the planning process it may be difficult to renegotiate land agreements and, at a certain point and with this volume of new policy costs, landowners may withdraw from the market. Without nationalisation of land on a mass scale, it is necessary for discretionary sellers to have requisite incentive to come to the market.

Within the envelope of developer contributions available to local authorities via CIL and S106, a growing proportion has been channelled towards Affordable Housing. This is likely because of the reduction in Government grant for Affordable Housing. From 2017/18 to 2021/22, private sector cross-subsidy via S106 was responsible for the delivery of 132,190 new Affordable Homes, 48% of the total delivered in England during the period. By contrast, in the 17 years between 2000/01 and 2016/17, private sector cross-subsidy accounted for 120,351 new Affordable Homes, around 15% of total Affordable Housing supply over those 17 years.

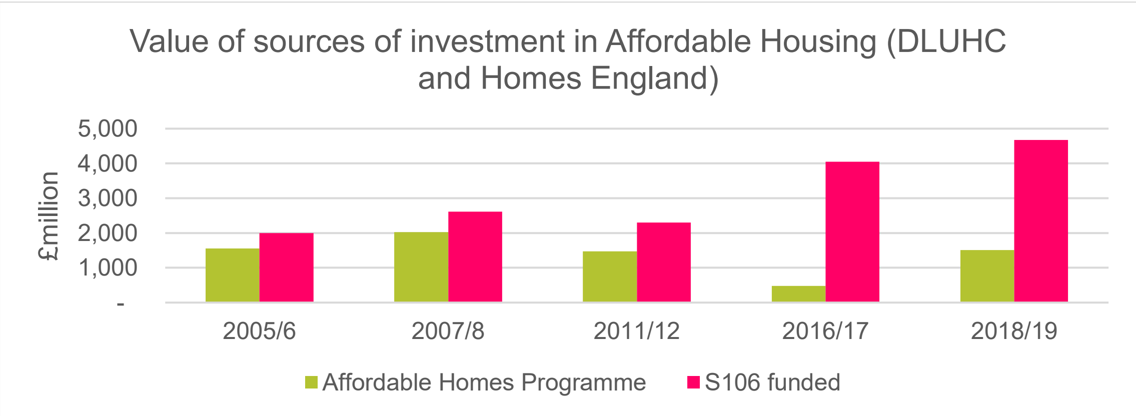


The shifting emphasis of Affordable Housing supply from national government grant-funding from private sector cross-subsidy is even more striking through an exploration of the delivery of Social Rented housing. This is the most affordable of all Affordable Housing tenures is often highly prized by local authorities. It is also the most costly tenure to deliver, either through grant or via S106 agreements.

Social Rented housing has historically been the dominant tenure of Affordable Housing. The its Affordable Housing Programme of 2015, however saw the de-prioritisation of Social Rented housing and local authorities instead became reliant on private housebuilders who became the primary source of Social Rented housing, with 53% of delivery between 2015 and 2020 being derived from S106.



On occasion in recent years, DLUHC has published estimates of the incidence and value of S106 contributions and Affordable Housing contributions from private developers. Academics working on behalf of the DLUHC have made estimates of the value of Affordable Housing for five separate years between 2005/6 and 2018/19. As comparison of this with the value of Affordable Housing grant from central government in those years clearly demonstrates the growing reliance on private cross-subsidy. In 2018/19, it was estimated that £4.7 billion of the total £7 billion developer contributions generated through S106 and CIL went towards Affordable Housing provision, more than two-thirds of the value of the total developer contributions in England, an increase from the 51% in 2005/6. In comparison, just over £1.5 billion in Affordable Housing grant was awarded in the same year.[40]



As well as the value of developer contributions increasing over time, a report for DLUHC in 2020 found that there had been an increase in the *number* of obligations per planning consent granted[41], hinting not just at the increased cost of delivery but also the complexity in meeting obligations.

There is generally sentiment in the industry that increasing the proportion of S106 contributions going towards Affordable Housing has probably had an indirectly detrimental impact on local communities' attitudes to development. Affordable Housing delivery by developers through private cross-subsidy (S106) is commonly – and correctly – invisible to local communities with the entirety of developments being tenure blind. However, with proportionally less of the total cross-subsidy being invested in local services that are visible to

[40] We recognise that the Affordable Housing grant can be somewhat 'lumpy' over a programme period but the trends indicated here are instructive of the shift over time.

[41] *The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19,* (Lord, Dunning, Buck, Cantillon, Burgess) (DLUHC), August 2020.

communities, the challenge of local engagement has been exacerbated. In this landscape, housebuilders have necessarily rebalanced their investments in favour of Affordable Housing. Such investments have been required by policymakers and are at least in part the result of central funding cuts to Affordable Housing, which have increasingly impacted the strategy and spending of housebuilders by increasing their obligatory investments in Affordable Housing, yet in spite of housebuilders' investments in this area, ministers have often been critical of developers' contributions towards local infrastructure.

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

A strength of the S106 regime is its flexibility. While policies may be set at an authority-wide level for Affordable Housing percentages, a negotiation over the full envelope of S106 contributions allows for more bespoke delivery of infrastructure and facilities in accordance with local community needs. Where schemes would ultimately be unviable without a negotiation, multiple factors come into play, including the attractiveness of housing delivery in that locality for the LPA and the LPA's own considerations about its authority-wide housing need and delivery. If the policy threshold for Affordable Housing cannot be viably met, it is positive for all stakeholders if a negotiation results in housing delivery that would not otherwise come forward, usually including a percentage of Affordable Housing albeit not at the precise policy threshold.

Those valuing land or preparing a planning application should be fully aware of the policy environment that an application will be considered against, where these policies have been kept up to date, as well as the planning gain contributions that will be sought. If the viability of a desirable scheme cannot stand these planning gain contributions then the applicant may make their case and the LPA can consider whether the merits of the scheme justify exemptions to certain policy requirements in certain circumstances. Planning Practice Guidance was amended in 2019, to state explicitly that "where viability assessment is used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan."[42]

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)?

As stated above, immediate land is that which has the principle of development already established (permission in place) or upon which the principle of development would (should) be relatively easy to establish (secured by a developer on a short-term, subject-to-planning).

Securing access to land is regularly cited by all housebuilders, but especially smaller firms, as the most significant operational constraint they face. Paragraph 69 of the NPPF states that LPAs should identify land to accommodate at least 10% of their housing requirement on sites no larger than one hectare, however, this is often accommodated in the windfall component of future supply and not on sites specifically allocated for residential development. The windfall component is usually predicated on historic rates of windfall development projected forward with reference to sites in SHLAAs that have been assessed as potentially developable. Such an assessment in a SHLAA is more often than not a firm enough basis for a SME builder to invest in bringing a site forward because there is still no assurance that an LPA or its planning committee will be welcoming of the application.

[42] *Viability,* Planning Practice Guidance (September 2019), DLUHC https://www.gov.uk/guidance/viability.

Importantly, the term 'SME' covers a wide range of enterprises with a wide range of land requirements. As Savills[43] noted in April 2022, the most significant shortages of land in the market at that time were those with the capacity for 50 to 150 homes, which are most keenly sought by medium-sized, regional operators, but for which competition can come from larger, national operators were there is a paucity of larger sites in a local market.

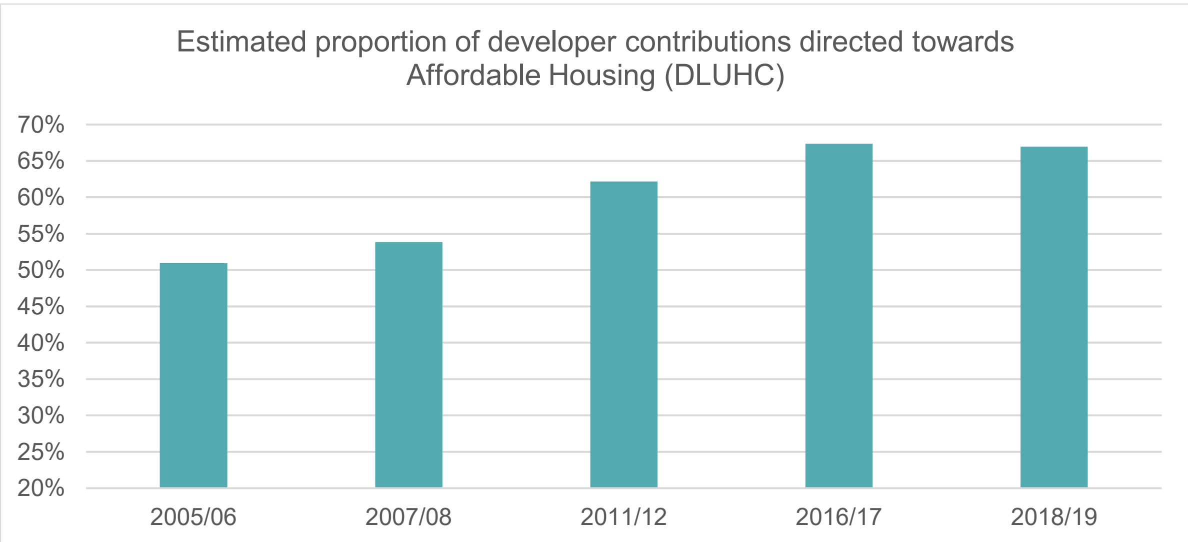
The strategic market has stratified little over the past twenty years or so as it has matured. It is likely to be the case that there are fewer SMEs taking on strategic sites of between 50-100 homes because the costs and risks of doing so continue to increase for the reasons explained throughout this response.

The promoter market features 'master-developers' who are becoming specialist in bringing large, multi-phase developments to the market as serviced plots.

10. What are the main barriers (if any), to the provision of affordable housing for (a) LPAs and (b) developers?

Both LPAs and developers are constrained by land values and development values in the provision of Affordable Housing. That is, the viability of development determines the overall package of developer contributions that a given site is capable of delivering via the residual land value model. This total availability of developer contributions is a function of development value, policy costs, production and sales costs, and developer return (with the balance being split between the landowner receipt and the developer contribution package) (CIL, s106 etc).

It should not be presumed that LPAs will necessarily prioritise Affordable Housing as part of this S106 and CIL envelope. As a result of local community interests, LPAs may prioritise other infrastructure in the package of contributions, particularly where private housing in the area is relatively affordable. However, estimates produced for DLUHC[44] show that the proportion of S106 and CIL contributions directed towards Affordable Housing has increased from around half in the 2000s to more than two-thirds by 2019.



For developers there will generally be little incentive to minimise specifically the Affordable Housing contribution with a broadly agnostic approach to the precise split of the overall S106 and CIL package. An exception may be in areas and for sites where it may not be likely that

[43] https://www.savills.co.uk/research_articles/229130/327072-0.
[44] (Lord, Dunning, Buck, Cantillon, Burgess) (DLUHC), August 2020.

local Housing Associations will have an interest in acquiring the Affordable Homes. This could be because of local housing market dynamics, e.g. housing affordability, the appetite of Housing Associations with a local presence to acquire new units, or because of the number of new Affordable Housing units that will be available with the demand for small numbers of Affordable Homes in a remoter location likely to be considerably lower than for a concentrated group of units close to existing Housing Association units. In the case of the latter example, a commuted sum may be negotiated, or the developer may seek to promote other S106 contributions as an alternative via the negotiation process.

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.

Roads

The non-adoption of roads has become a significant cause of concern for developers over the past 10 years. In 2017 when HBF produced a major report on SME challenges[45], highways adoption and timescales for approval of highways designs was cited as critical for many smaller firms. The conflicting positions of highways and planning authorities in the same local authority area, inconsistency in approach to bonds and a lengthening process across local authority areas and the unfettered increase in fees and costs have caused an increase in uncertainty, timing, and the resources which housebuilders are required to invest in order to understand misalignments in policy and liaise with authorities.

> *'We had a site where we had the Highways Authority saying, "we don't really want to adopt it". I think that the state should be required to do so. And they said, "maybe we will for a commuted sum". So, I think they're almost ransoming us. Another example is on highways where you've got planning for a particular road width and the Highways say, "well, that doesn't suit it us". So you then have two statutory bodies and you're stuck in the middle, we cannot please them both.'* (SME housebuilder, 2016).[46]

Following the publication of HBF's 2017 report, HBF has since used Freedom of Information (FOI) requests to obtain local level data on costs and timescales associated with Section 38 and Section 278 agreements, and we have encouraged the Government to update the relevant frameworks and processes as guiding legislation is now more than 40 years old. Our research over five years shows a large – and growing – disparity in timescales and costs associated with the process for approving highways designs and the adoption of roads.

In relation to inspection and supervision fees, due to the position that Highways Authorities hold, developers can be asked to pay very large inspection fees without which a Highways inspector will not visit the site. Negotiations surrounding such fees are likely to lead to delays.

[45] *Reversing the Decline of SME Home Builders,* HBF (January 2017).
[46] *Ibid.* page 51.

'The other real headache is the question of supervision fees. If I go back 12 years we used to pay about 4% of the contract sum for Section 38 and 278 works. The price is never based on the winning tender now anyway. If the tender comes in at £3 million the council can just say that the figure is actually £3.5 million. And then supervision fees have increased massively. We're looking at paying 8% now. For the length of contract and the fees charged we could easily employ four or five engineers on a full-time basis.' (SME housebuilder, 2016)[47]

Highway Authorities apply their own design standards that vary from authority to authority across the country. This is clearly sub-optimal and adds to the time and costs involved with developers providing and agreeing design solutions.

Timescales

- The average time taken simply to achieve technical approval of a scheme in 2021-22 ranged from:
  - Section 278**:** 2 weeks to 66 weeks
  - Section 38: 2 weeks to 56 weeks
- The average time taken from technical approval to the completion of a Section 278 legal engrossment in 202-22 ranged from 4 weeks to 155 weeks.
- The average total time taken from technical submission to formal adoption of a Section 38 agreement in 2021-22 **ranged from 3 months to over five years.**
- While the highest range has remained consistently high over the years HBF has conducted the FOI, the lowest values have increased, with a greater number of local authorities taking longer to approve submissions.
- These delays represent a significant hurdle for housebuilders, not only in relation to the completion of developments, but also the financial implications they carry.
- Respondents to the FOI request highlighted other issues causing delays, many of which could also be resolved through the implementation of a national standard and associated statutory timescales.
- Multiple highways authorities cited slow responses from external legal advisers as a source of delay.
- Similarly, many respondents raised that teams in highways departments need more resources.

Highway bond provision

- The information HBF received regarding inspection fees, commuted sums and total bond values for Section 278 and Section 38 agreements from the last three financial years showed significant differences between individual local authorities.
- Average bond per development values in 2021-22 ranged from £11,285 to £2,861,892.
- Values of bonds have increased significantly over the period in which HBF has been conducting the exercise:

Year	Lowest	Highest
2017-18	£515	£321,421
2018-19	£627	£418,755
2019-20	£1,547	£932,883
2020-21	£15,727	£2,319,850
2021-22	£11,285	£2,861,892

- The variation in bond values also has a geographical dimension. Of the local authorities that responded to the FOI exercise, those based in London and the South East tended to charge lower fees. The following values are the average per development in 2021-22:

[47] *Ibid*, page 52.

    - Redbridge – £11,285.
    - Thurrock - £34,976.
    - Bracknell - £87,500.
- In contrast, local authorities based around the North of England required much higher bond values:
    - Blackpool: £813, 962
    - Trafford: £1,842,497.
    - Barnsley: £2,847,500.

Inspection fees

- HBF's FOI also found significant variance with inspection fees, as there is no common approach for calculating these. Although most highway authorities are using a percentage of the bond value to calculate the fee, this percentage varies between 6% and 15%. For some local authorities, there was also an additional fee to the percentage fee. These additional fees range between £1,000 and £3,000
- Some local authorities charge lower percentages over a certain threshold of total bond value, enhancing economies of scale for larger developments
- Additionally, some highway authorities are using different methods to calculate fees, such as deposits, hourly rates and linear meters. Some authorities stated that the inspection fee or percentage is scheme-dependent.

With no consistent method for calculating fees, builders are unable to sufficiently plan for this in budgets, proving particularly difficult for SMEs in particular who generally do not have balance sheets able cope with significant costs which cannot be accurately accounted for ahead of development.

In 2021, HBF wrote to ministers and other stakeholders to highlight the latest research and to consider putting in place a nationally agreed set of requirements for highways approvals and adoption to increase certainty and consistency and reduce delays. Although developers and highways authorities have expressed an interest in pursuing this concept, Government is yet to make such a commitment.

During a debate on this subject in the House of Commons on 1 December 2022, HBF's research was referenced and calls for reform were supported by the MP who proposed the debate, Andrew Selous, who also urged the Government to 'take a lead on this issue'. He said:

> *'The Home Builders Federation notes the unacceptable inconsistency between local highway authorities, with inspection fees varying between 5% and 15% of the bond value and the length of time between a technical submission and technical approval for both section 278 and section 38 agreements varying between one week and one year. The Home Builders Federation requests that costs imposed on it by local highway authorities be reasonable and consistent, and that the process for technical approval and legal engrossment be simple, effective, rapid, trackable and measurable—all very reasonable demands. It asks that councils do not seek betterment schemes over and above the engrossed legal agreement, so preventing adoption as a result.*
>
> *'I want the Department to take a lead on this issue and deliver significant improvement in how we provide roads on new estates with the associated facilities that are critical to prevent our constituents from being exposed to danger.'*[48]

On 18 January 2023, HBF wrote to the Chairs of the House of Commons Select Committees for Housing and Transport asking them to consider launching inquiries into the issues surrounding unadopted roads on new housing developments. In our correspondence, HBF highlighted that while the issue was a source of frustration for all developers, the timescales

[48] *Hansard,* 1 December 2022 (Col.1072).

and costs for SME housebuilders were causing major concerns for businesses less equipped to navigate the process. The All-Party Parliamentary Group for SME Builders has also considered this issue, but it has not been the subject of a committee inquiry and has seemingly received little attention at a ministerial level with responsibility falling to one Whitehall department, but the impact and consequences landing with the stakeholders of a different department. In this respect, the challenges have a level of read across to the nutrient neutrality impasse.

The information obtained through national surveys of highways authorities highlights the many issues that both developers and highway authorities face when meeting Section 278 and Section 38 requirements as well as the sheer inconsistency of cost and timescale for approvals across different regions and localities. The key points from our previous data gathering exercises are:

Other public amenities

Over the past 10-15 years, councils have generally proven to be less inclined to adopt public amenities and on-site infrastructure. The decline in resourcing of local authorities combined with an increase in the size and complexity of development sites over this period has made public adoption of new green spaces, paths and SuDS.

The housebuilding sector has expressed concern about this development. Planning and regulatory changes due to take effect this year and in the coming years will see new housing schemes continue to increase the amount of shared spaces and facilities on sites.

BNG requirements introduced via the Environment Act 2021, which will apply from November 2023 but which are effectively in place in some areas already, developers will need to demonstrate a 10% uplift in biodiversity on all developments. Planning authorities will approve a BNG Plan for development before construction can commence. As well as the potential impact on development timescales as a result of an additional check being added to a planning process already beset by delays, BNG will likely be met through additional green spaces, meadows, trees and other additions. Additional features on sites but outside of private gardens will need to be maintained. Appetite for adoption of these features is not thought to be high among local authorities so alternative maintenance arrangements will be necessary. Where on-site BNG cannot be achieved, off-site credits may be available but could be costly.

SuDS have also proven to be a more frequent feature of new housing developments over the past 10 years. This provides an alternative to channelling surface water into a sewerage system that is often deemed unable to cope with new development.

On 10 January 2023, the Government announced plans to mandate the use of SuDS for all new developments by activating Section 3 of the Flood and Water Management Act 2010.

These new measures taking effect will likely make adoption by councils even more challenging, by increasing an aspect of planning which, until recently, had been relatively infrequent, but which will become more prevalent, perhaps the predominant, arrangement for managing new sites.

Estate charges

Estate charges have become more prevalent for new housing developments because of the increased complexity of new build sites and a growing reluctance among local authorities to adopt new open spaces, roads, paths and other on-site infrastructure and features.

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?**

Securing land for development is a function of the amount of land available on the market at any given point in time.

Larger developers and promoters have an advantage in terms of scale in being able to dedicate resource towards both (i) being aware of land that is actively being marketed, and (ii) approaching and building relationships with land who may not yet have considered bringing forward land but who might be persuaded to do so through a direct transaction, however, it may also be the case that small builders have more local knowledge and better relationships with local land owners.

From a strategic perspective, the builder or promoter needs a long enough agreement to make sure that consent can be secured. Consider for example, the risk applicable to sites that had a draft allocation in one of the many local plans, but which have been delayed over the past twelve months, where a planning application might have been being prepared. In the event that the agreement runs for two years, the cost spent to progress the plan to its current state (which could conceivably amount to over £400,000) represents a significant risk to the housebuilder. However, if there is still eight years within the agreement, during which time the development could progress, then the chances of ultimately securing consent remain high. Similarly, individuals or families with a short-term need to liquidise assets might be more incentivised to enter into a contract with a developer or a promoter than an institutional landowner that has controlled land for many years and for whom the need to start promoting for development immediately is rarely a decisive factor.

Disposing of land for development is a function of the amount of active players in the market at that point in time.

Locally, the market for non-Green Belt sites with significant developmental potential in strong market areas will usually be highly competitive. Post-'presumption', agents have been able to drive relatively short contract periods, which promoters and builders will take on where appeals can be won in the absence particularly of a 5YHLS. Similarly, sites in politically-stable local authorities with a commitment to and track-record of plan-making are less of risk and can command higher fees and shorter contracts (in contrast to Green Belt sites in less stable LPAs which could be considered to be at the opposite end of the spectrum).

Nationally, the introduction of the NPPF in 2012 represented a very definite commitment to 'boosting the supply of housing'[49] and was instrumental in raising the risk threshold for promoters particularly taking on appeals. Planning has arguably become more political in recent times, a degree more circumspection has entered the market, with promoters now less

[49] *National Planning Policy Framework* (2021 version), para 60 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf.

likely to take on appeals and more likely to promote sites through longer-term process inherent in local plan creation.

13. <u>As regards charges made to freehold owners on residential estates:</u>

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?**

The New Homes Quality Code (NHQ Code) places a number of requirements on developers in terms of their responsibilities to make buyers and their legal advisers aware of a range of anticipated costs and expenses, including any management and service charges. This 'Affordability Schedule' includes:

> *'… (b) Estimated amounts of any additional costs that the developer knows or expects will arise directly from the sale. This includes management fees (for example, to maintain the landscaping, highways that the local authority is not responsible for, and so on), event fees and other charges. This information should bring to the customer's attention any service charges that may increase or be charged in the future as more facilities become available or sinking fund charges that may be introduced for repairs or maintenance. If the developer does not know the actual value of costs or charges, they should give the customer a schedule of costs without including the values.'*[50]

The NHQ Code requirements provide that the builder will make consumers aware of the costs at multiple stages throughout the buying process, including at the stage of sales and marketing; point of reservation; pre-contract; and completion.

Market interactions

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

As described above, developers compete for immediate land. Developers with strategic land portfolios compete with promoters in the strategic land market. Land agents compete with each other to bring immediate and strategic sites to the market on behalf of landowners.

15. <u>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)</u>

[50] *Consumer Code Book*, New Homes Quality Board (February 2023), page 15.

do these factors conflict, either with each other or with housebuilders' objectives?

The key factor in local plan-making for an LPA is the standard method for calculating local housing need and a decision as to whether an LPA wants to plan for a higher or lower figure. With a housing need figure established, the LPA then needs to identify where to accommodate it. In the earliest stages of the plan-making process an LPA will consider, for example, whether urban areas be densified; whether an existing hierarchy of settlements accommodate it with existing boundaries; and whether neighbouring LPAs can accommodate any development. Subject to exploring these issues, decisions about new urban extensions or even new settlements may need to be made. These can be highly contentious and the three principal reasons that local plans fall away or are found to be unsound relate the housing numbers, the cross-boundary 'duty to cooperate' and the Green Belt, all of which is determined at this very early stage in the planning and development process.

Without a statutory requirement to prepare a local plan, meaningful incentives to prepare one, or sanctions for failure to prepare a local plan,; and a trend towards a plurality of councils being involved in the planning process (making big decisions harder to take), there is little surprise that local plan coverage remains low. A local plan that meets housing need in full is material to land coming forward to meet the needs of consumers and their local communities.

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?**

Due to lack of resources, LPAs often have fewer specialists to bring to discussions. However, developers with capital employed and opportunity costs have a stronger time imperative and will balance any concessions against the benefits of a swifter commencement of the project. LPAs may not have such a time imperative but in a well-functioning plan-led planning system will be incentivised to meet local housing needs through the delivery of policy compliant, sustainable housing.

Negotiations best function when the bargaining power of both parties is balanced by an incentive to reach an agreement, either because of the opportunity cost of not doing so or because of enforcement of other planning 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.**

S106 Agreements are negotiated during the planning application process and have to be signed and executed in order for a decision notice to be issued. A developer or promoter valuing land or preparing a planning application on a site that does not have consent will be fully aware of the policy environment that an application will be considered against and the likely scale of S106 Agreement (and CIL) contributions.

Applicants signing up to a Planning Performance Agreement should reasonably expect the Heads of Terms of a S106 to be drafted in time for a planning committee so that councillors can approve a 'resolution to grant' planning permission subject to the signing of an agreement.

The S106 Agreement process can lengthen application timescales, however, because local authority legal departments will not, in many cases, engage until a planning application has that 'resolution to approve'.

Planning applications are made on the basis of stated policy requirements, but viability can be an issue on occasions and LPAs can accept lower planning gain contributions where applicants can demonstrate that a scheme would not otherwise come forward.

There can sometimes be changes in circumstances (market downturns, for example) between a site being sold with a planning consent and work starting on site. In such circumstances an LPA may be persuaded to vary a S106 Agreement to include lower contributions or a new planning application accompanied by a viability appraisal can be submitted.

18. **<u>How and when are decisions made about the ownership and management of public amenities on freehold estates, including whether they are adopted?</u>**

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.

The above responses have comprehensively explained challenges around the non-adoption of roads. Where housing is developed for private sale to individual households, the adoption of road and other public amenities will almost always favour the adoption by local authorities of new highways, infrastructure and on-site features.

Few developers are equipped to maintain long-term interests in new developments, blocks or estates. Where public amenities require arrangements outside of the scope of local authority adoption, this can present challenges for developers at the point of marketing and sale. Such developments may also have long-term reputational consequences.

Exploitation of market power

19. **<u>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?</u>**

The balance between competing interests ensures that no participants are able to exercise market power.

In relation to land, there will typically be strong competition between different house builders and the prices offered for sites will be determined in accordance with the relevant national and local policy costs set by central and local government bodies and other actors such as utilities providers. In some instances, land purchasers in the market who may not be subject to the full suite of policy costs and the same market considerations may have a competitive advantage in the bidding process for land. This could include Housing Associations, Build to Rent developers or overseas developers, none of which are liable to pay Residential Property Developer Tax. In consulting on its new BSL, the Government has also suggested that Housing Associations and Build to Rent providers are likely to be exempt, representing a significant reduction in overall policy costs that are factored into land offers, meaning landowners may be able to secure higher bids from these purchasers. Housing Associations also have the benefit of a lack of profit motive and are thus able to offer both landowners and home buyers more attractive prices without the burden of incorporating profit margin, presenting a significant competitive constraint on developers.

National policy costs are largely fixed, albeit with some local variations and exemptions for certain developers (as above) while the developer return is only marginally flexible through the residual land valuation model. Sales and production costs may come with economies of scale.

At the other end of the development process, in relation to sales, although builders control the product they build and set prices, they are 'price takers', constrained by local housing market conditions and demand. In this respect, there is no change to the situation described by the OFT in 2008:

> *'It is our view… that although homebuilders clearly have some price setting power, they are still significantly constrained by the price of the existing housing stock.'*[51]

This is not to say that new homes are necessarily priced at exactly the same level as an equivalently sized second-hand property in the area. The two are not wholly comparable, but the second-hand market which accounts for 80-90% of sales will set the parameters for asking prices established by builders and for valuers working on behalf of mortgage lenders. What is often described as the 'new build premium' reflects the value of the new fixtures, fittings and appliances, the new home warranty as well as the convenience and saving related to having no maintenance required on the property but does not yet reflect the full energy efficiency benefits new builds offer. In this regard, pricing is determined by local markets and effectively regulated by valuers on behalf of mortgage lenders.

By assessing the value of new homes by reference to existing properties, there is an in-built disadvantage for builders and purchasers of new homes. While a 'new build premium' may be accepted, the valuation will ultimately depend on comparable properties in the local market. However, the comparison of a new, energy efficient home with on-site positive biodiversity features and new appliances, fixtures and fittings can be difficult to compare with local properties if no new homes have been built in area for many decades.

Since last year, valuers have been encouraged to collect and consider energy efficiency data, but the practical impact on values has not been seen to date. In the longer-term it is probable that the market impact will be a reduction in the values of older, less efficient properties, reflecting the likely costs of retrofit. However, without proper attention paid to the benefits of new builds, this could serve to drag valuations of newer properties down, given the importance of local 'comparables' when assessing new dwellings. As discussed elsewhere in this response, a competitive and genuine market for green mortgages would create powerful incentives for buyers to elevate environmental considerations as they enter the housing market and for house builders in the race to innovate in a competitive market.

The residual land value model serves to balance both ends of the market at which developers are constrained by the markets in which they operate (for land and in the sale of homes), and extract a land value tax receipt for LPAs via Affordable Housing, infrastructure and community facilities. The below represents the constraints housebuilders face from both a demand- and supply-side perspective. Inputs are driven by regulation, taxes, local policies (policy costs) and materials costs (production and sales costs), while the output is heavily dictated by local

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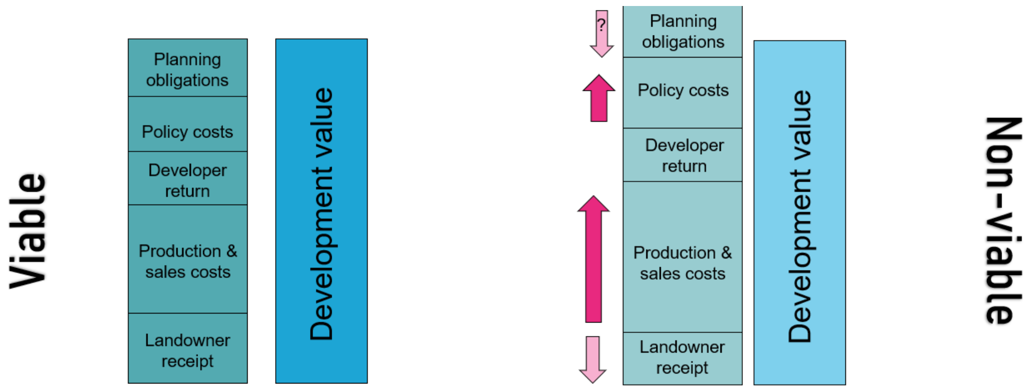
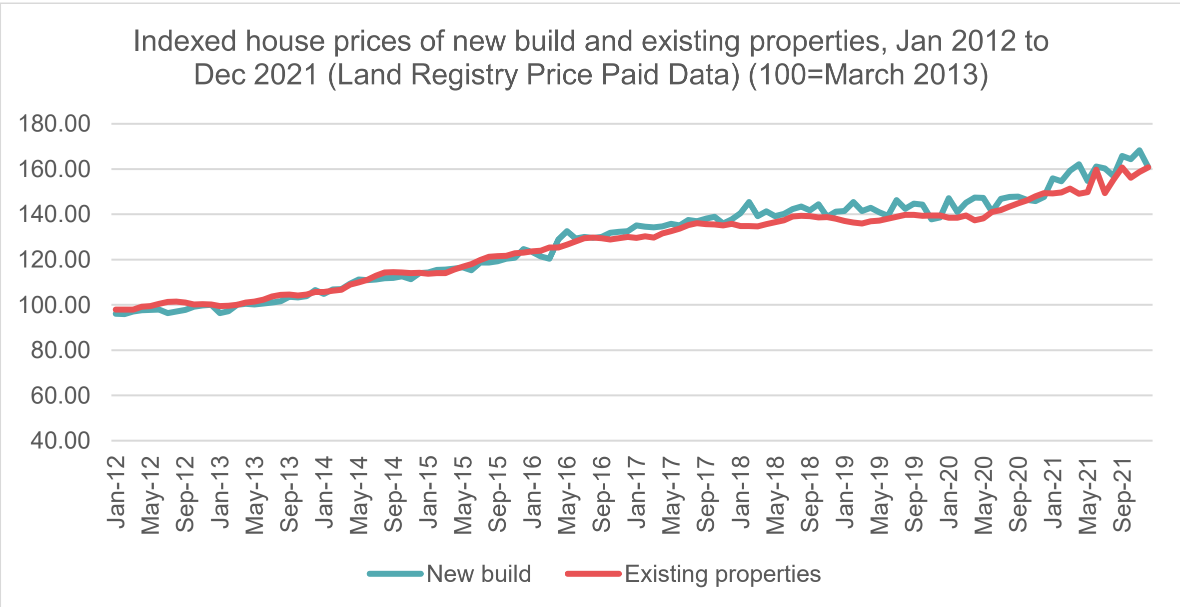
[51] *OFT report,* 2008, para 4.43.

housing market dynamics. The flexible components in the middle are land values (landowner receipts) and, to a degree, developer contributions (planning obligations).



We recognise that some commentators have stated that new build prices have increased faster and more significantly than those in the secondary market and that this has broken or stretched the link between the second hand housing market and the new housing market. This argument often comes in two forms. The first is that builders simply raised prices, stretching the ‘new build premium’ further than has historically been the case. The second is that, because buyers had greater affordability as well as a lower deposit requirement, builders changed the *type* of new homes being built with a greater proportion of houses built compared with flats.

The data, however, shows that although the products on offer are heterogeneous in respect of both new and second hand homes, these residences are subject to the same market factors over time. The chart below, using paid price data from the Land Registry shows a strong correlation between prices of new homes and existing homes in spite of a much larger proportion of new homes comprising larger family homes in recent years compared with the 2000s. Between 2008 and 2020, the proportion of new homes that were flats fell from around 50% of new properties to approximately 25%. Government data on Energy Performance Certificates shows that the average new build in England and Wales in 2009 had a floor area of 72.2m^2. By 2022 this had risen to 90.7 m^2.[52]



[52] DLUHC Live Table NB3.

Average new build prices between March 2013 (the month before Help to Buy was introduced) and December 2021, increased by 60.85%. Similarly, the average price of existing properties purchased in December 2021 was 60.77% higher than in March 2013.[53]

The residual land value model serves to balance both ends of the market at which developers are constrained by the markets in which they operate (for land and in the sale of homes), and extract a land value tax receipt for LPAs via Affordable Housing, infrastructure and community facilities. This is how home builders can be seen to be constrained on both sides of the equation. On one hand, inputs are driven by regulation, taxes, local policies (policy costs)and materials costs (production and sales costs), while the output is heavily dictated by local housing market dynamics. The flexible components in the middle are land values (landowner receipts) and, to a degree, developer contributions (planning obligations).

20. <u>What factors influence the size of land banks held by developers?</u>

Several factors influence the size and type of land banks that developers may look to hold:

<u>Current delivery and forward projections</u>

A developer's landbank may be considered as a function of current or projected annual output. The first key factor, therefore, is that a company with a business plan aimed at maintaining an annual delivery of, say, 1,000 homes per year will likely require a larger landbank than a company currently building 400 homes per year.

<u>Status of land</u>

The division of the land bank between immediate land and 'strategic land' will also be a factor.

Land on which the principle of development has been established (immediate land) will have a greater degree of confidence attached to its eventual delivery than strategic sites. Strategic land will have a lower conversion rate into developable sites and the longer-term outlook also brings a higher level of risk for housebuilders in relation to future policy changes (and associated costs thereof).

<u>Confidence in the planning system</u>

A steady and consistent planning system on which developers can broadly rely may lead developers towards a strategy that necessitates a shorter land bank. The ongoing uncertainty around planning requirements and the lack of enforcement against LPAs for failing to meet local housing needs reduces confidence (which has been discussed above) may lead to developers seeking additional protection through a land bank of several years.

<u>Performance of the planning process</u>

Even land with a level of assuredness around its conversion into a developable site will retain risk. Planning risk, both overall and in the location in question will influence the confidence a developer has, even if the most significant risk is in relation to timescales for the planning and development process, including the discharge of planning conditions.

<u>Planning shocks</u>

As discussed elsewhere in this response, recent shocks to the planning system have seen blanket bans imposed on development in certain areas (e.g. nutrient neutrality moratoria in 74 LPA areas) have likely served to lengthen land banks in two ways. Firstly, developers have been unable to build out sites with existing planning statuses and so land acquisitions have

[53] Land Registry Price Paid Data.

been made as an additional to existing sites, rather than replacing them. Secondly, the threat of ongoing action from the Government's agencies to impose restrictions elsewhere may have led to those developers with capability to diversify their footprints and spread risk across more potential development sites.

Wider housing market considerations

In considering the likely demand for new homes in any local market the developer will also need to consider broader housing market. This will include projections for mortgage rates, the availability of affordable new build mortgages at appropriate LTVs as well as more general consumer confidence metrics. For land further away from implementable planning consent, this will involve a forecast of at least two years in advance.

Site size

For a variety of reasons, most importantly, the infrastructure requirements of sites of differing sizes, the size and location of sites in a land bank will factor in to likely build out rate.

Potential sales rate and build rate

Developers may weigh up other considerations and project a potential sales and build out rate for sites. This will be influenced by local market factors and prevailing economic and mortgage market conditions. Another factor will be the demand locally for different housing types. A mixed and diverse demand will allow, on bigger sites, the creation of multiple sales outlets.

During periods in which there is a more active market for new homes, including with a good supply of affordable mortgage finance, the rate at which companies can sustainably and professionally build and finish new homes will also need to be considered. This phenomenon can be observed in the overall decline in customer satisfaction ratings for housebuilders overall during the period of rapid housing supply growth in the middle of the last decade. While the vast majority of buyers were still very satisfied with the build quality and customer service they received, the decline in scores for the sector as a whole led to a wholesale review of the checks and balances, the gaps in consumer protection and, ultimately, to the creation of the New Homes Quality Board.

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.**

As discussed above, land banks are used to provide a degree of assurance around future throughput albeit with potential for national and local shocks to this visibility (nutrients etc, NPPF consultation). With lack of planning department resource in LPAs and delays for services, utilities and highways approvals, the risks associated with sites have increased in recent years. Given the operation between 2013 and 2022 of a planning system that should have a clearly identified footprint of land supply for the next five years (accepting that later years within that five-year period will be less defined), we may expect a company's landbank to represent the equivalent of around five-years of supply, depending on a firm's strategy regarding strategic land.

Where a developer has an interest in land, there is little propensity for a site with planning permission not to be built out though, as we have detailed throughout this submission, any such development is not without significant challenge to the developer.

Headline figures on ‘unbuilt planning permissions’ frequently include within the numbers plots that:

- Have been double-counted due to re-planning of a site;
- Are already complete and occupied (some statistics published by lobby groups include all plots on a site where any outstanding home is as yet incomplete);
- Have only an outline planning consent and on which commencement of construction is not legal

These often-cited figures about planning permissions yet to be built out relate to a variety of housebuilders. Incentives for house builders prefer delivering new homes rather than speculating on land values and many permissioned plots are in the control of the public sector including the NHS, Homes England, local authorities, the Ministry of Defence, Network Rail and Transport for London.

Furthermore, the numbers while striking should also be considered in the context of current and necessary housing supply. Gross housing supply in England has consistently run at around 230,000 to 250,000 in recent years, of which around 210,000 to 230,000 have been traditional new build completions. In this context, ‘unbuilt planning permissions’ of 600,000 likely amount to around two years’ worth of annual housing supply.

For financial and accounting reasons, house builders are motivated to build rather than ‘bank’ land. Larger companies are generally judged by investors on the basis of their return on capital employed (ROCE), so once they have paid for a site and have achieved implementable consent there is a very strong, immediate commercial driver to earn a return on the asset by building and selling homes. House builders can only take profit from land by developing it (or selling it to another developer). By contrast, the financing costs of holding (but not developing) land can be as much as 10% per year, before considering any build cost inflation. If a house builder is not building homes the book value of the land will only ever correspond to its original cost regardless of the market’s movements. Inevitably, there is an opportunity cost for investors and thus, capital will only come forward if the ROCE is great enough compared with other possible uses of that capital. In a rising market, therefore, the financial incentives to build on sites are generally greater. Studies suggest that delaying the building of homes will only be a fruitful strategy for a landholder in instances where annual house price inflation is around 15-20% or higher, which has historically only occurred very briefly and chiefly in London, most recently in 2014.[54]

22. **<u>What are the key factors that determine the incentive and ability for developers to build-out new sites at a certain rate?</u>**

Generally developers have an incentive to build out as quickly as can be achieved physically and commercially in order to make a return on their capital, as explained above. Each site has large fixed-cost base. Financing will typically play a role in determining both incentive and also the feasibility of a housebuilder completing build out expediently.

[54] Year-on-year house prices in London grew by more than 15% during 2014.

The likely build out rate for an individual site will be influenced by local market factors and prevailing economic and mortgage market conditions. Local market interest and forward sales will also play a role in determining the pace of build out.

Another factor will be the demand locally for different housing types. A mixed and diverse demand will allow, on bigger sites, the creation of multiple sales outlets. Price point may also be a factor. Large, high specification homes at a much higher price point will have a more limited potential market and, if being delivered by a smaller firm, there may be a tendency towards managing the build programme in accordance with the market activity to avoid deploying too much capital at any one time.

On much larger sites, multiple sales outlets may be considered with each offering a mix of housing types.

While most discussions about build out rates implicitly refer to developments of new housing, there is a slightly different set of considerations for apartment developments where the start and completion for all dwellings occurs simultaneously. On very large apartment schemes, pre-sales often to investor buyers may be an important feature in helping to finance the extensive amounts of funding required, but once the programme has begun, the incentive for the developer is to complete the build as quickly as possible. With all properties being marketed, sold and completed at the same time, the commercial realities mean that returns can only be achieved at the very end of the development programme for that block. These considerations, the vast amounts of upfront capital required and the inherent risk associated with sales on developments, along with greater complexity are some of the reasons why many housebuilders have moved away from larger apartment development opportunities in recent years.

The physical and logistical capabilities of the developer, its workforce, the supply chain (including subcontractors) and the site (including access and conditions) will present limiting factors at the upper end of potential build out rate calculations. Over more recent years, both the availability of labour and products and materials has limited potential build out for many developers. In relation to products and materials, high inflation and low availability has affected developers across the board but was felt most acutely by the smallest developers. Those builders who purchase materials on a smaller, more frequent basis were greatly affected by the unavailability of certain products during 'crunch' periods. Supply chains of larger firms were also frustrated, however larger scale purchases and long-term agreements mitigated some of the impact that befell those companies reliant on local builders merchants' product availability.

The incentive to build and sell more homes must be balanced against the vital Health and Safety responsibilities that developers have for their sites and the need to ensure standards, quality and customer services are maintained.

It has been widely reported in recent years that sales and build out rates accelerated sharply across the industry during the mid-2010s. Following a lengthy period of subdued activity from 2008 to 2013 and the vast outflux of skilled labour from the sector that followed, the increased speed of build out with a smaller and less experienced workforce led to many (though not all) builders experiencing challenges related to finishing standards and customer service. This experience fuelled a desire in the industry to revisit the Consumer Code that was implemented following the OFT market study in 2008, to update and enhance its provisions under a new, more powerful entity with greater capacity, the New Homes Quality Board.

Barriers to entry and expansion

23. <u>What differences (if any) are there between small, medium and large developers in:</u>

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).

Small and medium-sized developers utilise many different specialisations and business strategies. There is also a range of different perspectives on growth. Many of HBF's smaller builders frequently express significant growth aspirations. This was particularly the case between 2014 and 2020. Others are more focused on maintaining regular and consistent housing delivery. It is difficult, therefore, to form a general summary of development activity, even based on the size of an enterprise. Likewise, larger businesses also have specialisations and divergent strategies either for growth or consolidation of their footprint.

Generally, few small developers will actively pursue development opportunities for large-scale apartment buildings as the upfront capital costs and the timescales for return on investments make financing such schemes expensive and typically unfeasible.

Very large sites with significant infrastructure requirements that may need to be financed upfront will deter most smaller firms too. However, these are important sources of housing supply and it should be recognised that the development of these may lead to further, smaller-scale development opportunities locally in the future.

Literature on this subject has considered house builders to be 'wholesalers' and 'land improvers.'[55] The wholesaling function involves the tying up of capital for extended periods. Capital can be tied up for longer periods where (i) sites are large, and (ii) the sales process is backloaded, both of which is often applicable to apartment development. If it is possible to finance such a scheme in the first place then a higher profit margin may compensate housebuilders for the higher risk profile they take in locking up their capital in this way.

24. <u>What are the key challenges for small and medium developers in:</u>

a) Securing sites for development?

b) Securing planning permission?

c) Building-out sites?

SME developers face numerous challenges with regards to securing sites, obtaining planning permission and building out sites.

Securing sites for development

By virtue of their size and limited resources, SMEs are more likely to pursue smaller sites and those with some form of planning status (allocation, consent). As mentioned above in response to Q3(f), paragraph 69 of the existing NPPF sets out that local planning authorities should identify land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved.

However, in practice this is largely accommodated in the windfall component of future supply and not on sites specifically allocated for residential development. The windfall component is usually predicated on historic rates of windfall development projected forward with reference

[55] Wellings (2006).

to sites in SHLAA that have been assessed as potentially developable. Such an assessment in a SHLAA is not a firm enough basis for a SME builder to invest in bring a site forward.

Indeed, a lack of availability of small sites is regularly cited by SME developers as a hindrance to their growth. In 2022, HBF conducted its third consecutive SME developer survey in conjunction with Close Brothers Property Finance and Travis Perkins. Of the 220 respondents (91% completion rate), 91% said that land availability was a barrier to growth. Of these, 52% said it was a major barrier to growth, up from 47% in 2021 and 32% in 2020. As such, one of the report's key recommendations asked Government to 'bring forward a greater number of small sites in Local Development Plans'.

This challenge, and the responsibility central Government has in addressing it, has been acknowledged by the DLUHC which, in its 2022 consultation on proposed changes to the NPPF, stated: *"We have heard views that these existing policies are not effective enough in supporting the government's housing objectives, and that they should be strengthened to support development on small sites, especially those that will deliver high levels of affordable housing.*

"The government is therefore inviting comments on whether paragraph 69 of the existing Framework could be strengthened to encourage greater use of small sites, particularly in urban areas, to speed up the delivery of housing (including affordable housing), give greater confidence and certainty to SME builders and diversify the house building market".

HBF agrees that the Paragraph 69 could and should be strengthened and in our response to the Government's NPPF consultation, we called for the DLUHC to set out an expectation that LPAs be able to demonstrate specifically and explicitly the location of the land that will accommodate at least 10% of their housing requirement. These sites, no larger than one hectare, should be identified in such a way as to effectively establish the principle of development is established in the same way as any other local plan allocations.

Securing planning permission

The costs involved in securing planning permission can themselves be considered prohibitive. These include, amongst others: pre-application submissions, traffic surveys, environmental surveys, ecology reports, planning consultant fees, architects' fees, landscape schemes, heritage statements and assessments.

In total, these fees can amount to hundreds of thousands of pounds and which is often (necessarily) obtained on a speculative basis before planning consent is either granted or refused. These costs amount to losses that few small firms can withstand more than a limited number of times without eventually securing a planning permission. For example, as stated in answer to Q8, a recent Post-Implementation Review by DLUHC found that the cost, time and workload involved in conducting an Environmental Impact Assessment had increased since the 2017 introduction of a set of regulations designed to streamline the process.

For an average 500-dwelling development, it was found that the costs to a developer were likely to be £150,000 to £250,000 for the production of 4,350 pages required to comply with regulations. From initiation to determination the process will take 8-18 months and require 0.2-3 FTE employees.[56]

As described throughout this response, the planning process is one imbued with inherent delays. For example, 91% of respondents to our SME survey cited delays in securing planning permission as a major barrier to growth. Too often the timing of authorities' responses does

[56] Post-Implementation Review: Town and Country Planning (Environmental Impact Assessment) 2017 Regulations (17 March 2023), DLUHC.

not allow SMEs to make timely and well-informed decisions whilst the quality of responses more often than not does not allow an SME to progress an application with the necessary confidence that their approach gives them the best chances of obtaining a quality planning consent.

The ramification of such delays and uncertainty for SMEs are significant, including:

- Uncertainty over staffing levels and redundancies.
- Hundreds of thousands in additional overheads as developers have had to charge staff to overheads instead of sites.
- Unexpected increases in the costs of materials and labour due to inflation as planning hadn’t been granted in the anticipated timeline.
- Funds tied up in planning resulting in the developer having to pass on other available sites and being unable to submit planning on other options.
- Delays in recycling funds due to late site starts meant developers have had to sell sites as they didn’t have the funds available to complete them.
- Hundreds of thousands in additional build costs holding land waiting for planning.
- Significant finance costs in holding land bought outright waiting for planning, especially as interest rates have increased.
- Additional costs resulting in inefficiencies dealing with changing planning officers.
- A lack of business planning due to uncertainty around when planning permission would be achieved.

The costs of achieving an implementable planning have increased. Of the respondents to the aforementioned 2022 SME developer survey, nearly half (48%) agreed costs had risen by between 11-30% and over a quarter (26%) advised it had risen by over 30%. Just 2% thought they had decreased and 3% thought costs had remained static.

The terms of development finance are a further challenge with 52% of respondents to our joint SME survey with Close Brothers Property Finance and Travis Perkins citing it as a major barrier to growth.

Most SME developers operate on project-to-project finance. Over recent decades the availability of such finance has typically reduced (2008-2012 saw little availability). Since 2012, availability has improved but to protect themselves, development finance providers have typically changed the terms on which they extend capital to developers (most often restricted to those with a track record of delivery) to reduce Loan-to-Cost (LTC) ratios from historic norm of 80% to 60%.

Beyond the LTC ratio, the equity input dynamics for the developer have become far more front-loaded with the returns from sales then first satisfying lenders desire to extricate its funding from the scheme. This means that despite headline LTCs reducing to 60%, the reality is that at any one time in a development’s lifespan, the true LTC is likely to fall to 40-50%. This is a reflection of the perceived risk of delay as a result of planning and the potential for sales market risk at the demand end too, especially given that the timeframes even on a small site may be three years or more, forcing development finance providers to take a view of likely housing market dynamics. This also means that new entrants to the sector must have a significant amount of equity and be content to take on considerable risk as the interaction between development finance and the planning process further compounds an already challenging situation.

Development finance providers will not generally lend on schemes without some form of planning permission, often not even schemes included in local plans. This means that the risk inherent in planning is entirely the small developer’s. As highlighted earlier in our response to this question, this will usually run to tens of thousands of pounds, often hundreds of thousands and may not result in a planning consent being granted. Where planning is granted, this process could take years.

Finance providers often also insist that the developer inputs their financial contribution at day one, rather than on a phased basis, which acts a barrier to growth for housebuilders who do not have access to capital and operate on a project-by-project basis. In this regard, the conclusions of the OFT in 2008 relating to finance as a barrier to growth for SMEs still hold today, however have been compounded by additional planning risk, and particularly the risk of delay.[57]

While inefficiencies in the planning process frustrates developers of all sizes, across the country, it is acutely challenging for SME builders, who by their very nature are less well-equipped to mitigate these issues.

For example, if a large developer faces delays on a particular site, it will at least have multiple other sites that it can progress in the interim. SMEs, on the other hand, may have their capital tied up in just one or two projects at a time. As a result, lengthy delays can bring their business grinding to a halt.

This in turn can have a negative impact on SME builders' ability to access development finance or more preferable terms. When asked whether their access to development finance or the terms have been negatively impacted by planning delays, a third (33%) of respondents to our SME survey said that it had. This, once again, acts as a barrier to entry given the clear need for either supportive investors or considerable personal wealth.

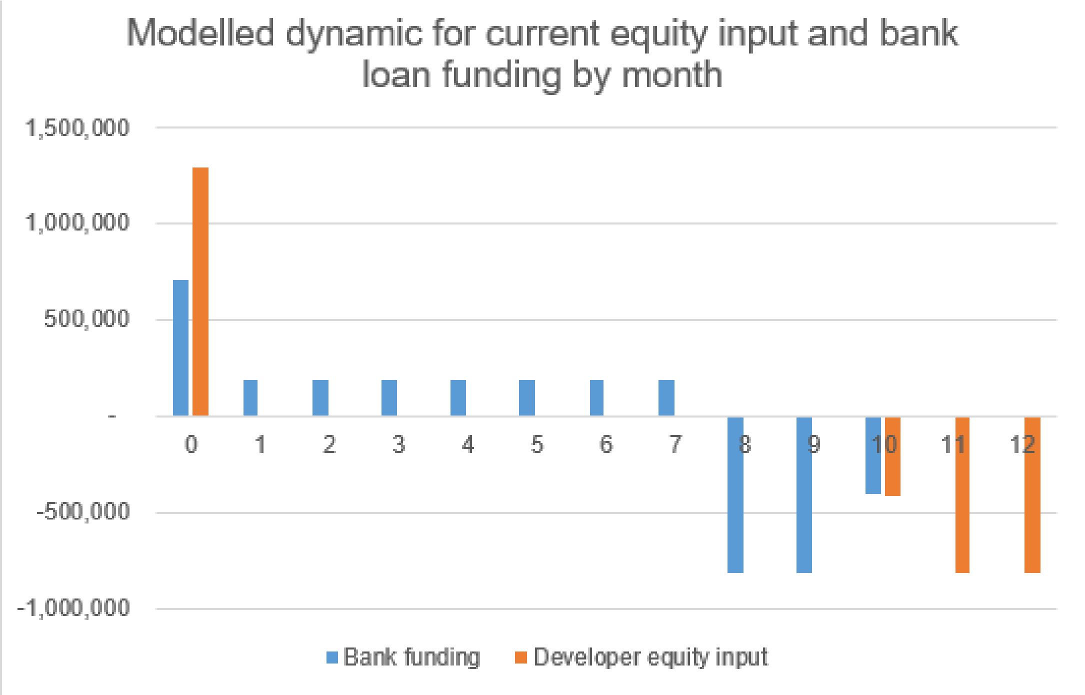
The difficulties for SMEs that relate to planning risk and how this influences development finance terms have been acknowledged by the Government through its various schemes and Funds which have attempted to improve development finance availability for SMEs through taxpayer loans and other instruments in the period between 2010 and 2022.

These have largely failed to have meaningful impact, largely because the terms put forward on many occasions by the Government agency, Homes England have also taken a cautious approach to the planning risk incurred on sites operated by smaller firms. It should also be noted that Government schemes have often replicated the input/output of equity profiles in the wider market and have often been predicated on companies and directors with existing track records in the sector, an acknowledgement of the risks and level of expertise required.

To support a recommendation in HBF's report, *Reversing the Decline of Small Housebuilders* in 2017, HBF modelled the typical input/outputs of funding and return for a small site over a 12-month period. The experience of previous generations of start-ups and SMEs had been for a 'pari passu' return profile for the developer and the finance lender. That is, when sales on the development begin, the lender and developer took shares in these returns, allowing small firms to recoup their equity earlier in the project and open up opportunities to use this for new and additional projects.

The typical approach in more recent years (influenced by attitudes to planning risk and other factors) has seen lenders seeking loan and interest repayments before the developer is able to recoup their equity. In the stylised example illustrated below, sales of homes begin from month eight which accelerates the repayment schedule before the company extracts its equity from the final sales at the end of the process.

[57] *OFT report,* paras 4.74 to 4.77.



Building out sites

For those SME builders who successfully navigate the challenges in securing planning permission and development finance, further hurdles remain to facilitate construction. These include:

- Delays in the discharge of conditions - Discharging conditions as quickly and efficiently as possible is crucial for increasing housing supply at pace, however this process is increasingly beset with delays and taking in excess of six months complete. 93% of respondents to our SME survey cited this as a major barrier to growth.
- Significant under-resourcing and under-staffing has led to discrepancies, administrative errors, and additional delays for developers. A total of 92% of SME survey respondents said a lack of resources in LPAs was a major barrier to growth (up from 90% in 2021)

Developers, particularly SME developers, have also struggled to obtain the necessary materials and labour needed to build out their sites. While just 20% of respondents to our 2020 SME survey identified the supply and cost of materials as a major barrier to increasing housing delivery, this increased to 78% in 2021 and 79% in 2022. It is a similar situation regarding labour: 64% of 2022 respondents identified the cost and supply of labour as a major barrier to housing supply, up from 59% in 2021 and 19% in 2020. These same issues also apply to larger housebuilders too.

25. <u>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?</u>

SME sometimes seek to differentiate themselves by focusing on a different section of the market than volume developers. This may involve building larger and more expensive properties with higher specifications on smaller developments.

Many are also keen to place a strong emphasis on the ‘individuality’ of a property and with 64% of respondents to our recent SME developer survey building between 1 and 50 units each year, tailoring the specification of a property to a consumer’s individual needs is more viable for these developers than for a volume housebuilder delivering 14,000-18,000 units each year.

By targeting non-first-time buyer purchasers, SME developers will be less susceptible to several external factors, including mortgage availability, interest rates, cost of living increases which affect FTBs first and foremost.

The perceived ‘quality’ of a development is subjective. However, the results of the annual HBF/NHBC Customer Satisfaction Survey (CSS) show that a range of both SME and large developers have achieved the highest five-star rating, demonstrating that a commitment to the highest building standards is being adopted by developers of all sizes.

In addition, as all new properties must be built to specific standards set according to Building Regulations, this limits the scope for housebuilders to differentiate themselves on quality. Added to this is the new industry code of practice, the NHQ Code, which places significantly more requirements upon builders with regards to the service and delivery and is based on ten defined principles, one of which is quality.

As regards larger builders, they are likely to diversify their own product range to access different consumers within an area, usually through different brands. Due to their size, capital and resources, larger developers have the ability to pay more at crunch periods for subcontract labour, and so may be able to build more quickly. For SMEs, on the other hand, the funding of work in progress is likely to be more dependent on achieving sales as they draw down on development finance loans.

Some differences in the developments completed by SMEs and larger developers will also be down to government policy. For example, the NPPF states that for developments of 10 units or less, there is no requirement for Affordable Housing.

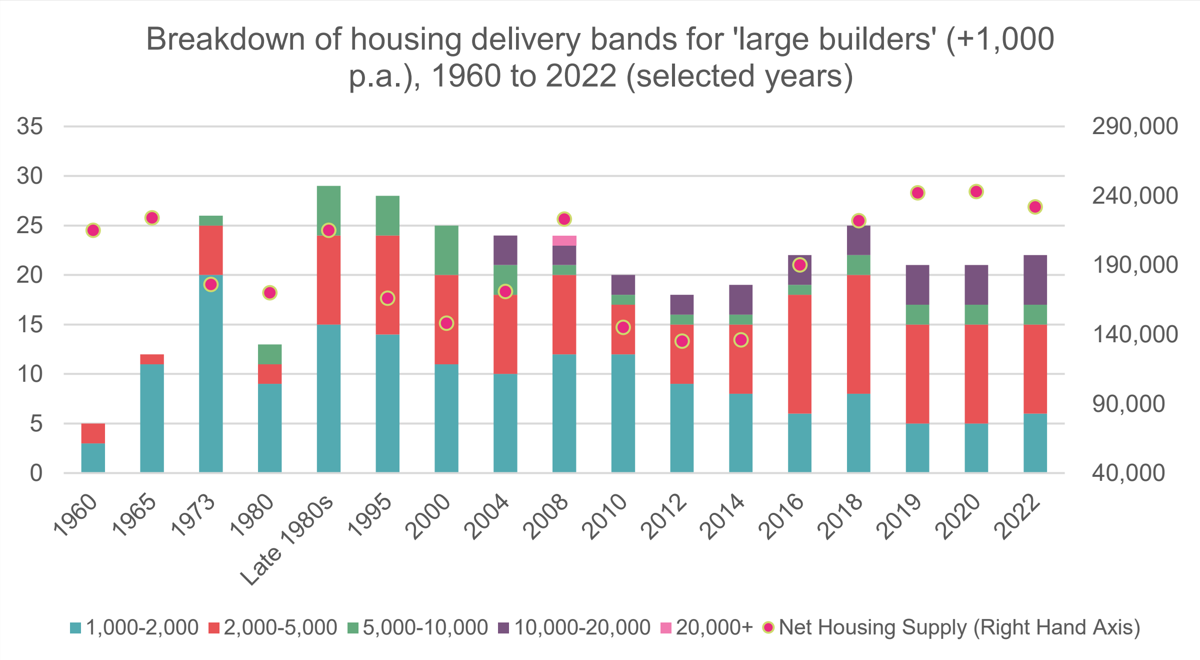
Annex 1: Recent History of the Housebuilding Sector: 1960s to 2020s

RECENT HISTORY OF THE HOUSEBUILDING SECTOR: 1960s TO 2020s

MARCH 2023

Introduction and summary

There is no comprehensive picture of the total number of active builders available, but historical literature and market updates offer a sense of the role of larger home builders (defined as those delivering more than 1,000 homes per year). Among this cohort, other than declines in delivery in extremely troubled economic periods, the number and output from large firms has kept pace with the wider sector.



The most significant changes in policy direction occurred following the introduction of the plan-led system in 1991. However, a plan-led system need not necessarily lead to an under-delivery of housing. The experience in the years following the implementation of the National Planning Policy Framework (NPPF) bears this out, albeit with some nuances, but a plan-led system in which Local Planning Authorities (LPAs) can effectively opt out of obligations as was the case until 2012 is extremely unlikely to provide the land needed to meet the country's cumulative housing needs. Many in the industry are concerned that current planning proposals put forward by the Government may loosen the duties on LPAs to meet the housing needs of their communities.

Although no reliable statistics are available, it is generally appreciated that the number of small and medium-sized (SME) homebuilders has declined significantly over recent decades as a series of policy changes have limited opportunities for start-up and growth with the occasional punctuation of economic events further exacerbating the general declining role of the SME homebuilder.

In 2016, HBF began a major research project, drawing on available data, conducted surveys and carried out extensive interviews with established SME firms in the sector to present a comprehensive picture of the barriers to entry and growth .

The report, *Reversing the Decline of SME Home Builders*, published in January 2017, identified three main areas requiring attention from policymakers:

- Land and planning: Fewer smaller sites were available with a realistic chance of progressing through the planning system, and the speed of achieving a planning consent presented significant challenges to builders' ability to recycle equity and grow.
- Planning risk perceived by development finance providers led to the normalisation of terms that see developers' capital tied up well into the typical build and sales process for the average site.
- Regulation: Beyond planning, SMEs' interactions with local government, especially in relation to the approval and adoption of highways has emerged as a significant cause of delay in the end-to-end planning process.
- Finance: Although new development finance providers entered the market since the financial crisis and previous incumbents had also returned, the terms of development finance were now influenced by the perceived riskiness in terms of timescales and execution making growth more difficult to achieve for individual companies.

The length of time it takes and the costs involved with securing planning consents has grown significantly in recent years.

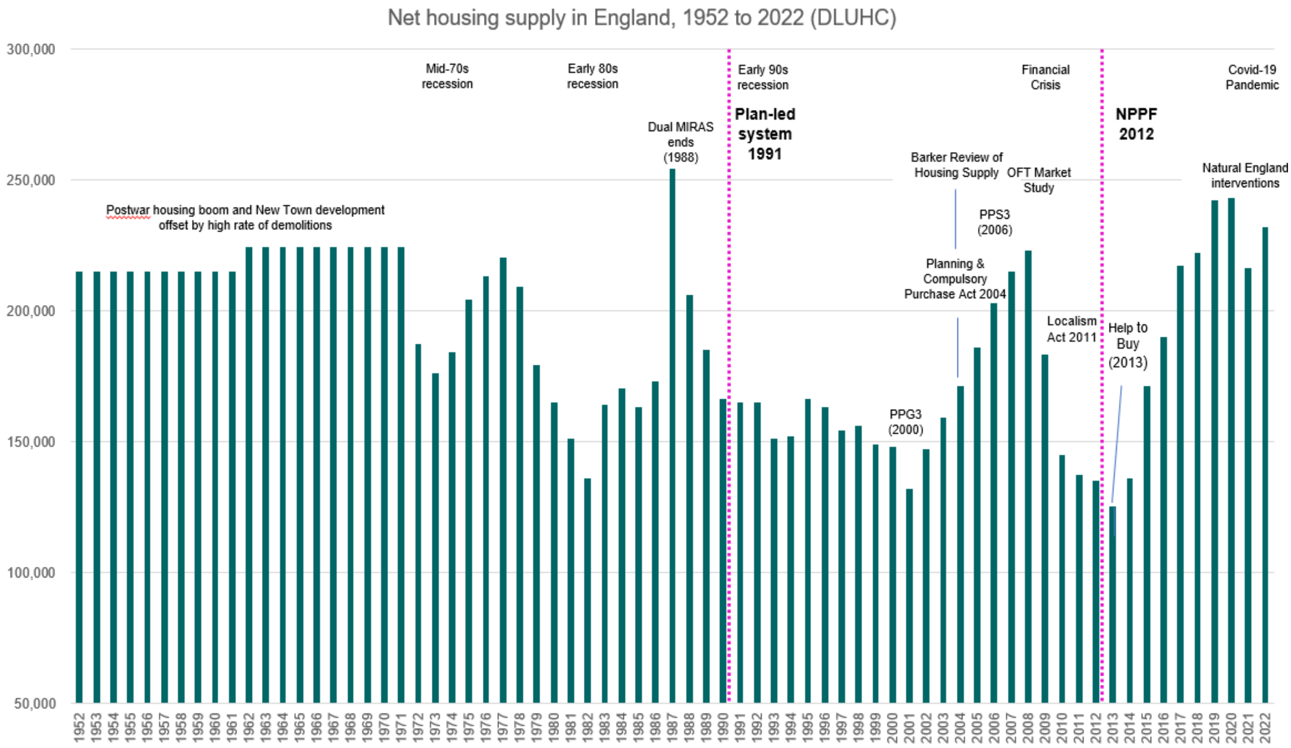
- The delays developers are experiencing in achieving planning consent is an issue that has worsened since the publication of HBF's report. While planning decisions on minor applications are required to be completed in eight weeks, research by Lichfields (2020) found 98% of applications take over 13 weeks from validation to planning committee. The median time from validation to planning committee is 33 weeks (in addition to pre-application engagement[1]).
- Recent comments from HBF members, gathered as part of HBF's response to the All-Party Parliamentary Group (APPG) for SME House Builders inquiry into finance, suggests this time has now increased further in some cases to around nine months.
- The difficulties such delays cause for SMEs are evidenced by findings from HBF's joint report with Close Brothers Property Finance and Travis Perkins. In 2022, 93% of respondents cited delays in securing planning permission as a major barrier to growth.
- The Department for Levelling Up, Housing and Communities (DLUHC) recently confirmed that the costs and time associated with production of the environmental documentation required to support planning applications have increased despite regulations introduced in 2017 to streamline the process. House builders require around 0.2-3.0 Full-Time Equivalent (FTE) members of staff and hundreds of thousands of pounds of investment to produce substantial reports in order to comply with the onerous planning requirements.

Many of the additional costs and the increased risk profile of housing development is acknowledged tacitly or explicitly by Government. For example, the planning impasse in 74 LPAs as a result of river pollution caused by water companies' failings is accepted by Government as being a problem for house builders that is not of their causing and which they cannot realistically solve. Similarly, the Government has recently stated that regulations introduced by DLUHC to streamline the documentation and costs associated with the planning process have made the planning process more challenging, necessitating more professional advice, access to more diverse expertise and extended the time it takes to secure a planning consent.

This paper illustrates with reference to the key reforms and market developments the additional complexity, cost and risk associated with home building in recent years. The policy, regulatory and tax changes seen in recent years is unprecedented in its pace and extent. This has resulted in

[1] Small sites: Unlocking housing delivery, Lichfields (2020), p7.

significant additional burdens for homebuilders of all sizes but for the smaller developer, the planning and development process is increasingly challenging to navigate.



1960s, 70s and 80s

Although larger private home builders had been prevalent in the market before the war, many had found alternative opportunities that had arisen out of wartime construction activities and immediately after the war had re-focused what had been predominantly house building businesses into broader construction services. This included the construction of housing for local authorities. The boom in housing supply was predominantly driven by local authority housing delivery but was offset by tens of thousands of demolitions per year up until the 1980s. Although total housing supply was consistently between 250,000 to 300,000, net delivery averaged 215,000 during the decade. By the mid-1960s more new enterprises were forming and expanding.

The postwar period up to the 1970s continued to see new companies emerge that would go on to become longstanding house builders. In an often-strong home building market, supported by progressive planning and housing policies, including the creation of New Towns, the industry expanded. Typically driven at the outset by a single entrepreneurial individual, the period from the war and into the 1970s saw the founding or rapid growth of many of the larger house builders still operational today, including:

- Bellway, 1946
- Barratt, 1958
- Crest Nicholson, 1963
- Bloor, 1969
- Persimmon, 1972
- Redrow, 1974
- Berkeley, 1976

By the early 1970s, relatively newly formed companies like Bellway and Barratt were multi-regional businesses with the latter expanding from the North East of England into Scotland, Yorkshire, the North West and Midlands.[2] This growth plan was replicated elsewhere.

Banking challenges during the latter part of the 1970s, exacerbated by high inflation, had led to a number of company failures in the sector. With the market depressed due to difficulties with business and consumer finance, retrenchment or diversification occurred. For companies with contracting interests, this was often seen as a more attractive proposition, particularly where they had operations overseas.

Although the 1970s was often challenging in broad market terms as inflation eroded savings and high interest rates made mortgage finance expensive, a number of Government interventions supported housing market activity through financial support for household mortgage payments. These began in the 1960s with the Option Mortgage Scheme and culminated with Mortgage Interest Relief at Source through the 1980s and into the 1990s. The latter intervention came at a considerable cost to the Exchequer – around £5bn per year in the mid-1980s – but was deemed necessary because of the prevailing and persistent high interest rate environment.

With the housing market recovering and new, expanded access to mortgage finance for households during the first half of the 1980s, contractors, including Balfour Beatty and Alfred McAlpine sought to build and sell homes or expand their house building arms to supplement the lower margin business of general construction.

It is no coincidence that a clear correlation can be seen between the post-war peak in net supply of housing in 1987 and the prevalence of SMEs building homes which peaked the following year

[2] *British Housebuilders*, Wellings (2006), p77.

in 1988. The experience of this period is indicative of a more entrepreneurial environment in which SMEs and new entrants were able to identify potential development opportunities and create new homes without promoting sites through local plan-making processes.

According to NHBC's market data, the high-water mark for SME activity in the home building industry in 1988 when 12,215 companies were each building between one and 100 homes was swiftly followed by the passage of legislation which radically altered the land and planning environment for home builders, transforming the relationship between developer and LPAs.

The 1980s saw a gradual retreat from housing delivery among local authorities. Although council homes were being sold, with close to one million properties being purchased by occupants during the decade, Local Government played a less active role in building new housing.

1990s

Formalising the plan-led system and the growth of developer contributions

The Town and Country Planning Act 1990 (1990 Act) tipped the balance of control significantly away from landowners and private, entrepreneurial companies and towards LPAs. The 1990 Act was the most momentous planning legislation to receive Royal Assent since the Town and Country Planning Act 1947 (1947 Act) which had effectively nationalised the right to develop land. However, following the implementation of the 1947 Act there was still a presumption that landowners would be permitted the right to develop on their land (unless specifically prescribed otherwise).

The 1990 Act split the planning system into two distinct functions: forward planning and development control. These principles were developed further by the Planning and Compensation Act 1991 which amended the 1990 Act to introduce the plan-led system of planning in England and Wales.

These legislative changes in the early 1990s introduced the concept of charges for 'planning gain' or 'betterment'. More than 30 years on, Section 106 of the 1990 Act is widely known beyond the home building industry as the main mechanism through which developers make contributions to local infrastructure, services and provide Affordable Housing through cross-subsidy. Governments had made several previous attempts to introduce planning gain taxes but with limited returns. Examples included the 1947 Development Charge, the 1967 Betterment Levy and the Development Land Tax in 1976.

The private cross-subsidy model introduced in the 1990s has expanded considerably since the 1990s, mostly through gradual change, but also punctuated by major reforms and circumstances. Twenty years on, and Section 106 would be accompanied by the Community Infrastructure Levy (CIL) and the austerity measures imposed from 2010 onwards would see the value of developer contributions increase markedly, and a significant shift within the envelope of Section 106 agreement packages from the provision of infrastructure and services to the supply of Affordable Housing, reflecting the changing priorities of councils.

Since the 1990s, successive governments have brought forward significant volumes of planning legislation, guidance and policy, most of which have been open to interpretation and compliance at a local level, though none since 1990 has proven to be as far-reaching as the Town and Country Planning Act 1990.

When implemented, the 1990 Act established for the first time a presumption *against* development unless in accordance with local plans known as Development Plans. Achieving an allocation in a local plan was now necessary to provide a degree of assurance that a planning application for new homes might secure consent. However, no effective sanctions or incentives were introduced to encourage LPAs to develop and adopt a Development Plan. Nevertheless, the plan-led model of land regulation strengthened the reliance on land promotion through the various stages of an LPA's plan adoption process. As a result, the application process to obtain planning permission on a site subsequently became a much lengthier – and expensive – endeavour. By introducing an additional stage in the planning process (i.e. the production of a Development Plan and a greater emphasis on upfront exchanges with LPAs), the consequence of the 1990 Act was to create a requirement for a much more long-term commitment to sites, tied to the particular timescales of an LPA's Development Plan-making and adoption processes.

The Act, without adequate measures to ensure LPAs were maintaining and updating Development Plans, resulted in persistent undersupply of housing over the next two and a half decades.

Development Plan adoption processes would work on five-year cycles. This would provide the balance between the resources required at an LPA level and create a degree of certainty over the medium-term. However, the identification of small developable sites became significantly more difficult following the passage of the 1990 Act as the financial and time commitment necessary to secure an allocation in a Development Plan became a significant barrier for house builders (especially SME house builders) to overcome, in addition to the growing expense associated with obtaining planning permission. The new approach under the 1990 Act meant that promotion of sites in order to receive an allocation in a local plan could take as long as ten years if site promotion proved unsuccessful in the first plan-making cycle.

Early 1990s consumer recession

It was not just the legislative environment that became more testing for SMEs during this period. June 1990 marked the start of a period in which the UK's economic output contracted in seven of the following eight quarters. The recession which engulfed the UK economy in the early 1990s was deeper and arguably harder felt for a greater number of households than the period of negative growth in the late 2000s. Conditions in 1991 were more challenging for households with unemployment peaking at 10% compared with 8% in the late noughties; record levels of home repossessions and Bank of England base rates of interest between 10% and 14%. This contributed to a steep decline in the number of companies building homes, which was compounded by a new planning framework (as described above) which presented a significant barrier to entry and expansion (due to the temporal, financial and knowledge investment required to navigate the planning system under the 1990 Act), and had the *de facto* effect of hindering many house builders' return to the market following the economic decline Consumer confidence remained low for an extended period and finance, for developers and for households was expensive.

In the years that followed the 1990 to 1992 recession, as GDP returned to growth, any annual increases in SME numbers were marginal. For instance, the number of builders registered with National House Building Council (NHBC) building fewer than 100 homes per year grew modestly in number in 1993, 1994 and 1997 (by 2.1%, 1.9% and 2.0% respectively) but this was significantly outweighed by the sharp decline in the number of such house builders active on the market during the recession. In short, the recession severely impacted many of the companies that had been active during the late eighties and, by the time the headline economic conditions had improved, the new planning framework was challenging for home builders and such that only a limited number re-emerged, very few new entrants appeared and many that managed to weather the storm soon found continued growth or even survival difficult.

1990s legacy: a summary

Net housing supply remained stubbornly low throughout the 1990s. Annual net supply between 1990 and 2003 peaked at 166,000 in 1995 before declining gradually to 132,000 in 2001.[3]

The emphasis on forward-planning introduced at the start of the 1990s had significantly increased the timescales associated with advancing sites towards a planning consent with a new emphasis placed on promotion of sites through the local Development Plan process. In combination with often difficult underlying economic circumstances and constrained mortgage availability these factors had fundamentally altered the structure of the industry. Welling (2006) estimates that at the turn of the century the largest 10 house builders accounted for 40% of total housing supply, up from 28% at the end of the previous decade. (Wellings, 2006).

<u>2000s</u>

The drive for density: Planning Policy Guidance Note 3

After coming to power in 1997, the Labour Government had a focus on urban renewal. With an election victory that owed a great deal to the support of suburban England largescale greenfield development was unappealing and so a major policy focus was the promotion of brownfield sites for development. Within a year of the election victory, Deputy Prime Minister, John Prescott published *Planning for the Communities of the Future* which promoted the 'Brownfield First' approach to land use for new housing. This was an extension of the ideas put forward by the previous Government which had adopted an 'aspirational target of 60% of new homes to be built on brownfield land.

The Brownfield First approach introduced 'a sequential and phased approach to development of all sites, which means there will be a general preference for building on previously developed sites first, especially in urban areas'. A consultation on a draft Planning Policy Guidance Note 3 (PPG3) was published in 1999 before the finalised guidance was published in March 2000. Via the Government's regional agencies responsible for setting housing targets, growth was to be directed 'to areas where previously-developed land is available… in preference to developing greenfield sites'.[4]

The formal target was '[N]ationally, to raise the proportion of new homes we expect to be built on previously developed land from 50% to 60%, to be achieved over the next ten years'.[5]

It was estimated that on a consistent basis around 50% of new homes were, at the time, being built on brownfield land. Statistics, reported by the Office of the Deputy Prime Minister pointed to 52% of new homes on previously developed land during 1991 to 1993.[6]

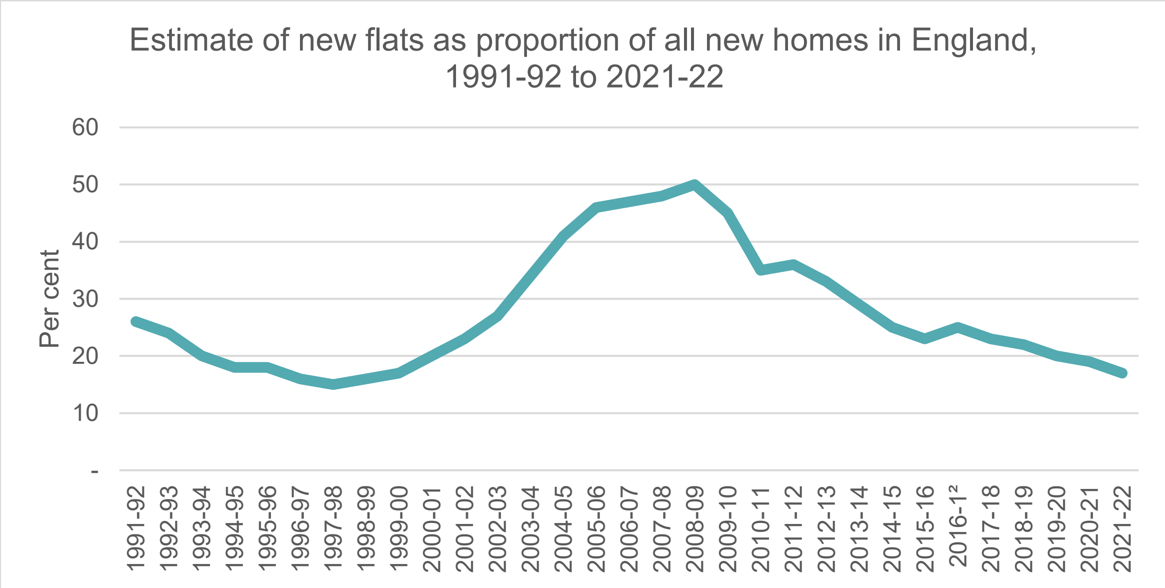
To enforce the policy, PPG3 required the referral to the Secretary of State of large applications (over 150 homes) on greenfield sites.

The policy was successful in achieving its aims. From 2004 to 2007 the proportion of new homes on brownfield had risen to an estimated 74%, falling slightly to 72% for 2008 to 2011.[7] By

[3] No reliable accurate figures are available for the new build completion component of net supply
[4] Lichfields: 'A brownfield-based planning policy?', October 2021
[5] *Planning for the Communities of the Future* (Office of the Deputy Prime Minister), 2000
[6] *Ibid.*
[7] DLUHC Live Table 254

comparison, the average annual proportion of new homes on brownfield sites in the 10-years to 2022 was 58%, so greater than in the 1990s but far from the numbers recorded in the 2000s.

PPG3 increased the density of new housing, peaked at 42 homes per hectare in 2008 to 2011 and led to a significant increase in the number of new flats as a proportion of the housing completions, which rose sharply following the introduction of the Brownfield First policy of the early 2000s, from 20% when the guidance was implemented, to 50% in just eight years.



In a planning system now concentrated on the delivery of denser, urban, flatted development, SMEs found site availability and finance options challenging. The dynamics of funding and commercial returns on the delivery of apartment schemes is different to housing schemes, involving frontloaded financing with a 'lumpy' sales programme. The delivery of apartment schemes also requires different skills and technical expertise with the level of complexity growing exponentially over the years. Brownfield opportunities often come with considerable costs associated with land remediation, for instance.

With the planning focus now on urban development, small firms concentrated on infill opportunities in towns and cities, often on private gardens. However, this was an avenue that would be closed down in the years ahead, following the change of government in 2010.

Housing Market Renewal Initiative

The Housing Market Renewal Initiative (HMRI) or Housing Market Renewal (HMR) Pathfinders programme was a scheme focused on demolition, refurbishment and new building which ran in the from 2002. It was launched and administered by the Department for Transport, Local Government and the Regions (now known as DLUHC).

The aim of HMR was 'to renew failing housing markets in nine designated areas of the North and Midlands of England'[8] which had experienced a significant decline in population, dereliction, poor services and conditions. By renewing failing housing markets, it sought to improve neighbourhoods and encourage more people to live and work in these areas.

Initially, nine areas were selected to become 'Pathfinders': Birmingham/Sandwell, East Lancashire, Hull and EastRiding, Manchester/Salford, Merseyside, Newcastle/Gateshead, N

[8] Housing Market Renewal Pathfinders, House of Commons Library Note, 30 October 2013

orth Staffordshire, Oldham/Rochdale, and South Yorkshire. In 2005, three further areas were also identified: West Yorkshire, West Cumbria, and Tees Valley.

With no statutory powers to enforce implementation of its strategies, Pathfinders were reliant on local and regional regeneration agencies to achieve their plans. In 2008, the House of Commons Public Accounts Committee raised concerns that:

'more homes have been demolished than built and without longer term support, demolition sites, rather than refurbished and improved housing stock, may be the Programme's legacy'.[9]

It also acknowledged that while the number of *"low demand"* properties in pathfinder areas had fallen, *"by some measures it has fallen less than in England as a whole".*

The programme was expected to last between 10-15 years and by March 2008, had cost £1.2 billion which had predominantly been spent on refurbishment (40,000 refurbished properties and 1,100 new builds).

Following the change of government in 2010, the initiative was abandoned in 2011.

Barker Review

The Barker Review of Housing Supply, authored by economist, Kate Barker, was published on 17 March 2004. It had been commissioned a year earlier by the then Chancellor, Gordon Brown, and Deputy Prime Minister, John Prescott.

Barker was commissioned to examine the operation of the housing market and address land and planning issues that contribute to market volatility and a lack of supply. The market landscape at the time of the review was one of improved economic and demographic conditions since the 1990s, but which had not led to an increase in housing completions, such that by 2001 completions had fallen to their lowest peace-time level since 1924, even lower than the trough experienced during the early 1990s recession.

Specifically, the remit of the project included: 'issues affecting housing supply in the UK, including competition, the capacity and finance of the house building industry, new technology possible fiscal instruments, the interaction of these factors with the planning system, and sustainable development objectives'.[10]

In her foreword to the resulting report, written as an open letter to the then Chancellor of the Exchequer and Deputy Prime Minister, Barker noted that 'housing provision is often controversial and provokes strong reactions'. Barker also warned that 'a weak supply of housing contributes to macroeconomic instability and hinders labour market flexibility, constraining economic growth.'

The report considered a range of prospective objectives for housing completions based around reducing the real house price trend to varying rates around 2% per annum and then proposed 36 recommendations, exploring the role of planning, infrastructure, utilities as well as public land and customer satisfaction with new build homes.

Barker recognised the scale of the task and the range of actors needed to effect change in the sector: 'Delivering an adequate supply of housing requires action by all players: Government; the housebuilding industry; social housing providers; communities and local authorities.'[11]

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[9] *Housing Market Renewal: Pathfinders: Thirty-fifth report of the 2007-8 session*, House of Commons Committee of Public Accounts, 9 June 2008
[10] Budget Policy Note PN1, *Building a Britain of Economic Strength and Social Justice*, 9 April 2003
[11] *Barker Review: Final Report* (2004), page 12

One recommendation directed at the industry included the setting of an objective for HBF to 'develop a strategy to increase the proportion of house buyers who would recommend their housebuilder from 46 per cent to at least 75 per cent by 2007'.[12] HBF introduced the Customer Satisfaction Survey (CSS) and accompanying star rating scheme in 2005. By 2012, 90% of respondents to the survey stated that they would recommend their builder to a friend.

In March 2014, a decade after the publication of the Barker Review, HBF published a report considering the progress made since the publication of the Barker Review in March 2004. Using Barker's central scenario of housing supply levels over the decade which may have been expected to 'reduce the long-term trend rate' of house price inflation, HBF estimated that the shortfall in supply had been around 950,000.[13]

Planning and Compulsory Purchase Act 2004

The Planning and Compulsory Purchase Act 2004 introduced Regional Spatial Strategies. A Regional Spatial Strategy (RSS) was intended to provide LPAs and communities with a longer-term 'spatial' vision for the region. The statutory underpinning was further informed by Planning Policy Statement 11 (2004) which stated that the RSS should provide guidance for 'a fifteen to twenty year period' on 'identification of the scale and distribution of provision for new housing'.[14] To aid LPAs:

> *'The RSS will need to provide housing figures for individual districts or appropriate sub-regional housing market areas for which joint Development Plan Documents (DPDs) are to be prepared.'*[15]

RSSs would be abolished by the incoming Coalition Government, a move that was signalled in advance of the 2010 election.

The Planning and Compulsory Purchase Act also introduced a more formal requirement for all LPAs to 'prepare and maintain' a local plan.[16] However, by 2012, the Government calculated that only around half had actually adopted local plans.[17]

Natural England measures to limit new housing in Surrey and the wider South East

In 2005, Natural England designated the Thames Basin Heaths Special Protection Area which had immediate consequences for housing delivery in parts of the Surrey, Hampshire and Berkshire. Natural England advised all LPAs that any new housing within 5km of the Special Protection Area (SPA) may harm bird populations, with particular harm caused by development within 400m of the SPA, due to the presence of additional walkers on heathlands as a by-product of the new housing.

Mitigation measures have subsequently been implemented such that:

- No new housing is permitted within 400m of an SPA;
- The provision of Suitable Alternative Natural Greenspace (SANG) is required for relevant new schemes; and
- Strategic Access Management and Monitoring (SAMM) measures (i.e. visitor management coordination) is necessary.

[12] *Barker Review*, Recommendation 32
[13] *Barker Review a decade on* (HBF)
[14] *Planning Policy Statement 11: Regional Spatial Strategies* (2004), para 1.3
[15] *Ibid*, para 1.5
[16] *Planning and Compulsory Purchase Act 2004*, Section 15(1)
[17] *Hansard*, 27 March 2012, Col. 1337

Identifying land supply at a local level: Planning Policy Statement 3

Planning Policy Statement 3 was published in November 2006, replacing PPG3 which the Barker Review (2004) had considered to be inflexible. The Barker Review argued that 'Government should take a rigorous approach to revising PPG3… Restrictions on development should have an identifiable and evidenced benefit that outweighs their costs.'[18]

PPS3 placed a greater emphasis on 'improv[ing] affordability across the housing market, including by increasing the supply of housing.'[19] It introduced a stronger focus on a 'responsive supply of land' and encouraged LPAs to look beyond brownfield sites:

> *'The planning system should deliver… A flexible, responsive supply of land – managed in a way that makes efficient and effective use of land, including re-use of previously-developed land, where appropriate.'*[20]

Office of Fair Trading market study

In 2007 the OFT undertook a market study of the home building industry. The final report, published in September 2008 found that the sector was 'broadly competitive'.[21] The OFT found 'little evidence of competition problems' with 'prices… set through home builders competing for sales against each other and are significantly constrained by the prices of existing homes'.[22]

The OFT did highlight concerns with completion delays, faults with new homes and some of home builders' processes around sales, including the terms related to reservation fees. Through the market study process and in response to the OFT's findings, industry agreed to form a new body to introduce a code to enforce best practice in relation to the sales process. This led to the formation of the Consumer Code for Homebuilders in 2010.

Financial Crisis

Many SMEs did not survive the financial crisis; the credit crunch and the subsequent impact on SME developer finance terms have had a lasting impact. Major home builders were also impacted by the headwinds as the number of companies building more than 1,000 homes per year fell from 24 to 18 and those building 2,000 homes fell from 14 to eight.

2000s legacy: a summary

The 2000/1 to 2012/13 period began with an historically low level of net supply in 2001 (132,000 – a postwar record at the time) and ended with output plumbing new depths (124,000 in 2012/13).

In 2008, the OFT estimated that in 2006 the largest ten UK homebuilders were responsible for 44% of new build completions, up from 40% in 1999.[23] However, this appears to have been calculated using the subsequently undermined measure of housing supply, now known only as 'Indicators of Housing Supply' and which has been shown to understate total completions by up to 20% per year.

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[18] *Barker Review: Final Report* (2004), Recommendation 12, page 48

[19] *Planning Policy Statement 3: Housing,* Department for Communities and Local Government (November 2006), para 9

[20] *Ibid,* para 10

[21] OFT Press Release, 109/08, 25 September 2008, "*Homebuilding sector is broadly competitive – OFT*"

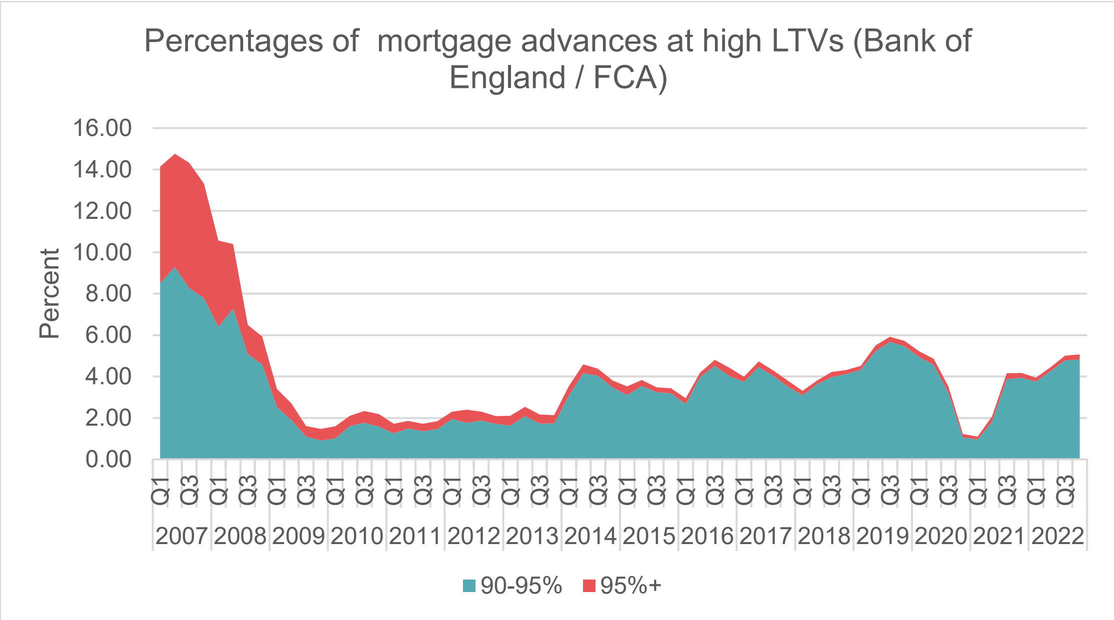
[22] OFT Press Release, 109/08, 25 September 2008, "*Homebuilding sector is broadly competitive – OFT*"

[23] *Homebuilding in the UK: A market study* (OFT1020), September 2008

2010s

A slow recovery, housing supply continues to fall

The economic recovery following the crash and resultant recession was a long and slow one. Indeed, house building activity remained stubbornly low for several years after the end of the technical recession. The credit crunch made development finance extremely hard to access for many housebuilders of all sizes, but for SMEs the situation was particularly dire. On the sales side, the mortgage market remained severely constrained well into the decade. With few high Loan-to-Value (LTV) mortgages available across the entire mortgage market, the housing market downturn remained entrenched. By 2012, under 2% of new mortgages were at high LTVs.



Treatment by lenders of new build mortgage lending exacerbated the challenging situation for sellers of new homes. The Government tried a number of interventions to support lenders back into the market, but with only minimal successes. As a result, housing supply bottomed out at a postwar low in 2012/13.

Land reclassification of gardens

A change in policy guidance in June 2010 further exacerbated the difficult situation for the SMEs that were able to identify and purchase land and obtain development finance. In one of the Coalition Government's first Communities and Local Government announcements, then Decentralisation Minister, Greg Clark in an effort to prevent 'garden grabbing' so that councils "do not have to sit by and watch their neighbourhoods get swallowed up in a concrete jungle", reclassified garden land as greenfield making development of such sites more challenging in planning terms. This was formalised in the NPPF two years later through the explicit exclusion of private residential gardens from the definition of 'previously developed land' (brownfield). Until 2010, the development of infill sites such as private gardens, where sustainable, had been a specialism of small house builders and sustained many companies that were well equipped to use their local knowledge to identify potential schemes and bring forward sustainable developments.

Community Infrastructure Levy

Although the concept of the CIL was written into statute with the Planning Act 2008, the new levy came into force in April 2010 with the passing of relevant regulations. CIL affords local planning authorities the opportunity to charge builders a levy on the development of new dwellings. Any intention that CIL would eventually replace Section 106 as a single, simplified developer contribution mechanism has not been borne out.

By January 2020, only 48% of authorities with the power to charge CIL had done so.[24] By 2018/19, CIL accounted for around £1 billion of the total £7 billion developer contribution envelope.

In its market study report of September 2008, the OFT recommended that delayed payment of CIL be available for smaller developments. This recommendation was not taken up by the Government although a delayed payment provision was introduced temporarily under the Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020.[25]

Austerity: diminished local authority planning department resourcing

The Royal Town Planning Institute (RTPI) stated in 2022 that net expenditure on local authority planning departments fell from £844 million in 2009/10 to £480 million in 2020/21. In real terms, this represented a 55% reduction in local planning resource. At the same time that resourcing for LPAs halved, the annual number of schemes permissioned increased by 3% and the number of plots permissioned on an annual basis rose by 85% representing a huge increase in workload. This small increase in sites going through the planning and the considerable increase in plots points to a growth in larger, more complex sites going through the planning process. Even with consistent resourcing, processing this workload on a consistent budget would likely be challenging, however, with less than half of the resources available compared to a decade earlier, the result has been a significant hurdle to planning performance which LPAs have largely been unable to surmount. This led to extended and uncertain timescales for securing planning consents. With the Government in the late 2010s keen to hold authorities to account for under-delivery of housing against local need, many turned towards the allocation and consenting of larger sites.

Planning department resources and workload: 2009/10 and 2020/21 compared[26]

	2009/10	**2020/21**	**Change**
Planning resource	£844m	£480m	-43.1%
Planning resource (2021/22 prices)	£1.07bn	£480m	-55.1%
Permissioned sites	13,582	14,011	+3.2%
Permissioned plots	169,496	314,031	+85.3%

The inherent risks associated with planning affect the entirety of the sector (albeit these challenges can be particularly difficult for smaller companies to navigate). It is often accepted that when a planning authority is unable to decide on a planning application within the statutory timescales, developers are encouraged to withdraw the application and resubmit or, worse still, have the application rejected and be forced to pursue an appeal. The cost and time involved for house builders to navigate the inherent uncertainties and risks imbued in this approach makes it extremely hard to do business for small companies with the capital tie-up that this necessitates having a huge opportunity cost.

[24] *The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19,* (Lord, Dunning, Buck, Cantillon, Burgess) (DLUHC), August 2020, pp 18-19
[25] Withdrawn regulations here
[26] Planning permissions data from Glenigan for HBF's Housing Pipeline report, published December 2022; resourcing estimates from RTPI; real terms values using HM Treasury 'GDP Deflators' (22 December 2022)

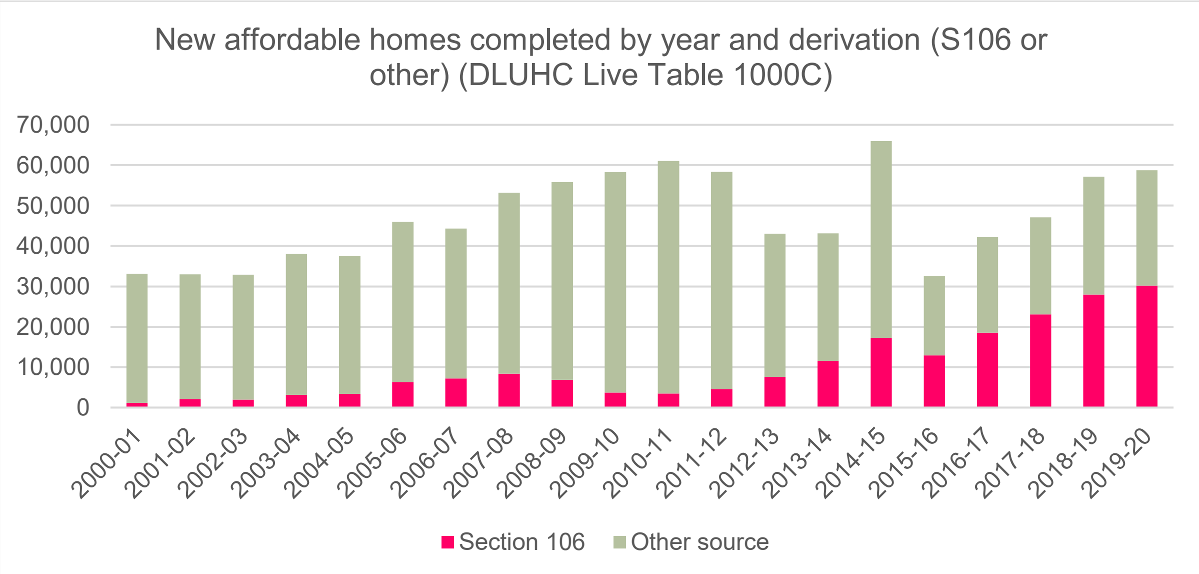
The growth in appeals as a means of securing a satisfactory response within reasonable timescales is another example of how SMEs are, in particular, disadvantaged by the current planning system. Costs associated with securing consents by appeal often run into hundreds of thousands of pounds and are met entirely at the developer's own risk with no financing available for this activity.

Austerity: Growing reliance on private sector to fund Affordable Housing

In recent years, as Government grant for Affordable Housing providers has been squeezed, private sector cross-subsidy via Section 106 has been responsible for the delivery around half of all new Affordable Homes.

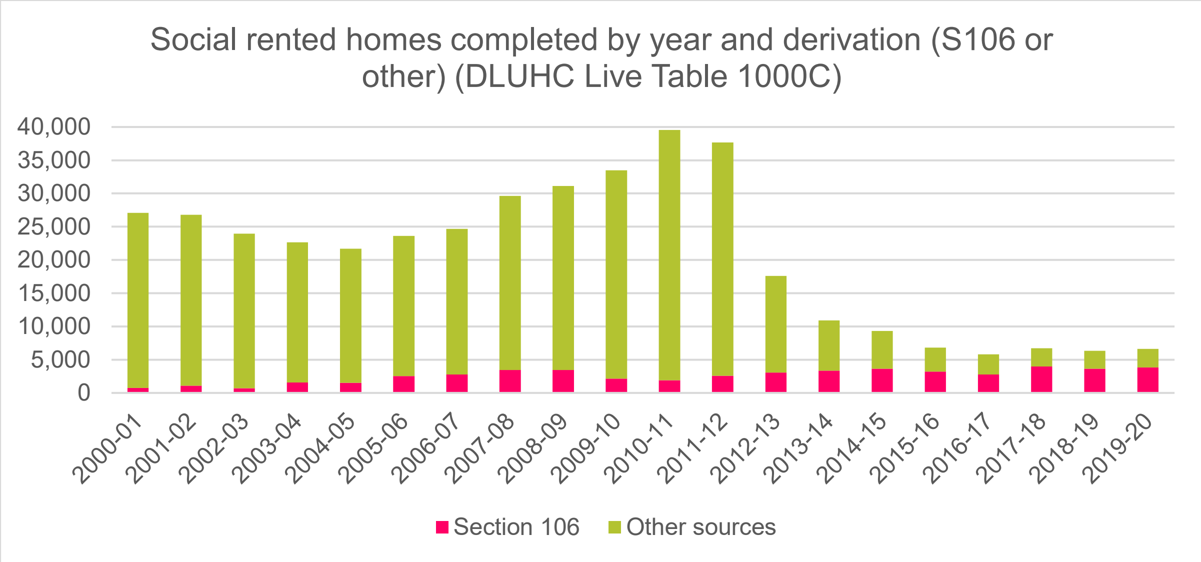
From 2000/01 to 2016/17, private sector cross-subsidy accounted for 120,351 new Affordable Homes (around 15% of total Affordable Housing supply).

From 2017/18 to 2021/22, 132,190 Affordable Homes were delivered by developers through private cross-subsidy (s106), representing 48% of the total delivered in England during the period.

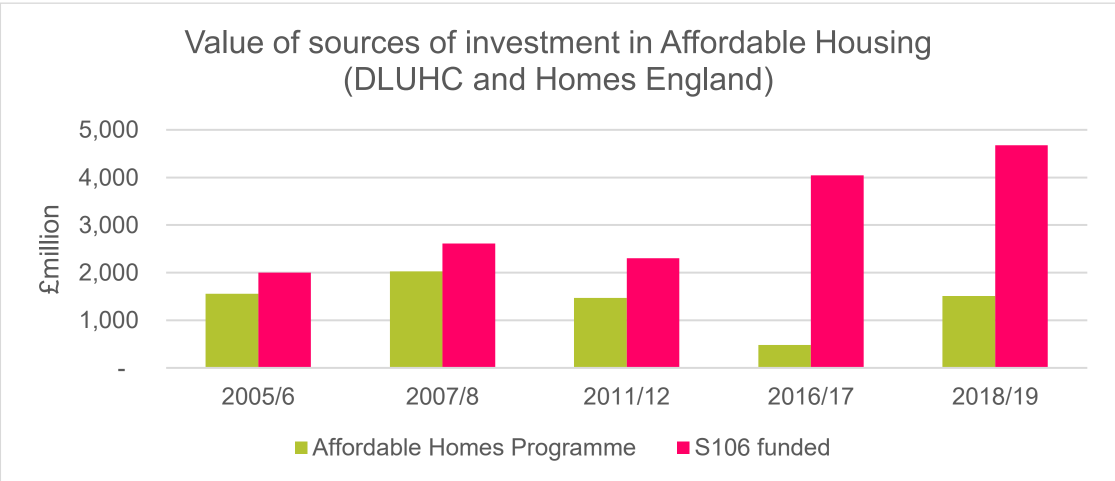


The shifting emphasis of Affordable Housing supply from national government grant-funding from private sector cross-subsidy is even more striking through an exploration of the delivery of Social Rented housing. This is the most affordable of all Affordable Housing tenures is often highly prized by local authorities and is the costliest tenure to deliver, either through grant or via Section 106 agreements.

In previous generations, Social Rented housing was the dominant tenure of Affordable Housing. As the Government de-prioritised Social Rented housing through its Affordable Housing Programme from 2015, local authorities relied on private home builders who became the primary source of Social Rented housing, comprising 53% of delivery between 2015 and 2020 being derived from Section 106.



From time to time in recent years, the DLUHC has published estimates of the incidence and value of Section 106 contributions and Affordable Housing contributions from private developers. Academics working on behalf of the Department have made estimates of the value of Affordable Housing for five separate years between 2005/6 and 2018/19. A comparison of these estimates with the value of Affordable Housing grant from central government in those years demonstrates the extent to which the reliance on private cross-subsidy has grown over that period. In 2018/19, it was estimated that £4.7 billion of the total £7 billion developer contributions generated through S106 and CIL went towards Affordable Housing provision, more than two-thirds of the value of the total developer contributions in England, an increase from the 51% in 2005/6. In comparison, just over £1.5 billion in Affordable Housing grant was awarded in the same year. It should be noted that Affordable Housing grants can be lumpy over a programme period, but the trends indicated here are instructive of the shift over time.



The policy emphasis of recent years on delivery and funding of Affordable Housing through developer contributions and its rebalancing vis a vis other types of developer obligation may have had an impact among those who claim that new housing is failing to bring with it requisite infrastructure and support for local services. Affordable Housing is designed to be 'tenure blind' and indistinguishable from the private homes on new build sites so with a rebalancing of investment away from green spaces, roads, health facilities and education towards Affordable Housing, developer contributions have become less visible to existing communities than in previous generations.

As well as the value of developer contributions increasing over time, a report for DLUHC in 2020 found that there had been an increase in the *number* of obligations per planning consent granted[27], hinting not just at the increased cost of delivery but also the complexity in meeting obligations.

Localism Act 2011

The Localism Act 2011(Localism Act) aimed to devolve certain decision-making powers from central government to local authorities, communities and individuals. In terms of planning decisions, the Government's stated aim was to make the system "clearer, more democratic and more effective".

Among the provisions in the Localism Act were the abolition of Regional Spatial Strategies, a new right for communities to draw up a neighbourhood plan and a community right to build, a new requirement for developers to consult local communities before submitting planning applications for certain developments and reforms to the way local plans are made.

The Localism Act also gave local authorities greater freedom in setting the rate for CIL and enabled the Government to require that some of the money raised from the levy go directly to the neighbourhoods where development takes place.

Industry launches NewBuy scheme with Government backing

In March 2012, to give new build homebuyers access to higher LTV mortgages and boost housing supply, the Government launched the NewBuy scheme. Under the scheme, lenders would benefit from a 5.5% guarantee from Government, supported by the developer who would make a 3.5% contribution to an indemnity fund. Around 25 builders took part during the first year of the scheme's operation before it was effectively replaced by Help to Buy in April 2013.

The National Planning Policy Framework, 2012

The introduction of the NPPF in 2012 engendered a much more positive environment in which to plan for new housing. The minister responsible for introducing the NPPF, Greg Clark, made the case in the House of Commons for the new Framework to simplify a bureaucratic system underpinned by more than 40 complex and lengthy documents which was grinding 'ever slower':

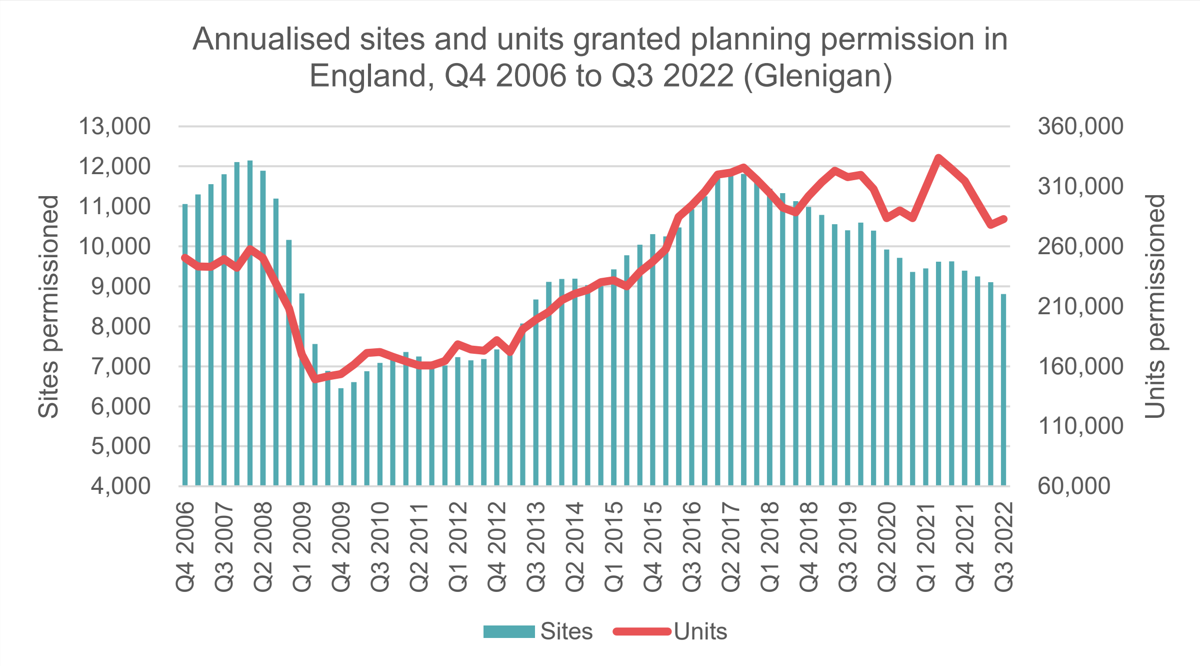
> *'A decade of regional spatial strategies, top-down targets and national planning policy guidance that has swelled beyond reason—over 1,000 pages across 44 documents—has led to communities seeing planning as something done to them, rather than by them. As the planning system has become more complex, it has ground ever slower. In 2004 Parliament required every council to have a plan, but eight years on only around half of councils have been able to adopt one.'* (Greg Clark, Planning Minister, 2012)[28]

The NPPF, implemented in 2013, effectively introduced sanctions for LPAs that were not adequately planning for the housing needs of communities. However, as is often the case through periods in which governments embark on major planning reforms, the process of consultation and transition to the new system created an incentive for councils to suspend local plan development, leading to short-term uncertainty in the planning process.

The long-term benefits of the NPPF's introduction can be seen clearly by the impact it has had on the number of planning permissions that have been achieved in the years following its

[27] *The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19,* (Lord, Dunning, Buck, Cantillon, Burgess) (DLUHC), August 2020
[28] *Hansard,* 27 March 2012, Col. 1337

introduction. As more (albeit still too few) local planning authorities adopted NPPF compliant local plans there was a gradual increase in the number of planning consents granted for new homes, eventually, in mid-2016, surpassing the pre-crash peak. Combined with the introduction of the Help to Buy Equity Loan scheme in April 2013, this led to a huge increase in investment by builders in the people and land required to build homes.



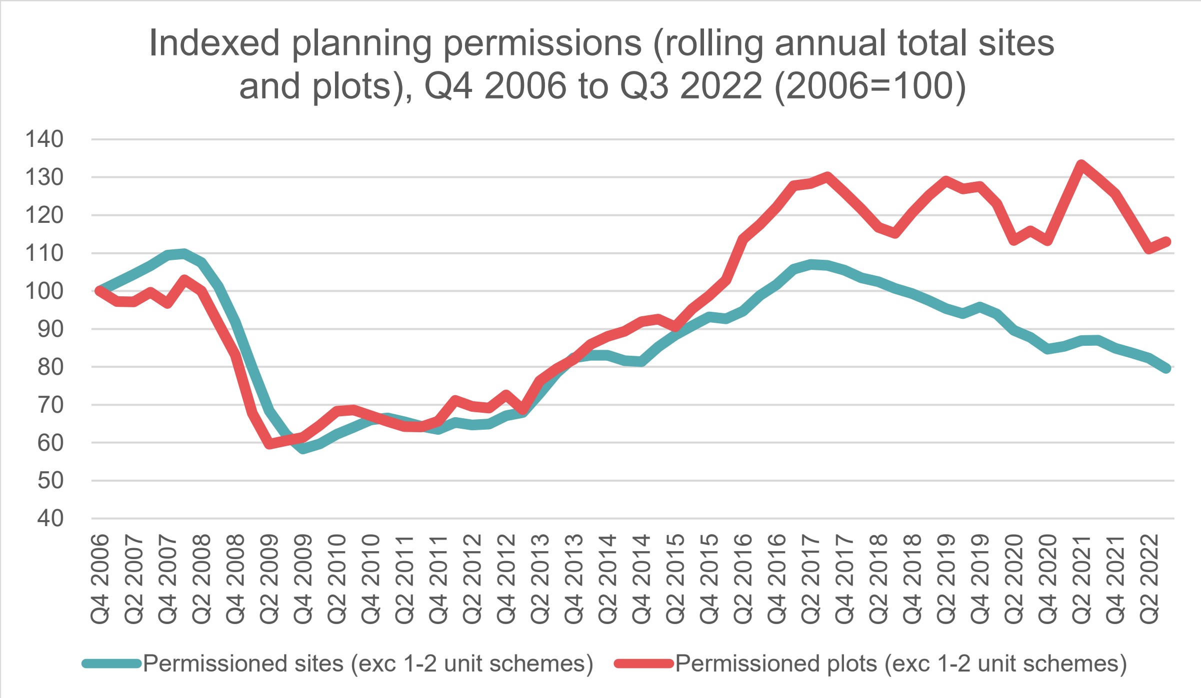
Even with the broadly positive NPPF in place, land was hard to come by for SMEs. Although effectively a reform that made the pre-existing plan-led system of planning more effective by strengthening the predominance of the plan and putting greater onus on councils to meet housing need, the outcome has been a greater reliance on larger sites to meet those housing needs.

At a time when LPA's budgets were and continue to be squeezed, local authorities allocated more large sites than ever before. While this helps to satisfy the requirement for a five-year land supply on a nominal basis it will often fail to deliver and prevent access for most small firms. Furthermore, fixed costs (in the form of both money and time) differ little between a site of 20 units and one for 150 units. The overheads and timescales involved with getting on site are broadly consistent across the majority of sites aside from the very largest.

It is also likely that local political calculations play a part in a growing reliance on larger sites to meet local housing requirements. While it is perceived that existing communities may not support the planning and delivery of new homes, political expediency can lead to fewer but larger site allocations are more palatable for local politicians who understandably deem one site of 1,000 new homes to generate less local discontent than 20 sites of 50 homes or 10 sites of 100 homes. As discussed above, very large sites are deliverable by relatively few developers and require considerable upfront finance.

While the NPPF has been successful in delivering a good supply of outline planning permissions, converting these into implementable permissions has become more difficult and time-consuming. For the reasons set out above, the average size of a permissioned site has also increased. Using Glenigan data on planning permissions granted for sites of three or more homes, we can observe a disconnect between site and unit permission numbers which had remained in lockstep from the commencement of the statistical release in 2006 and the implementation of the

NPPF in 2013. In the 12 months to September 2022, there were 13% more plots permissioned than in 2006 but from 20% fewer sites.



Help to Buy

Help to Buy transformed the ability of homebuyers to purchase new build properties when it was introduced in April 2013. With constraints in the mortgage market generally, the situation for sellers of new build homes was dire as first-time buyers without large savings pots or access to family wealth were unable to access mortgages for new build homes with higher LTV mortgages.

Unlike previous schemes designed to support purchasers to buy new build homes, the Help to Buy scheme proved less onerous to administer and less restrictive for builders in registering and taking part. At its peak up to 3,000 builders were registered for the scheme and with no barrier to entry and no transaction costs, SMEs participated in Help to Buy in a way not seen with other previous Government interventions of this type. By the time the final completions take place in March 2023, it is expected that almost 400,000 homebuyers will have had the benefit of Government equity loans, of whom around 90% will be first-time buyers.

The scheme de-risked investment by builders by underpinning effective demand for new homes over a sustained period, allowing developers, even with a lengthier planning process, to acquire new sites, plan, build and sell. With planning consents nowadays taking longer to secure, developers are forced to calculate the likely housing market and mortgage market conditions several years into the future. The presence of Help to Buy meant that new build mortgage availability remained fairly consistent from 2013 to 2022. Mortgage lenders needed only to advance 75% LTVs to first-time buyers under the scheme with Government equity loans fundamentally de-risking lender activity in the new build space. Lender participation in the scheme was extensive and buyers not only benefited from lower deposit requirements, they borrowed less from the lender (with Government bridging the gap), at lower LTVs and generally, therefore, much lower rates than would be available at 95% or even 90%.

Starter Homes for First-Time Buyers

In December 2014, the coalition Government announced a starter homes initiative which was intended to deliver 100,000 discounted starter homes for first-time buyers. The Government subsequently implemented a starter homes exception site policy to encourage the provision of starter homes on under-used or unviable commercial and industrial land. The policy exempted developers from certain planning requirements on these sites, in return for offering starter homes at a discount to younger first-time buyers.

Following considerable time and effort on the part of lenders, developers and local authorities, following political changes, starter homes have not been delivered and are no longer a part of government policy.

Government brings forward various development finance initiatives to support SMEs

A succession of initiatives have been announced to help SME builders secure access to development finance which has been in short supply since 2008. Until the Home Building Fund was unveiled by Secretary of State, Sajid Javid in October 2016, the most high-profile package was the Builders Finance Fund which launched in April 2014. Initially only available on sites of at least 15 units, the scheme had limited success.

In addition to being prescriptive, financial assistance was generally only available for developers on sites with detailed planning permission meaning that developers continue to effectively bear all of the planning risk on a development. This suggests that even the Government's principal housing agency recognises the planning issues that constrain small developers and the risk inherent in the planning process. Developers also reported that the administrator, Homes England's processes remained onerous and terms were not hugely attractive.

The Home Building Fund has most recently been relaunched as the 'Levelling Up Home Building Fund' in 2022.

Housing and Planning Act 2016

Achieving Royal Assent in 2016, the Housing and Planning Act made numerous changes to housing policy and the planning system. It provided the legislative framework for the aforementioned starter homes initiative and gave the Secretary of State greater powers to intervene to require an LPA to make a local plan.

Growing concern about the challenges facing small and medium-sized home builders

In 2016, HBF began a major research project, drawing on available data, conducted surveys and carried out extensive interviews with established SME firms in the sector to present a comprehensive picture of the barriers to entry and growth.

The report, *Reversing the Decline of SME Home Builders*, published in January 2017, identified three main areas requiring attention from policymakers:

- Land and planning: Fewer smaller sites were available with a realistic chance of progressing through the planning system, and the speed of achieving a planning consent was a major drag on builders' ability to recycle equity and grow.
- Other public bodies: Beyond just planning, SMEs' interactions with local government, especially in relation to the approval and adoption of highways was emerging as a significant cause of delay in the end-to-end planning process.
- Regulation: A raft of new regulations have increased the technical complexity and variety of considerations necessary for the planning and delivery of new homes.

- Finance: Although new development finance providers had entered the market since the financial crisis and previous incumbents had also returned, the terms of development finance were influenced by the perceived riskiness in terms of timescales and execution making growth more difficult to achieve for individual companies.

It is the perceived additional risk and complexity in the planning process, along with the potential for delay, that has fundamentally changed the typical development finance terms available to SME home builders. Even where sites have allocations in local plans or outline planning consents, finance providers have insufficient confidence in the process to deliver in a reasonable and foreseeable timescale. As such, the 'pari passu' equity withdrawal dynamics that were a feature of development finance for previous generations of SMEs are no longer commonplace meaning that small developers only receive a return towards the very end of the sales process. Recycling equity at the rate that had been possible in previous decades is no longer possible and thus the growth from developing, say, two sites simultaneously to having a business with the capability to develop four or five sites at a time is extremely challenging.

Even where the Government has made multiple efforts to support SME developer finance, it has also taken a cautious approach to planning risk for small sites and small builders.

Town and Country Planning (Environmental Impact Assessment) Regulations 2017

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 were introduced with the objective of streamlining the burgeoning administrative burdens on developers, councils and other stakeholders involved in carrying out Environmental Impact Assessments (EIAs). EIAs had grown over time and gained increased prominence, forming an important part of the development management system in England.

The regulations modified the EIA production process in a way designed to reduce burdens while maintaining environmental safeguards. As part of the changes, the Government introduced a new requirement for the EIA to be produced by a 'competent expert'. The LPA also has a duty to ensure it has sufficient expertise.

In March 2023, DLUHC conceded that the regulations were contributing to 'the high costs and administrative burden associated with EIAs in the town and country planning system', stating:

> *'Contrary to the intentions of the regulations, there is still evidence of high costs and significant administrative burden associated with conducting an environmental assessment under the TCPA EIA regime, with a resulting impact on businesses.'*[29]

The Government's Post-Implementation Review (PIR) of the regulations cited research showing that:

> *'An average environmental statement for a 500-home development cost £150,000-£250,000; took 8-18 months; and ran to 4,350 pages.'*[30]

The research found that the cost of EIAs on a Contracts Finder database ranged from £150,000 to £1 million. The coordination of EIAs is estimated to require between 0.2-3 Full-Time Equivalent (FTE) workers plus 6-10 technical specialists and take 'almost 55

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[29] Post-Implementation Review: Town and Country Planning Act (Environmental Impact Assessment) Regulations 2017, 17 March 2023
[30] *Ibid*

days of effort on average'.[31] While these estimates are based on a typical 500 home site, the costs of providing EIAs on smaller sites will be proportionately similar on a per unit basis and perhaps even greater. All of these pre-permission costs are incurred at the company's own risk. For those reliant on project-based finance this will be prior to securing development finance on the scheme.

The Government PIR stated that the regulations had resulted in:

> *'Extended time periods for preparing EIA applications, increased costs and delays in the processing of EIA applications by authorities as they procure external support, all adding to the administrative burden of EIAs to business. An example from the Contracts Finder database shows £2.5m allocated for a 3-year EIA review contract by a London planning authority.'*[32]

The fear of legal challenge was deemed to be the predominant reason for the expansion of materials produced through EIAs.

The Government plans to replace the current EIA process with a new process as part of proposals in the Levelling Up and Regeneration legislation first introduced to Parliament in May 2022.

Housing White Paper

In 2017, then Housing Secretary, Sajid Javid published a Housing White Paper which acknowledged that too few homes were being planned for and built. The Government proposed a new methodology for assessing housing needs of communities and a Housing Delivery Test which would build on the provisions of the NPPF to introduce more effective sanctions on councils that consistently fail to meet local needs.

Letwin Review

At Budget 2017, the Chancellor commissioned a review into build out rates on residential development sites. Chaired by Sir Oliver Letwin, the review published its final report in October 2018.[33]

The final report made a series of planning-focused recommendations and explored the dynamics of absorption rates in local housing markets. Letwin also considered non-market factors as influencers of build out rates, including:

- lack of transport infrastructure;
- difficulties of land remediation;
- delayed installations by utility companies;
- constrained site logistics;
- limited availability of capital;
- limited supplies of building materials; and
- limited availability of skilled labour.

[31] *Digitising the Environmental Impact Assessment Process* (March 2020), Digital EIA Project Partners, page 28
[32] Post-Implementation Review: TCP Act Regulations 2017
[33] *Independent Review of Build Out: Final Report* (2018), Rt Hon Sir Oliver Letwin

At the time of the review, with housing supply still increasing rapidly, Letwin particularly highlighted the insufficient availability of skilled bricklayers as ‘a binding constraint’ on housing delivery.

New Homes Quality Board

Following an Inquiry into the Quality of New Build Housing in England by the All-Party Parliamentary Group for Excellence in the Built Environment in July 2016, from early 2017, the industry began work on enhancing the consumer redress mechanisms and consumer protections that had been introduced by the Consumer Code for Home Builders in 2010. HBF commissioned an independent review of consumer protections which pointed to a lack of redress coverage in the first two years after moving in. While the Consumer Code had addressed several issues flagged by the OFT in 2008 relating to the sales process, a new set of measures would be needed to protect consumers after completion.

Following years of work with stakeholders and industry, the New Homes Quality Board (NHQB) was established in 2021 to raise funds, develop enhanced provisions and appoint and oversee a New Homes Ombudsman service. The NHQB will also ensure that poorly performing developers are properly sanctioned where necessary.

2010s legacy: a summary

Housing supply increased each year from 2013, reaching a peak prior to the Covid-19 pandemic with 251,000 units delivered (gross) in 2019/20 (243,000 net). The planning system and incentives for local planning authorities (coupled with lack of investment and resource in planning at a local level, lack of development finance and increased regulation) saw increased delivery of housing through bigger sites only deliverable by large home builders while SMEs struggled to navigate the system.

By the end of the decade, the largest 10 UK home builders by volume were responsible for around 35% of new build completions, largely unchanged from the previous decade.[34]

	2008	2010	2012	2014	2016	2018	2019	2020	2022
Largest 10 completions	82,222	48,928	48,773	59,048	71,835	80,794	84,065	87,899	90,077
Largest 25 completions	105,389	66,564	65,364	77,411	98,089	110,055	110,148	114,942	117,267
Completions	-	-	-	-	-	-			
England (DLUHC)	200,300	124,200	128,160	130,340	163,940	195,390	214,410	219,120	210,070
Wales (StatsWales)	8,664	6,174	5,575	5,843	6,900	6,663	5,777	6,037	5,273
Scotland (Scottish Govt)	25,788	17,128	16,075	15,139	16,850	17,563	21,267	22,124	21,580
Total GB completions	**234,752**	**147,502**	**149,810**	**151,322**	**187,690**	**219,616**	**241,454**	**247,281**	**236,923**
Largest 10 %	**35.0%**	**33.2%**	**32.6%**	**39.0%**	**38.3%**	**36.8%**	**34.8%**	**35.5%**	**38.0%**
Largest 25%	**44.9%**	**45.1%**	**43.6%**	**51.2%**	**52.3%**	**50.1%**	**45.6%**	**46.5%**	**49.5%**

[34] Housing Market Intelligence reports, 2008 to 2022; DLUHC Live Table 120 (24 November 2022); StatsWales ‘New Dwellings’ report (9 March 2023); Scottish Government ‘Housing Statistics Quarterly Update (24 Jan 2023)

2020s

Natural England interventions

As well as planning policy changes, planning at a local level and home builder activity is also subject to often seismic shocks. Since 2019, government agency, Natural England has been empowered to impose bars on planning permissions being granted for a variety of environmental reasons often very tenuously linked to housing let alone new housing supply.

Nutrient neutrality:

Since 2019, the building of an increasing number of homes has been delayed due to new rules on 'nutrient neutrality', following the European Court of Justice in 2018 known as 'Dutch N' which caused Natural England to revise its guidance to local authorities. The current advice is that local authorities should apply the 'precautionary principle', whereby it is necessary for all new development of any kind involving overnight stays (i.e. new housing and hotels) to be 'nutrient neutral', i.e., that the amount of nitrates or phosphates entering the water system as a result of a new development must be offset by the removal of an equivalent amount of these nutrients from elsewhere.

The Government acknowledges that the principal source of nutrient pollution comes from agriculture, particularly poultry farming, and that the only effective means of addressing the issue other than changing agricultural practices is to adequately treat wastewater. However, the performance of water companies in this regard has been poor. To tackle the situation, in 2022, the Government announced that it would give water companies until 2030 to upgrade infrastructure.

Currently, 74 local authorities have been told that that development in 'catchments' around some waterways cannot proceed unless developers are able to ensure their schemes are nutrient neutral. The requirements to achieve nutrient neutrality are exceptionally difficult for home builders to achieve. As a result, home building has been essentially completely halted in these areas and it is estimated that around 120,000 homes are currently held up in the planning system as a result.

Developers are significantly impacted by the mitigation measures introduced by Natural England,. In many areas, pollution is attributable to agricultural activity more than homebuilding. Poultry farming, with its intensive production of phosphates, is a particularly sizeable contributor. Despite this, Natural England has not intervened in the planning process to prevent any new poultry sheds from being developed. In one local authority area alone, applications for several new intensive poultry farms are currently under consideration by councils. Just one of these will involve the expansion from 32,000 battery hens to almost 100,000, trebling the amount of phosphorous being emitted. To meet nutrient neutrality requirements, some developers have purchased and fallowed pig farms or trout farms.

Government has attempted to facilitate the introduction of mitigation schemes that would see developers purchase credits to achieve nutrient neutrality, but four years after the challenge emerged, few schemes are in place and where they are they involve significant costs that threaten the viability of developments.

The 74 affected authorities have historically delivered an average of 51,000 new homes every year prior to restrictions being imposed.

Because of the restrictions imposed in the catchments, ranging from the Tees Valley to Cornwall, developers have focused land acquisition and investment elsewhere resulting in a two-tier market for development land, particularly around the borders of catchments. With a small number of geographically concentrated development sites often all under moratorium owing to Natural England intervention and with no means of exiting, the situation grows more dire by the month. Many have already been facing into the consequences of this Government action for several years.

Water neutrality:

In the autumn of 2021, Natural England imposed further restrictions on development in the Arun Valley area, with the building of new homes blocked because of the perceived impact of new homes on water use and, potentially, the habitats for a breed of aquatic snail. While presently confined to a small geographic area, similar restrictions could emerge in other areas of the country.

There is not presently a centralised strategic offsetting scheme to address water neutrality issues. Instead, developers are required, at their own cost, to create their own offsetting schemes to show local authorities that water usage in the water catchment area has been reduced by the relevant amount. This has a significant knock-on impact on budgets and timelines.

The affected catchments delivered an annual average of 2,100 new homes prior to restrictions being imposed.

Recreational Impact Zones:

Following analysis undertaken by a consultant on behalf of Natural England, development has been halted around a number of national parks and other ecological areas, due to a concern that planned increases in housing in these areas will result in an increase in the use of sites for walking, jogging and other recreational activities.

The measures can take effect within 15km of a protected site, including the Chiltern Beechwoods, the New Forest and Strensell Common in York.

It is expected that mitigation measures will be required to resolve perceived issues presented by housing growth in the area, but this will require a 'strategic, proportionate, and co-ordinated approach, [through] partnership working across a range of local authorities and stakeholders'.

There is currently no long-term solution in place. While in some areas, developers are able to proceed if they make a financial contribution to the local authority, most affected areas have no mitigation approaches agreed and there is therefore very limited scope for development to proceed.

Air quality mitigation:

Although not yet in place, Natural England has employed consultants to consider development 'mitigation' measures to address air pollution. It is likely that the interventions will block development within 10-20km of protected areas because of the perceived potential impact of additional car journeys. Since 2022, new homes are required to be built with Electric Vehicle charging points but this is not expected to be sufficient to satisfy Natural England's requirements. Low Traffic Neighbourhoods, not always welcomed by councils and communities may be an appropriate mitigation measure, but could present other issues for developers.

Planning for the future White Paper

In 2020, the then Secretary of State for Housing, Robert Jenrick, launched the Government's Planning for the Future White Paper. The document proposed a range of reforms to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and make more land available for development where it is needed.

The reforms, particularly the proposed new method for calculating local housing need were controversial and following the defeat of the Conservatives in the Chesham and Amersham by-election, in which planning was a central issue, the Government changed direction. Its new approach to planning reform was subsequently set out in in the Levelling Up and Regeneration Bill and accompanying policy paper.

Industry launches Deposit Unlock

To improve access to high LTV mortgages for new build homebuyers, HBF, Homes for Scotland and 17 home builders launched the Deposit Unlock scheme in 2021. Deposit Unlock is an industry designed and funded mortgage indemnity scheme that gives buyers access to 95% LTV mortgages on new homes.

The scheme, similar in structure to the previous NewBuy scheme but without any Government involvement, sees participating developers provide lenders with a guarantee against relevant losses if and when they occur. The home builder pays around 2.6% of the total value of the property with the contribution split between the purchase of an indemnity on behalf of the lender and another part which is held on deposit to cover the first of any loss on the loan.

Following its launch, the scheme has been made available to the wider home building industry and by March 2023, almost 50 companies had adopted the scheme alongside three mortgage lenders – Nationwide Building Society, Newcastle Building Society, and Accord (Yorkshire Building Society).

For buyers, the product will not provide mortgage finance as affordably as Help to Buy did with those Help to Buy mortgage deals priced typically as a 75% LTV loan and on which homeowners paid interest on the 75% provided by the lender but not, for the first five years, on the 20% Government equity loan. Because Deposit Unlock involves the developer guarantee the lender up to the loss of 35% of the value of the property, the mortgage offered by the lender is a standard 95% LTV and is thus priced as such.

Raft of new building regulations take effect

2021 began an influx of new Building Regulations, increasing the cost and complexity of housing delivery:

- An enhanced Part M on accessibility
- A revised Part L increased the fabric energy efficiency of new homes by 31% compared with existing standards
- The creation of a new Building Regulation, Part S, requiring new homes to be equipped with Electric Vehicle charging points
- A new Part O on Overheating
- Part F on Ventilation

All of these changes took effect between June 2021 and February 2023 and represent a major increase in the cost and technical complexity of housing delivery, even ahead of the step change required for the Future Homes Standard in 2025.

While larger developers have the ability to employ specialists and invest in the new technologies that are increasingly required in the delivery of new homes by spreading these fixed costs across a large development footprint, the additional costs and the complexity associated with these new measures make small-scale development even more challenging.

First Homes

Following the end of the Starter Homes programme, the Government announced plans in 2021 to proceed with its First Homes policy. First Homes are discounted market sale units which allows FTBs to purchase a new build home for between 30-50% less than its market value. In addition to being FTBs, purchasers must be able to get a mortgage for at least half the price of the home and have a household income of no more than £80,000 (£90,000 in London). Once purchased, the home can only be sold on to someone who's also eligible to buy a First Home and the buyer must be offered the same percentage discount the original purchaser received based on the home's market value at the time of sale.

The first homes were sold and occupied under this scheme in November 2021. A programme of 1,500 First Homes is being rolled out in over 100 locations across England.

Residential Property Developer Tax

In April 2022, UK house builders begin paying the £2.5 billion Corporation Tax surcharge, the Residential Property Developer Tax (RPDT) to fund over 18 million buildings built by foreign developers and other parties. RPDT will see larger UK builders charged a 29% rate of Corporation Tax. Overseas developers, where they pay any Corporation Tax will only be liable for 25%, giving them an in-built advantage over domestic builders.

When HM Treasury consulted on the new tax in 2021, the consultation document stated that the tax would represent 'a fair contribution from the largest developers' towards addressing the building safety crisis:

> *'Given the significant costs associated with the removal of unsafe cladding, the government believes it is right to seek a fair contribution from the largest developers in the residential property development sector to help fund it.'*[35]

Self-remediation of 11m+ buildings

In early 2022, the Housing Secretary wrote to UK home builders to seek a voluntary commitment of £4 billion towards the remediation of over 11 meters buildings. In a letter from a DLUHC Director General in February 2022, the DLUHC proposed 'voluntary' contributions from UK developers. The 'mechanics' were to be set out in the future but the Government was seeking 'a float amount' to cover the first year of a new remediation scheme with subsequent contributions to be 'made annually by Developers' and 'subject to intra-year special contributions, if required'. Developers were told that failure to comply would result in their legal inability to secure planning consents or building control certification.[36]

In response, 49 of the country's largest developers make a voluntary commitment to self-remediate any buildings over 11 metres that they have developed in the past 30 years where these are deemed to have life-critical fire safety issues. The same developers will reimburse any public funds that have been paid to the owners of these buildings. The pledge is unprecedented as it sees developers going back to make adaptions to buildings that were built to the building regulations of the day.

The Housing Secretary subsequently conceded Government's own failings in overseeing an inadequate building regulations regime.

[35] *Residential Property Developer Tax: Consultation on policy design* (HM Treasury), April 2021
[36] Letter from DLUHC to residential property developers,

Building Safety Levy

In early 2023 Government recently consulted on another £3 billion UK builder tax, the Building Safety Levy to fund remediation of 11-18 metre buildings. This will take the total UK home builder tax liability for building safety issues to £5.5 billion in addition to the estimated £2.5 billion+ on self-remediation. This new tax will be paid by all builders, of all sizes, on all developments to raise £300 million per year over 10 years.

In its consultation on the new Levy, DLUHC suggested that rates may be set at local authority level and that there may be multiple local rates depending on the type of development. With the Levy expected to take effect in April 2024, it is still unknown what these rates will be and exactly how the funds will be collected, but it will have an impact on sites already in design and planning stages.

Biodiversity Net Gain (BNG)

As announced in the 2019 Spring Statement by then Chancellor Philip Hammond, new legislation would introduce a mandatory requirement for all development in England to demonstrate a 10% increase in biodiversity on or near development sites. The mandatory net gain will come into law in autumn 2023 but is already effectively in place across much of England.

It is expected that the cost to industry will be around £220 million per year but the priority for home builders and policymakers alike in the short-term is to ensure that an effective and operational credits system is in place for sites where on-site net gain may not be possible. For smaller sites provision of on-site BNG measures will be especially challenging and so SMEs are likely to be more reliant on off-site credits which could differ considerably in cost and availability across different regions and areas.

The requirements will necessitate additional on-site infrastructure and facilities, much of which may need ongoing maintenance and thus funding mechanisms will need to be carefully considered, particularly in light of attention on deployment of estate charges. BNG requirements will mean additional complexity in designing, building and selling new homes and developments with a level of technical and environmental expertise that has hitherto been employed by only the largest builders. BNG requirements will also cost more on greenfield and rural sites where smaller developers may be considered to be most prevalent.

Levelling Up and Regeneration Bill

On 11 May 2022, the Levelling Up and Regeneration Bill (LURB) was introduced to Parliament in support of the Government's manifesto commitment to level up the UK. As part of this, it includes a range of measures to the planning system which the Government hopes will deliver more beautiful and greener homes, with the associated infrastructure and democratic support that residents want.

In an impact assessment published in December 2022, the Government expanded on this by saying the Bill "would give local communities more tools to bring about regeneration, including through a planning system that places beauty, infrastructure, democracy, the environment and neighbourhoods at its heart".

Government plans a roll-back of NPPF provisions

Since its introduction in 2012, the NPPF has helped to drive up housing supply with a presumption in favour of development, measures to speed up decision making and encourage localism and ensures that local authorities have in place an up to date development plan, or Local Plan, for their area.

Policy uncertainty since 2020 has slowed plan-making and reduced permissions, a problem that has worsened since the publication of the NPPF consultation just before Christmas. HBF's housing pipeline report, published in December 2022, finds that quarterly planning approvals are 25% below the levels seen in 2019, when housing supply was at its peak, with a general downwards trend starting to appear over the last couple of years.

The proposed NPPF changes, particularly those to plan making and housing land supply, will make this situation worse. Analysis from Lichfields produced for HBF and LPDF finds that the changes have the potential to suppress annual housing delivery, with a 77,000 drop in supply as compared to the most recent statistics on net additions to the housing stock.

Complex new drainage regime

In January 2023, ministers announced that following a review undertaken in 2022 the Government will implement Schedule 3 of the Flood and Water Management Act 2010 in England. The implementation of Schedule 3 will introduce a mandatory Sustainable Drainage Systems (SuDS) regime. The Government's aim is to commence the mandatory SuDS regime during 2024.

The new regime could have significant implications for developers. It will mean that drainage arrangements for new development will need to be approved by the relevant SuDS Approval Body (SAB) before construction can commence. The right to connect to public sewers will be dependent on this being approved as part of the drainage proposals for a development. Schedule 3 will also require a new set of national standards for SuDS to be agreed which could affect the amount of developable land available within sites and funding will need to be provided for SuDs maintenance over time.

Because the SuDS will likely entail additional green spaces on sites which are unlikely to be adopted by councils it is expected to make long-term maintenance of sites more complicated with greater potential for estate charges to be required.

Industry steps up planning for Future Homes Standard

The Future Homes Standard will be the most significant step forward in energy efficiency ever taken, necessitating a wholesale change of heating technology in new homes and setting the roadmap to Net Zero. As well as individual company research and development to prepare for the new standard, industry collaborates with other stakeholders to create the Future Homes Hub supporting developers of all sizes to ready themselves for a seismic change to building regulations and the way new homes are constructed.

Working with Government departments and other stakeholders and recognising the challenges that SMEs will face in the adoption of the Future Homes Standard, HBF began work in 2020 that has led to the creation of the Future Homes Hub. The Hub relies on larger developers sharing research and conclusions with small firms as the Hub considers recommendations for the shape and specifications of the new standard.

2020s: the story so far

In the early years of the current decade the housing debate has become more contentious owing to perceived influence of planning and housing on by-election results and wider politics. Key policymakers have taken a very specific view of home building companies and the Government has gradually shifted a from a strongly pro-development policy agenda.

Additional taxes on development, significant hurdles at a local level and the revisiting of the provisions of the NPPF that have successfully delivered housing numbers between 2013 and 2022, are already beginning to roll back the sustained growth in net housing supply achieved in the decade. Furthermore, the expansion and rapid change of regulatory standards encompassing new areas of development will continue to increase costs for builders. As well as higher design and building costs, the changes increase the complexity of design and construction necessitating more technical and specialist expertise.

APPENDIX 1 – TIMELINE

Key:

Market

Planning

Regulation

Tax

Finance

Government

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1980s – MIRAS, expansion of mortgage credit

1990 – Town and Country Planning Act 1990

1991 – Planning and Compensation Act 1991

1991-1992 – Recession

2000 – Planning Policy Guidance 3 significantly prioritises brownfield development over greenfield schemes unless they performed 'so poorly' as to preclude their use for housing. Brownfield development increased from a long-term average of 40-50% of new residential addresses to 70% by 2008 (DLUHC Live Table P226)

The measure will also see the proportion of housing supply derived from apartments rise to 50% but lead to a period of supressed housing supply despite generally buoyant housing markets.

2001 – Housing and planning policy is moved into a new department, the Office of the Deputy Prime Minister

2002 – Housing Market Renewal initiative launches aiming to regenerate eight Pathfinder areas with a vast funding package to refurbish existing homes and build new communities. It would be discontinued in 2011

2002 – First-Time Buyers Initiative is launched which sees Government providing qualifying first-time buyers with equity loans of up to 50% to purchase a new build home

2004 – Government publishes the Barker Review of Housing Supply which provided the Government and industry with 36 recommendations

2004 – Planning and Compulsory Purchase Act introduces a more formal requirement for all LPAs to 'prepare and maintain' a local plan. By 2012 only half of LPAs had a local plan in place

2006 – Department is renamed the Department for Communities and Local Government (DCLG)

2007 – HomeBuy Direct is launched. This first-time buyer support scheme involves Government and home builders each providing a 7.5% equity loan to purchasers. Participation is limited to around 30 builders with few smaller firms able to meet the costs

2007-2009 – Financial Crisis and credit crunch sees many small firms go out of business and even larger companies narrowly avoid existential threats

2008 – OFT market study finds the home building sector to be 'broadly competitive'

2008 – English Partnerships and the Housing Corporation are merged to create the Homes and Communities Agency

2009-2013 – Mortgage availability is severely constrained due to the credit crunch. Even as the market begins to normalise and low mortgage rates stimulate activity in the housing market, new build Loan-to-Values remain even more suppressed than has historically been the case.

2010 – Community Infrastructure Levy is introduced

2010 – Reclassification of back gardens restricts land opportunities for SMEs

2011 – Following the 2010 election, Government relaunches a scheme similar to HomeBuy Direct, now called FirstBuy

2011 – Localism Act abolishes regional planning and gives communities the right to create Neighbourhood Plans

2012 – NPPF introduces effective sanctions to incentivise local planning authorities to adopt up-to-date local plans (although some still do not) and gives developers the opportunity to secure permissioned through appeals. However, the Framework incentivises the allocation of ever larger sites. The outcome is more permissioned plots from the same number or fewer permissioned sites.

2012 – NewBuy is launched. This partnership between Government and the home building industry is intended to de-risk mortgage lending to first-time buyers. The scheme involves developers contributing 3.5% of the value of the property. With a high upfront cost and a reliance on individual lenders choosing which developers to partner with, only around 25 developers participate.

2013 – Help to Buy is introduced with three objectives – to improve access to affordable mortgages for creditworthy households, increase housing supply, and boost the economy. Unlike previous schemes of its kind, builders are not required to originate their own equity loans. Rather than dozens of home builders participating this Government scheme sees universal participation among home builders with thousands of registrations.

2014 - In December 2014, the Coalition Government announced a starter homes initiative which was intended to deliver 100,000 discounted starter homes for first-time buyers.

2014 – Government launches Builders Finance Fund following lack of success for other SME developer finance initiatives. It is administered by the Homes and Communities Agency (HCA) and will subsequently be relaunched as the Home Building Fund and the Levelling Up Home Building Fund.

2016 – Mortgage Credit Directive is implemented. Prevents home builders from offering their own shared equity mortgage support schemes unless they are fully FCA regulated. Shared equity products had been a staple of the industry prior to 2013, including some in partnership with Government.

2016 - Housing and Planning Act 2016 made numerous changes to housing policy and the planning system. It provided the legislative framework for the Starter Homes initiative and gave the Secretary of State greater powers to intervene to require an LPA to get on with making a plan.

2017 – Housing White Paper acknowledges that too few homes are being planned for and built. Government proposes a new methodology for assessing housing needs of communities and a Housing Delivery Test which would build on the provisions of the NPPF to introduce more effective sanctions on councils that consistently fail to meet local needs

2017 – Industry begins journey towards creation of New Homes Quality Board and New Homes Ombudsman

2018 – The Ministry of Housing, Communities and Local Government (MHCLG) replaces DLCG as a reflection of the prioritisation of housing in the Government's agenda

2018 – The Homes and Communities Agency is replaced by Homes England

2018 – Letwin Review of housing development build out rates is published

2018 – In 2018/19, net housing supply surpasses 240,000 per year for the first time in more than three decades. The following year, further increases are recorded. This is the first time net supply has exceeded 240,000 in two consecutive years since the Second World War. (figures for the 1950s and 1960s are averaged over a decade and recorded as 215,000 in the 50s and 224,000 in the 60s having been offset by an estimated 50,000 to 80,000 demolitions per year). 2019/20 sees total supply (gross) reach 251,000.

2019 – Nutrient neutrality requirements are imposed on development in the Solent. Covering multiple local authority areas, the Government's agency, Natural England, in reference to an EU court judgment deem that development cannot take place unless 'nutrient neutrality' can be demonstrated and take effect. The cause is the nitrate pollution of waterways which Government acknowledges is primarily caused by agricultural practices and the failure of water companies to treat waste water adequately. In some limited cases home builders purchase pig farms or trout farms. By fallowing these sites, nutrient neutrality can be achieved and planning processes can continue.

2020 The then Secretary of State for Housing, Robert Jenrick, launched the Government's Planning for the Future White Paper. The document proposed a range of reforms to streamline and modernise the planning process, improve outcomes on design and sustainability, reform developer contributions and make more land available for development where it is needed.

2021 – Nutrient neutrality requirements spread to cover almost 30% of the country. Beyond nitrates, phosphate pollution is now considered a principal cause with specific links to intensive poultry farming. The 74 councils with moratoria on development range from the Tees Valley to Cornwall. More than 100,000 plots with some form of planning status (from Local Plan allocation to detailed planning consent) are estimated to be affected. The Government gives water companies until 2030 to upgrade waste water facilities. Until then development is suspended in these areas.

2021 - Following the end of the Starter Homes programme, the Government announced plans to proceed with its First Homes policy. First Homes are discounted market sale units which allows FTBs to purchase a new build home for between 30-50% less than its market value.

2021 – The Department for Levelling Up, Housing and Communities (DLUHC) replaces MHCLG reflecting the importance of Levelling Up in the Government's agenda

2022 – The Levelling Up and Regeneration Bill is introduced to Parliament

2022 – Government relaunches Home Building Fund for SMEs, now called 'Levelling Up Home Building Fund'

2022 – 49 of the largest UK home builders voluntarily pledge to self-remediate any buildings over 11 metres that they have developed in the past 30 years where these are deemed to have life-critical fire safety issues. The same developers will reimburse any public funds that have been paid to the owners of these buildings. The pledge is unprecedented as it sees developers going back to make adaptions to buildings that were built to the building regulations of the day. The Housing Secretary subsequently concedes Government's own failings in overseeing an inadequate building regulations regime.

2022 – HMT implements the Residential Property Developer Tax. This 4-percentage point surcharge on Corporation Tax is a £250m per year tax payable by 20-30 of the largest UK home builders. It is expected to raise £2.5bn to fund remediation of cladding defects on high rise buildings. No overseas developers or Build to Rent developers, regardless of size, will pay the tax as it is focused only on UK companies building homes for private sale.

2022 – Help to Buy scheme comes to an end having supported around 350,000 first-time buyer households to purchase new build homes over the preceding decade. The scheme has generated a net return of £500m from the first 101,000 equity loans repaid by households up to March 2022.

2022 – New Homes Quality Board becomes fully operational

2023 – Government consults on removing key aspects of the NPPF that are designed to ensure councils plan for the right number of homes; 50 councils immediately postpone Local Plan creation and adoption, and in some cases override existing Plans

2023 – Biodiversity Net Gain requirements are formalised to take effect from November 2023. In practice many councils are already instituting the policy which necessitates a 10% uplift in biodiversity on all new sites.

2024 – Building Safety Levy expected to be introduced. This will be a £300m per year tax on all developments and paid by all house builders. The £3bn intended to be collected through this the BSL will raise funds for the remediation of mid-rise buildings with cladding defects

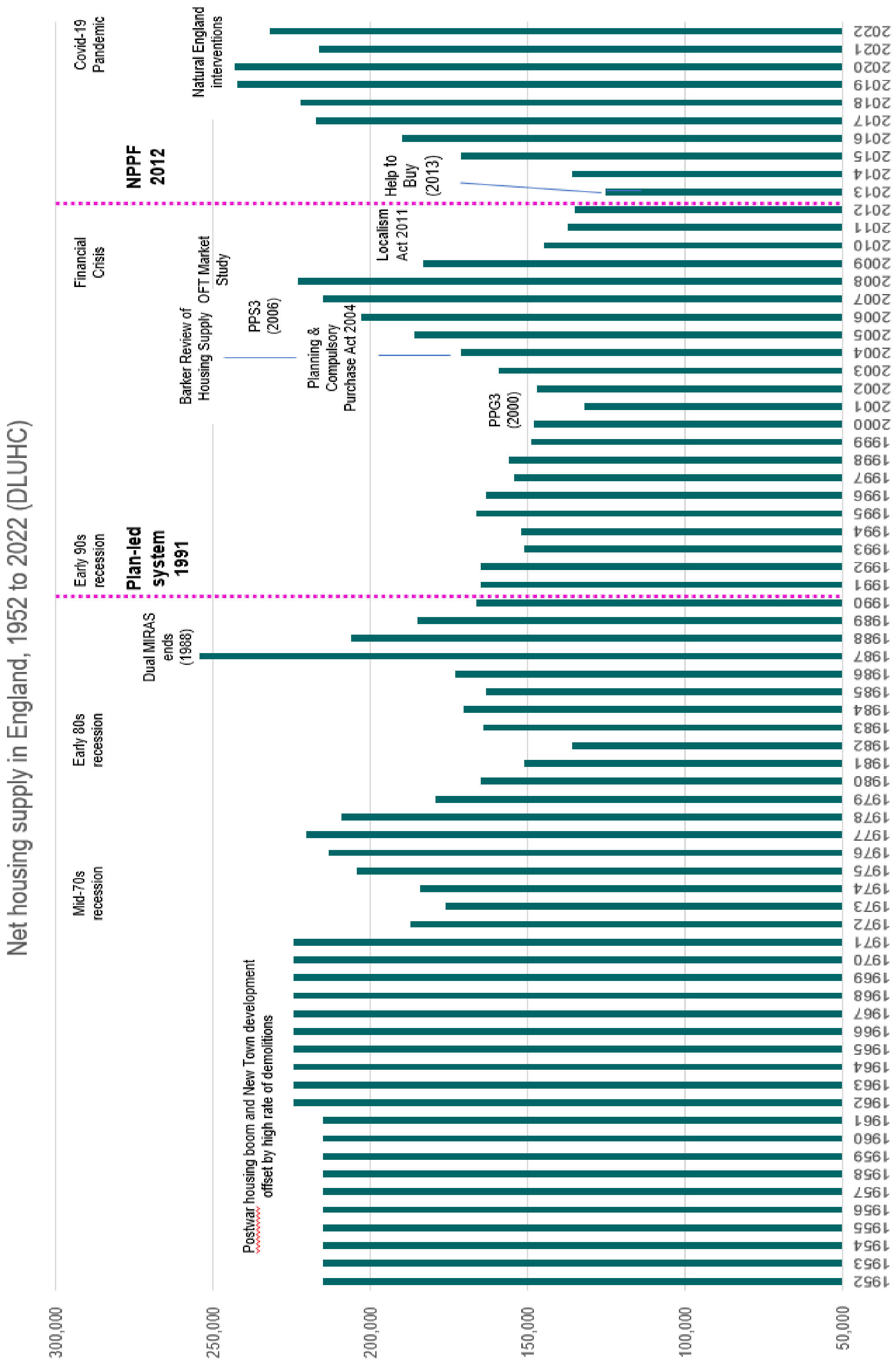
2024 – A new Sustainable Drainage Systems (SuDS) regime will require costly and complex drainage arrangements on new sites from 2024. It is also expected to require funding for the long-term maintenance of the SuDS and are unlikely to be adopted by local authorities.

2025 – Future Homes Standard will be the most significant step forward in energy efficiency ever taken, necessitating a wholesale change of heating technology in new homes. As well as individual company research and development to prepare for the new standard, industry collaborates with other stakeholders to create the Future Homes Hub supporting developers of all sizes to ready themselves for a seismic change to building regulations and the way new homes are constructed.

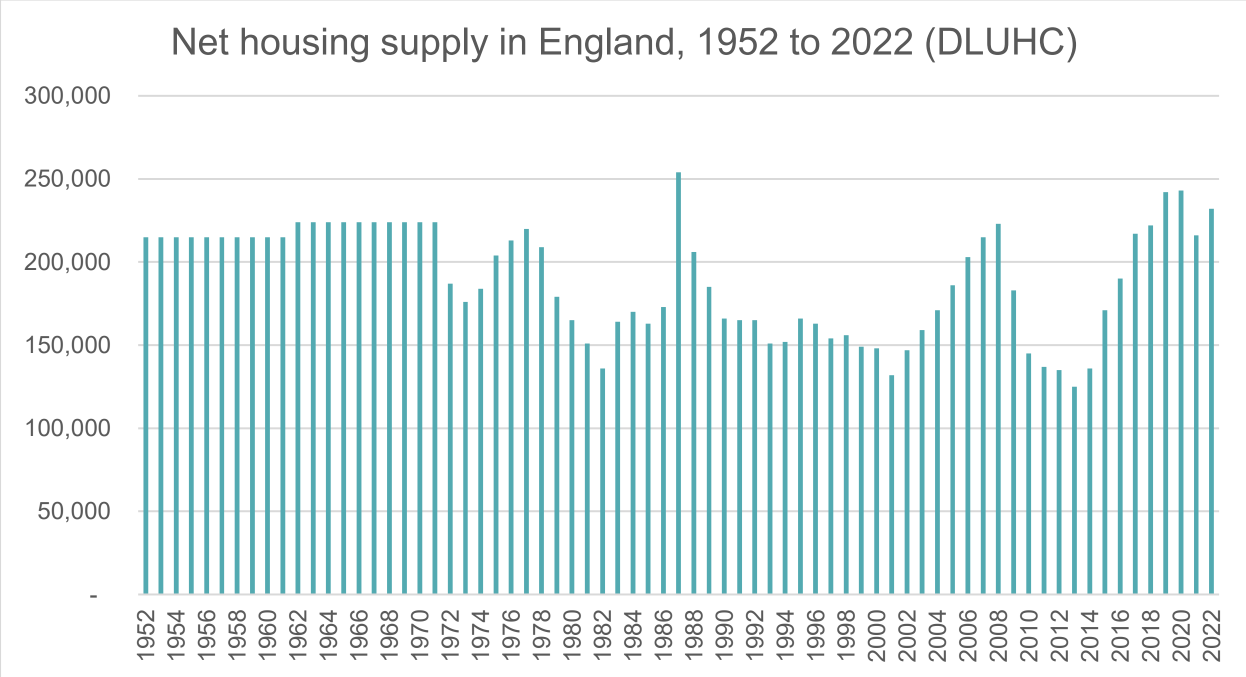
APPENDIX 2

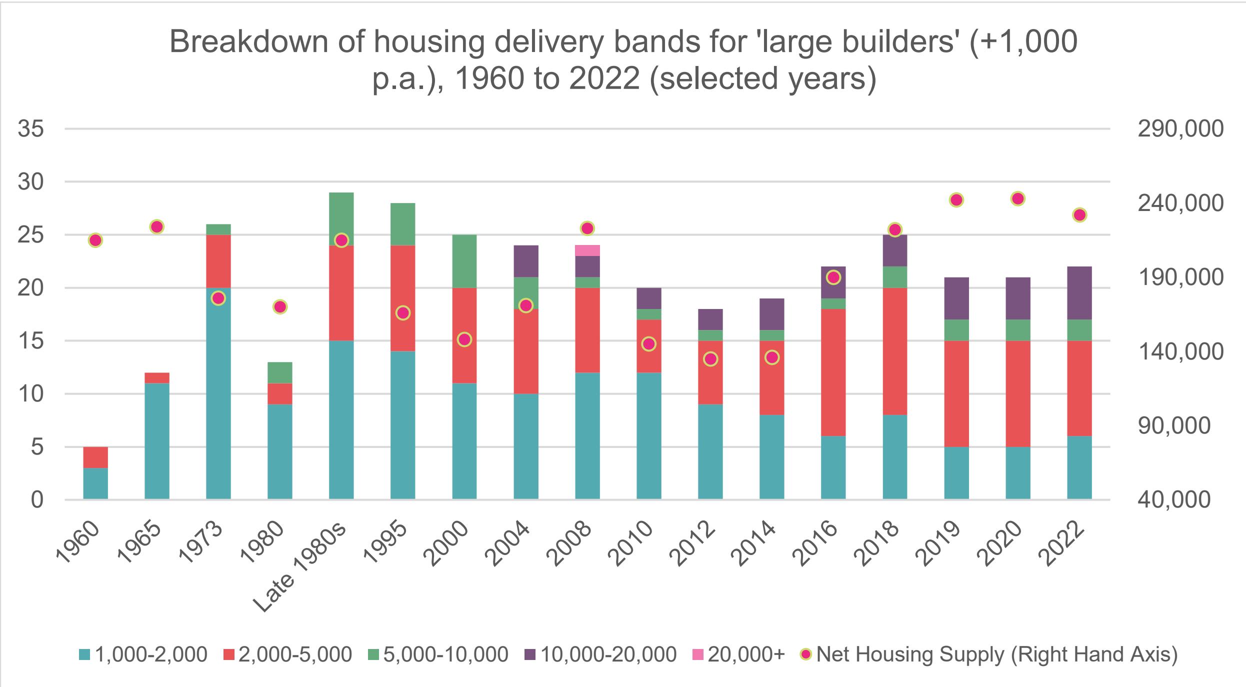
				Firms building more p.a. than					
	Output of largest 10	Share of new build completions	Share of total housing transactions	1,000	2,000	5,000	10,000	20,000	Source
1960	16,000	9%		5	2	0	0	0	Wellings 2006 (page 105)
1965	18,000	9%		12	1	0	0	0	Wellings 2006
1973	33,000	18%		26	6	1	0	0	Wellings 2006
1980	36,000	28%		13	4	2	0	0	Wellings 2006
Late 1980s	51,000	27%		29	14	5	0	0	Wellings 2006
1995	48,400	32%		28	14	4	0	0	Wellings 2006
2000	63,300	44%		25	14	5	0	0	Wellings 2006
2004	76,100	46%		24	14	6	3	0	Wellings 2006
2008	82,222	35%		24	12	4	3	1	HMI report and housing stats (HBF)
2010	48,928	33%	5%	20	8	3	2	0	HMI report and housing stats (HBF)
2012	48,773	33%	5%	18	9	3	2	0	HMI report and housing stats (HBF)
2014	59,048	39%	5%	19	11	4	3	0	HMI report and housing stats (HBF)
2016	71,835	37%	6%	22	16	4	3	0	HMI report and housing stats (HBF)
2018	80,794	37%	7%	25	17	5	3	0	HMI report and housing stats (HBF)
2019	84,065	35%	7%	21	16	6	4	0	HMI report and housing stats (HBF)
2020	87,899	36%	8%	21	16	6	4	0	HMI report and housing stats (HBF)
2022	90,077	38%	7%	22	16	7	5	0	HMI report and housing stats (HBF)

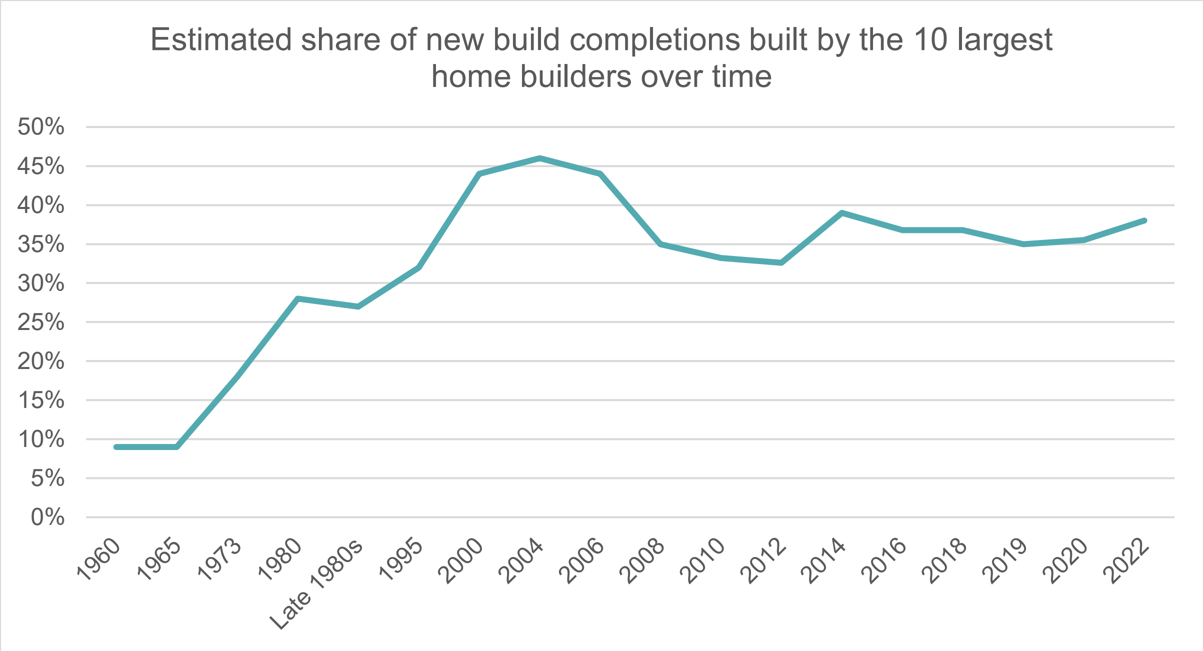
APPENDIX 3 – HOUSING SUPPLY OVER TIME



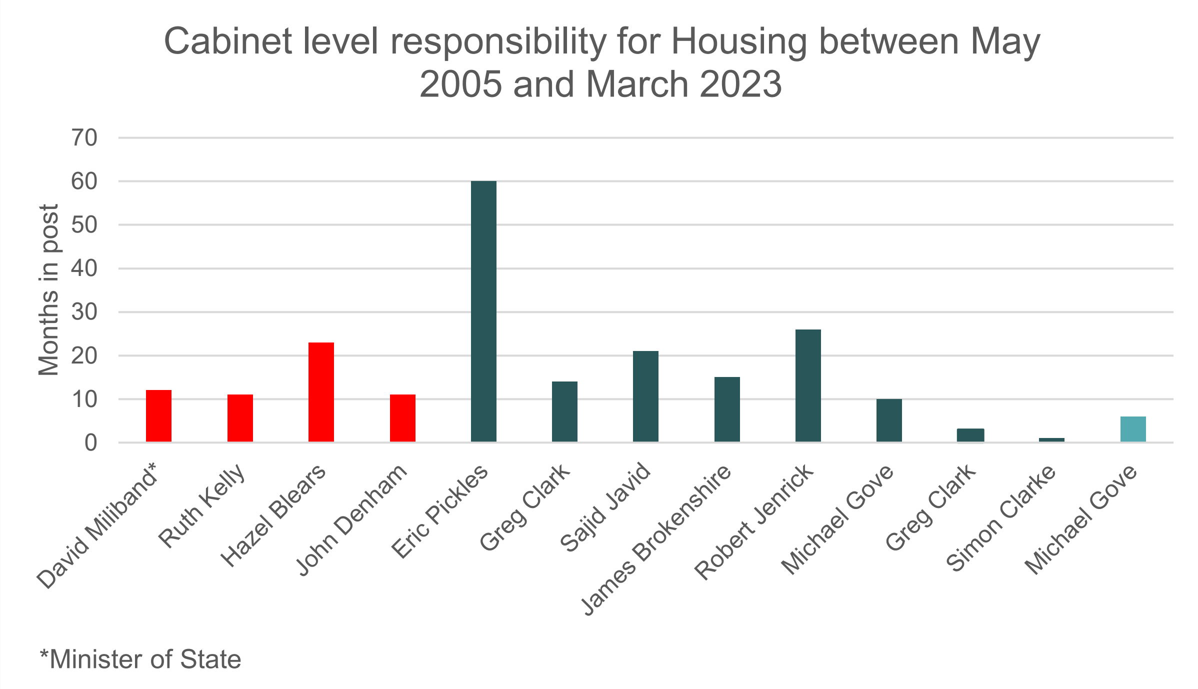
APPENDIX 4 – OTHER CHARTS

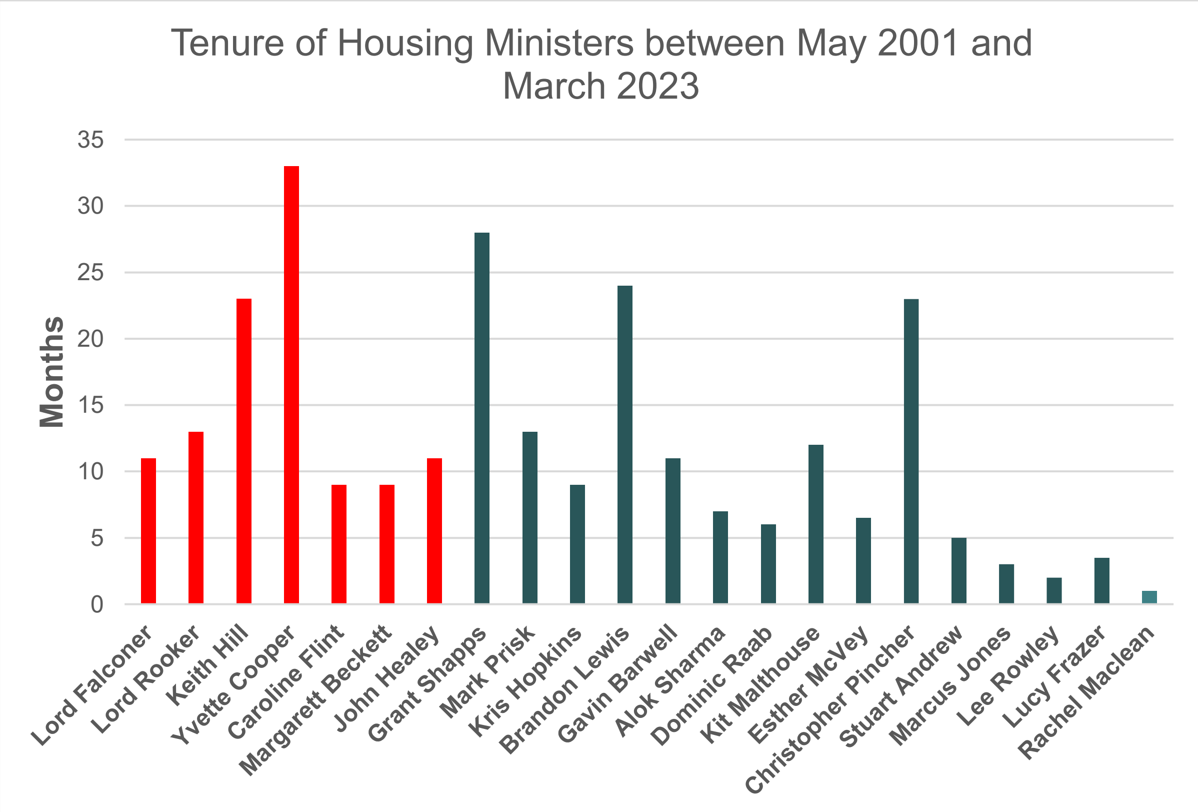





Estimated share of new build completions built by the 10 largest home builders over time
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
1960
1965
1973
1980
Late 1980s
1995
2000
2004
2006
2008
2010
2012
2014
2016
2018
2019
2020
2022

APPENDIX 5 – POLITICAL RESPONSIBILITY FOR HOUSING IN GOVERNMENT SINCE 2001





Annex 2: Industry Changes since the 2008 OFT Report

Industry changes since the 2008 OFT Report

March 2023

1 Introduction

The Office of Fair Trading (the "**OFT**") published a report in 2008 following the conclusion of its market study into housebuilding (the "**OFT Report**").[1] The OFT Report set out a series of recommendations to enable the housebuilding sector to serve consumers and their communities more effectively. This note provides an overview of whether and how these recommendations have been implemented by the various stakeholders involved (including housebuilders and central, regional and local Government).

2 The OFT Report and changes stemming from it

2.1 Overview

The recommendations in the OFT Report are largely twofold, and focus on:

(i) rebalancing the relationship between developers and consumers, to imbue greater transparency, means of redress and fairer contractual terms governing developers' relationships with consumers; and

(ii) maximising the overall supply of new housing by lending support to small and medium-sized enterprises ("**SME**") and self-builders.

2.2 Housebuilders-led changes

Housing developers and the broader industry have collaborated to develop and implement wide-reaching industry codes which have significantly improved the relationship between developers and consumers. These have built upon the OFT Report (as well as the Barker Review of Land Use Planning in December 2006)[2] and, more recently, the Excellence in the Built Environment All Party Parliamentary Group report *More homes Fewer complaints*[3] that was published in 2016 (with a follow up report, *Better redress for home buyers*,[4] 2018) that made the establishment of an independent ombudsman scheme its number one recommendation.

The following provides further detail on the industry's self-regulation measures introduced in response to the OFT's recommendations.

2.2.1 Consumer Code and Ombudsman service

The Consumer Code for Homebuilders ("**CCHB**" or the "**Code**") was set up in response to the OFT Report. It placed a range of new requirements on builders in terms of how they treated customers, in particular, with regard to the sales process and to information provision. The Code also provides an Independent Resolution Service for customers who had a dispute with their builder over issues covered by the Code. The Code is operated by the largest warranty providers.

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1 *Homebuilding in the UK*, A market study, OFT1020, Office of Fair Trading, September 2008 (the "**OFT Report**").

2 Kate Barker, Barker Review of Land Use Planning, December 2006 (the "**Barker Report**").

3 All Party Parliamentary Group for Excellence in the Built Environment, More homes, fewer complaints, July 2016.

4 All Party Parliamentary Group for Excellence in the Built Environment, Better redress for homebuyers, June 2018.

Mortgage lenders required homes on which they were lending to be built by builders participating in a Chartered Trading Standards Institute ("**CTSI**") approved code. Because the CCHB put in place qualifying criteria that some warranty providers could not meet, a number of other consumer codes were subsequently established.

In 2016, the all-party parliamentary group ("**APPG**") published a report making a number of recommendations with regards to improving build quality and customer service, including that an Ombudsman be established. In making this recommendation, the APPG concluded that the Code(s) had not delivered on the OFT conclusion that a greater supply of new housing must not come at the expense of quality or the expectation of homebuyers.

The report's publication coincided with a drop in the industry Customer Satisfaction Survey scores, that saw the overall industry score for the key question of "*would you recommend your builder to a friend*?" drop from 90% of customers answering yes to 84%. It also came amidst a series of negative reports about the service being provided by housebuilders.

HBF set up a number of working groups, comprising of representatives from across the sector, including house builders, warranty providers, existing code bodies, mortgage lenders, conveyancers (among others) to consider the recommendations made in the APPG report.

To inform this work, HBF commissioned WPI Economics ("**WPI**") to undertake a review of the existing protections in place and identify any gaps in those protections. Their report Consumer protection in the new homes market made a number of key observations:

(i) the Code body and board should be independent of industry;

(ii) the proliferation of codes is confusing for consumers;

(iii) independent redress via an ombudsman should be considered;

(iv) the Code has fulfilled many of the criteria of a good scheme as outlined by the OFT, and by design covers off issues surrounding the sales process and occupation, but that it has limited remit, and there are real concerns with regards to consumer protection on issues that occur post sale and occupation;

(v) robust protections for customers with issues post occupation (snags, defects, complaints about the service/quality) need to be introduced.

HBF continued to lead a number of stakeholder working groups, to consider how to take forward the work streams and liaised closely with Government to ensure its developing workstreams aligned with the relevant emerging legislation (via the Building Safety Bill). HBF's objective throughout was to put in place a new framework that would (i) be more robust and would fill the gaps in existing protections, in particular with regards to post occupation issues; (ii) deliver against the recommendations made by the APPG; (iii) remove the warranty providers as the arbiters and owners of the Code and so put more responsibility to deliver on house builders; and (iv) create a new independent framework, that would align with emerging legislation and ultimately lead to the operation of a single industry code of practise.

In 2019 HBF appointed Natalie Elphicke (now MP, and a well-respected housing expert who has co-authored reports on housing for Government and has set up the Housing and Finance Institute) as the "New Homes Quality Champion" to lead on taking the work forward.

Elphicke's appointed and subsequent work let to the launch of the interim New Home Quality Board ("**NHQB**" or the "**Board**") in May 2020, in advance of a full launch in February 2021. The Board comprises of senior representatives from consumer groups, house builders of all sizes, mortgage lenders, warranty providers, conveyancers and a number of independents. HBF (and Homes England) provide representative board members.

In 2022, Elphicke stood down and Rob Brighouse, who has a background in the rail industry, was appointed as independent Chair.

The new framework will deliver a step change in the industry's approach to quality and service. The main planks of the NHQB's new framework are:

(i) A new industry code of practise - the New Homes Quality Code (the "**New Code**") - that builds on the existing Consumer Code but places significantly more requirements upon builders. The New Code was subject to a full public consultation in early 2021 before being finalised and published later that year.

Arguably the biggest challenge for industry is that the New Code is principles-based. The 10 principles that underpin the New Code are: fairness, safety, quality, security, responsiveness, transparency, independence, inclusivity, security, compliance. This means that, regardless of whether the builder has built to the relevant technical standards or Building Regulations, or even adhered to the letter of the requirements of the New Code, if the New Homes Ombudsman Service ("**NHOS**") deems that the builder has breached any of the principles – such as not having treated a customer "fairly" - the NHOS could rule against them. Additionally, the New Code enhances protections as follows - it:

(a) **Protects vulnerable customers**, prohibiting high pressure selling and requiring any deposits the customer pays to their builder to be protected.

(b) **Requires the developer to provide all relevant information about the home during the sales process** – including its tenure and any future management or service charges – that allows them to make an informed decision about their purchase.

(c) **Sets out requirements for a fair reservation agreement**, including a 'cooling off' period; and sales contract requirements.

(d) Allows customers to have a professional carry out a **pre-completion inspection** of their home on their behalf.

(e) Specifies that a home must be 'complete', preventing builders paying customers to move into an incomplete new home early.

(f) Crucially, and to address the biggest gap in the existing arrangements, the New Homes Quality Code requires builders to have an **effective after care service** in place to deal with any issues or 'snagging' problems customers have with their new home, together with a robust complaints process that responds to customers concerns in a timely manner and to their satisfaction, keeping them informed throughout. If a customer is not satisfied with how any complaint they have made has been dealt with, they can refer their complaint to the independent New Homes Ombudsman Service ("**NHOS**"). The Code is very specific about how a builder has to deal with any "snags" and how a complaint must be handled. It requires them to (as a minimum):

- Work with customers to identify any so called “snagging” issues, and then to deal with them within 30 days. If they don’t – or indeed the customer has another issue with their builder – they can make a complaint and the New Code places some specific requirements on builders, not least with regards to timeframes, in terms of how to deals with that complaint. These include a requirement to:
  - Provide written acknowledgement of the complaint within five days;
  - Send the customer a “path-to-resolution” letter within 10 days, outlining how they will investigate the complaint;
  - No later than 30 days from the complaint start date, the developer will send the customer a complaint assessment and response letter that set out in full how the issues are being addressed, with timelines.
  - At eight-weeks (56 days) if the complaint is not closed, the builder must write to the customer to update them and set out how the complaint has been resolved and if not why and what the timeline is.
- After 56 days, if the customer remains unhappy with the solution or the performance of the builder through the complaints process, they can take their case to the NHOS, free of charge.

The NHQB has committed to undertaking a full formal review of the New Code on a regular basis, the first of which will take place next year.

(ii) The establishment of an independent New Homes Ombudsman Service (“**NHOS**”). The NHQB worked closely with the Ombudsman Association to develop a tender process that aligned with both their requirements in terms of qualifying criteria (on independence and structure, etc.) and also aligned with Crown Procurement rules, (in the event the Government wants to make the appointed NHOS statutory). The Dispute Service, which has a track record of similar service provision in the rental sector, was selected in November 2021 as the NHOS following a rigorous decision-making process.

All of the new arrangements are paid for by industry, via an annual registration and renewal fee that is based on the size of the company (turnover / number of homes delivered) such that the largest companies pay up to £300,000 and the smallest pay as little as £1,000.

The NHQB has a governance structure that draws on independent committees representing Governments of the four home nations, consumers, and industry. All the developing proposals were aligned with emerging legislation. The Building Safety Act provides the Government with the powers to now put an ombudsman on a statutory footing, and all indicators are that they are supportive of the model as introduced by the NHQB. Launch events were held in the Autumn of 2022 to mark the first builders ‘going live’ at which relevant ministers from the UK Government and devolved administrations were present.

2.2.2 Customer Satisfaction Survey and Star Rating scheme

In tandem with this work, HBF has also been reviewing the Customer Satisfaction Survey and Star Rating scheme. The scheme was set up in 2005 following recommendations made in the Barker Review of 2004 and has become the go-to barometer of industry performance for a range of audiences.

The Customer Satisfaction Survey is operated by the National House Building Council ("**NHBC**"). who sends out survey forms to all the customers of builders for whom they provide a warranty. NHBC send out forms at 8 weeks and 9 months. HBF awards a star rating to participating members based on customer responses to the 8-week survey to the key question, "Would you recommend your builder to a friend?" (HBF has put in place an accreditation scheme whereby other warranty providers can apply to send out survey forms subject to the successful completion of an audit by Ipsos Mori. MD Insurance passed the audit to survey the customers of the builders it provides warranties for last year)

The original methodology for the scheme was designed by Ipsos MORI ("**IM**"). IM carried out a review of it in 2017 (that broadly gave the survey a clean bill of health) and were again commissioned last year to undertake a further review. The key drivers for the most recent review were to understand how the survey and star rating needed to be revised to reflect the changes being introduced by the NHQB, and how it could be used to drive industry improvements.

Since its introduction, and the early years of the scheme when most builders published 2/3/4- star rating scores, builders worked hard to ensure they were delivering a service that improved their survey scores and star rating. The timing of the survey at 8 weeks has always been a point of debate. The Barker Review (and OFT) made a series of recommendations as to how builders needed to improve their performance through the sales process. It was felt that 8 weeks would thus be a good time to survey customers and would ensure they were still able to reflect on the sales process, as well as their impressions of their new home. It is clear from the survey scores and more broadly, that the industry has to a large extent improved its performance through the sales process since 2004.

The focus now is more on the need to improve post occupation performance, and the survey needs to align with the new requirements of the NHQB's New Code and its focus on how builders handle any complaints customers have about their new home.

IM were thus asked to consider the timing of the survey and the basis of the award of a star rating. Their recommendations are in the main that:

- the industry should look to incorporate customer responses from both the 8-week and 9-month surveys into the star rating award; and
- the award should be based on responses to two questions from each survey:
  - *How satisfied were you with the quality of your home?*; and
  - *How satisfied were you with the service provided by your builder?*; and
- more information from the survey should be made available to the general public.

HBF is now working with industry, the NHQB and other related stakeholders on how these recommendations can be best introduced.

HBF has been working with its members since 2016 to ensure they are aware of the developing proposals. The first builders went live with the new arrangements last Autumn and any customers reserving a new home post their builders go live or 'activation' date, are covered by the requirements of the new code and have recourse to the independent NHOS in the event they have an issue with their builder. As of March 15, over 30 companies have now gone live (accounting for an estimated third of the total new build sales market) whilst another 200 have registered with the NHQB and are working towards activation. Once all of those activate, we estimate that this would cover c. 80% of the market.

The New Code is a major step forward in terms of consumer protections and presents significant challenges to builders to implement, and requires major changes to processes and systems, plus in terms of staff training, but all HBF's major members are committed to activating along with a growing number of smaller members.

2.3 Government-led changes

While housebuilders have been implementing significant changes in their business models, customer communications strategy and terms and conditions since 2008, regulatory change has been comparatively slow and insufficiently radical to address the underlying deficiencies in the planning system, such that housebuilders (especially SME housebuilders) remain in a weaker position to tackle the barriers to entry and expansion which they face. Neither have reforms equipped the sector to achieve the UK's goal of net zero by 2050.[5] Some examples of areas where Government has failed to sufficiently address the OFT's recommendations, notably around challenges faced by SME housebuilders, are detailed below.

2.3.1 Community Infrastructure

The OFT recommended the introduction of delayed payments for small firms liable for the then planned-for Community Infrastructure Levy ("CIL") "to ease the up-front cash requirement". Although regulations were made following the introduction of CIL that allow local authorities to modify the payment profile of CIL charges, no overarching measures were adopted by the Government at the time or any of its successors.

2.3.2 Innovation

In 2008, the OFT recommended that the then-Department for Communities and Local Government ("**CLG**") and the Welsh Government put in place measures to ensure SMEs have access to the necessary technologies to deliver "net zero". However, little has improved in the way of support and resources for SME developers as they continue on the journey to "net zero".

This remains a challenge today with industry now working towards the implementation of the Future Homes Standard in 2025. As part of this pathway to "net zero", major changes to regulations took place in 2022. The changes, specifically relating to energy and sustainability, were cited by 86% of SME builders in a recent survey as being a major or minor barrier to growth. Over the long run it is

[5] George Clarke, *Homes - the biggest zero-carbon challenge*, 31 January 2022.

often the complexity and uncertainty of delivering new standards that causes the greatest disadvantage to small firms.

It is for this reason, and with the recommendation of the OFT in 2008 in mind, that HBF led on the establishment of the independent Future Homes Hub which will support the industry in the delivery of the Future Homes Standard which will represent a huge step-change even from recent building regulations changes. While the Hub's work has been actively supported through funding and expertise by the largest home builders, along with financial contributions from relevant Government departments, the outputs, including via a specific working group, will support all participants in the market.

2.3.3 Development finance

The OFT concluded "t*hat access to finance is a limiting factor to entry but it is a more significant* limiting *factor to expansion*" and again, this is an issue which has continued to challenge SME developers.

While the quantum of finance has improved during the 2010s, the terms on which that finance is available means that recycling equity on developments takes considerably longer than in the past, hampering firms with big growth ambitions. Indeed, 42% of respondents to HBF's 2022 SME survey said development finance was either a minor or major barrier to growth. This demonstrates that there is still considerable work to be done, particularly within certain regions of the country.

Lenders have drastically changed their attitudes to the sector since the Global Financial Crisis and the recent Covid-19 pandemic and current economic challenges have compounded the problem. Underlying all of this is the uncertainty inherent in the planning process which, inevitably, tempers the approach of banks and specialist funders who have diminished visibility as to when they will see their capital repaid. In fact, a third of respondents to HBF's SME survey said that either access to or the terms of development finance had been impacted by planning delays.

The difficulties for SMEs that relate to planning risk and how this influences development finance terms, have been acknowledged by Government through its various schemes and funds which have attempted to improve development finance availability through taxpayer loans and other instruments in the period between 2010 and 2022.

However, these have largely failed to cut through the issue, because the terms put forward on many occasions by the responsible Government agency, Homes England, have also taken a cautious approach to the planning risk incurred on sites operated by smaller firms. It should also be noted that Government schemes have often replicated the input/output of equity profiles in the wider market and have been predicated on companies and directors with existing track records in the sector, an acknowledgement of the risks and level of expertise required.

Implementation of the OFT's recommendations

OFT recommendation	Implementation action(s)
Self-regulatory scheme	
Code of conduct – the OFT recommended[6] (and a number of industry stakeholders committed to), the introduction of a self-regulatory system which includes a code of conduct which meets the consumer protection concerns raised in the OFT Report. The OFT implemented four key milestones for the industry to meet in order to develop and implement a fully operational code of conduct by March 2010.[7] In the event that the industry failed to make adequate progress, the OFT recommended immediate further intervention in the form of a statutory redress mechanism for new homebuyers funded by a levy on the industry and capable of awarding redress and compensation for any failings in the sales process, shortcomings in contracts, delays or faults.[8]	Currently, there are a number of codes in operation, which are operated by the warranty providers. The code that a customer will be covered by depends on which warranty provider the builder of their home uses. There is one dominant scheme covering c. 90% of the market (The Consumer Code for Home Builders). A second "main" code that is operated by a number of smaller warranty providers (The Consumer Code for New Homes), and then a number of other codes operated by individual warranty providers. Each aims to ensure that housebuilders treat new home buyers fairly:[9] • April 2010: Introduction of the CCHB Code.[10] The CCHB Code applies to all consumers who reserve to buy a new or newly converted home built by a housebuilder under the insurance protection of one of the following supporting home warranty bodies: NHBC, LABC Warranty, Premier Guarantee and Checkmate.[11] (who joined at a later date having operated their own code for some years).These reportedly cover around 95% of all new homes built in the UK.[12] • December 2021: New Homes Quality Board (the "**NHQB**") publishes the new code of practice for the house building industry. The NHQB is an independent not-for-profit body which was established for the purpose of developing a new framework to oversee reforms in the build quality of new homes and the customer service provided by developers. The framework was introduced in 2022 and has delivered a step change in developer behaviour, a consistently high standard of new home quality and service, and strengthened redress for the purchasers of new-build homes where these high standards are not achieved. The NHQB was formally

6 In this recommendation it followed up on and endorsed the original recommendation for such a code from the 2004 Barker report.

7 OFT Report, paras 1.17; 7.2; 7.4; 7.6-7.7

8 OFT Report, para 7.7.

9 See: Consumer Codes, *Information for homeowners.*

10 The Consumer Code for Home Builders can be found here.

11 See: www.nhbc.co.uk/homeowners; www.labcwarranty.co.uk; www.premierguarantee.com; www.checkmate.uk.com.

12 See: *Home Warranties Explained*.

OFT recommendation	Implementation action(s)
	constituted as a legal entity in January 2021 and the board members were appointed with representatives from consumer bodies, the lending industry, Homes England, independent members, developers and providers of new home warranties, to deliver its objectives. [13] The NHQB Code is applicable for homeowners who buy from a "Registered Developer". As of 13 March 2023, there are 129 active developers and 325 applications pending for developers to become "Registered Developers".[14]
Transparency of sales information provided to consumers[15] – • Housebuilders or their sales teams (and/or estate agents) should provide accurate and fair information about the sale of a new home (for example, the standard of the home, the time it will take to construct it, planning permissions, specifications, building and environmental regulations and warranty cover etc.). • Housebuilders do not exclude or limit liability for any oral or written statements which may cause a homebuyer to buy a new home (for example, statements made by their sales team and/or estate agents or in brochures). • Housebuilders or their sales team and/or estate agents provide all relevant pre contract information (for example, the reservation agreement and the contract of sale) to the homebuyer as soon as the homebuyer demonstrates a genuine interest in purchasing the new home and before payment of a reservation fee. Alternatively, it is made clear that the reservation fee is refundable (less a small and justifiable administration charge if necessary) if the homebuyer (or their legal representative) is unhappy with the contract of sale. • Housebuilders and their sales teams and/or estate agent provide accurate information as to the true legal status of the reservation agreement. The	• The CCHB Code includes 19 requirements and principles that home builders must meet in their marketing and selling of homes and their after-sales customer service. These general principals are followed by more detailed guidance, notably in relation to: ▪ **Sales and marketing:** Alongside the general principle that sale and advertising material should be clear and truthful,[16] the CCHB Code includes details of pre-purchase information which should be provided to home buyers in order to enable them to make a suitably informed decision (including but not limited to an explanation of warranty cover and the any fees, liabilities and management services),[17] as well as information which should be specified in a reservation agreement.[18] ▪ **Employee training:** All employees and agents used by a developer to interact with buyers must be appropriately trained and familiar with the CCHB Code.[19] ▪ **Appointment of legal advisors:** Customers must be informed of the need to appoint legal advisers and/or mortgage intermediaries for the sale formalities.[20]

[13] See: Homepage (nhqb.org.uk).

[14] See: Register of Developers (nhqb.org.uk).

[15] OFT Report, para 7.5.

[16] CCHB Code, para 1.5.

[17] CCHB Code, para 2.1.

[18] CCHB Code, para 2.6.

[19] CCHB Code, para 1.4.

[20] CCHB Code, para 2.5.

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homebuyer clearly understands whether or not the reservation agreement prevents the housebuilder from selling the new home to another homebuyer. • Housebuilders and their sales teams and/or estate agent provide accurate information as to the contents of the contract. • Housebuilders ensure that the homebuyer is provided with accurate and full information about any maintenance fees.	• The NHQB Code is founded on 10 general principles[21] and establishes an obligation for developers to provide to new homes' buyers fair and complete obligation (in plain language) about their purchase. Further guidance relates notably to: ▪ **Sales and marketing:** This includes, but builds on, the requirement under the CCHB Code and provides that sales and marketing to be clear, fair and not misleading, legally compliant and use plain language.[22] The NHQB Code also provides that developers specifically consider the needs of vulnerable consumers in their sales and marketing materials.[23] Finally, in order to imbue greater transparency and facilitate consumers' improved means of redress, the NHQB Code includes obligations to clearly communicate to the consumer that a developer is a registered developer and will thereby conform with the provisions in the NHQB Code. ▪ **Describing the new home:** The NHQB Code includes a series of characteristics which must be included in materials to inform consumers of specific details of properties.[24] ▪ **Employee training:** All employees and agents used by a developer to interact with customers must be appropriately trained and familiar with the NHQB Code.[25] The NHQB provides on-line training modules that the major builders are putting all their thousands of staff through. ▪ **Part-exchanges and assisted move schemes:** These must be explained in clear, fair and complete terms and in plain language, and include details specified under the NHQB Code.[26] ▪ **Appointment of legal advisors:** Customers must be informed of the need to appoint legal advisers and/or mortgage intermediaries for the sale formalities. Developers can recommend specific advisers (not impose them or offer incentives to direct the customer's choice), and if they do so, they

21 Fairness, safety, quality, service, responsiveness, transparency, independence, inclusivity, security, and compliance.

22 NHQB Code, para 1.1.

23 NHQB Code, para 1.1.

24 NHQB Code, para 1.2.

25 NHQB Code, para 1.6.

26 NHQB Code, para 1.4.

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	must be clear about the fees/benefits they obtain from such recommendation.[27]
Re-balancing the scales between housebuilders and consumers • Homebuyers are given a reasonable period to look at the pre contract information supplied and if they choose to consult a lawyer and negotiate terms (for example regarding the reservation agreement and contract of sale) they can do so before parting with any money unless the reservation fee is refundable (less a small and justifiable administration charge if necessary). • Housebuilders ensure that the reservation agreement clearly allows the homebuyer to obtain a refund of their reservation fee if the sale does not go ahead, subject to the housebuilder's right to deduct a reasonable administrative fee that reflects the true cost of providing the reservation agreement. The refund should be available on the day the reservation period expires or within say 7-14 days after that date. • There is: (a) rectification of problems notified to the housebuilder by a homebuyer within a reasonable time, but without causing significant inconvenience to the homebuyer, and (b) if those problems are not resolved the homebuyer has a right to obtain compensation for out-of-pocket expenses, distress, inconvenience and loss of facility. • Where there is unreasonable delay in the completion of the construction of a new home it is made clear to the homebuyer that they can issue a 'completion' notice: (a) requiring the housebuilder to complete the works within specified time; and (b) giving the homebuyer the right to cancel and claim damages and interest if the notice is not complied with. • Standard terms and conditions concerning liability for delay should be brought in line with the (already existing) OFT guidance on unfair terms so that	• **No high-pressure selling techniques:** The NHQB Code prohibits the use of high-pressure tactics include encouraging a reservation by implying that other customers are interested or that prices will increase (if not true); by a financial incentive; by refusing the opportunity to personalise the new home when it would still be possible; encouraging the purchase of unnecessary insurance products; and suggesting that the sale may not proceed unless a specific third party advisor is hired by the customer.[29] • **Early bird option (pre-reservation):** allows purchasers to be informed and secure a plot in a development. The developer can charge a fee of max £150 (subject to periodic increases by the NHQB Code). The developer must be clear about the deadline for acceptance and the refundability conditions. The full fee must be refunded if the customer confirms that they do not wish to proceed with the purchase within the 24h after being communicated of the offer. Eventual charges for letting this period elapse must have been clearly communicated to the customer prior to the acceptance of the early bird option agreement.[30] • **Reservation agreements:** These may not be undertaken unless all material facts are available to all parties. If a formal reservation is agreed, the customer must be given a signed copy in which the terms and clearly set out. The terms of reservation must be exhaustive, clear, fair and written in plain language. In particular, the customer must be informed of the cancellation conditions and the refundability terms, and there is a 14 calendar-days "cooling off" period in which the reservation fees must be refunded in full.[31] • The developer must clearly state what will happen if the construction of the new home is delayed and under what circumstances the Customer can terminate the contract of sale. The NHQB Code refers to the possibility of issuing a "Notice to Complete", and requires the developer to define the legal completion period

27 NHQB Code, para 1.7.

29 NHQB Code, para 1.3.

30 NHQB Code, para 2.1.

31 NHQB Code, para 2.2.

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housebuilders cannot exclude liability (for example, for delays due to labour disputes or labour shortages that may in fact be in their control).[28]	between the issuance of such notice and completion, but does not specify any particular obligations regarding the conditions of issuance of the notice or the specific cancellation rights linked to it.[32]
Public disclosures – the OFT report recommended that (in order to help offset the asymmetry of information between homebuyer and housebuilder which leads to the inability of the prospective buyer to choose the highest quality housebuilder) the results of the redress scheme (in terms of the number and outcomes of complaints against housebuilders) should be made public to support prospective buyers in assessing the quality of a given housebuilder.[33]	• Cases adjudicated under the CCHB Code are now being published (anonymously) on the CCHB Code website.[34] The NHQB has said that it will publish anonymised case studies and industry trends initially but that ultimately it will "name and shame". Because of the timelines, the first cases have not as yet been referred to the NHOS. Publishing these, on an anonymised basis, will be a useful guide as to the approach of the NHOS. Clearly until the majority of the industry is "live" it would not be fair to publish specific details about those companies who have proactively activated early.
Compliance with laws – housebuilders have reviewed the contents of their reservation agreements and contracts of sale to ensure compliance with all relevant consumer protection legislation, including the Unfair Terms in Consumer Contract Regulations 1999.	• The NHQB Code explicitly provides that (i) it does not impact consumers' existing legal or statutory rights and (ii) consumers need not pursue a course of action through the New Homes Ombudsman Scheme where alternative courses of action such as action through the civil courts or other applicable ombudsman services or regulator(s) are available.[35] Compliance is also one of the ten key principles of the NHQB Code.
Dispute resolution mechanism – the OFT considered that an effective self-regulatory system required an independent, fair, effective and efficient dispute resolution system to be put in place for homebuyer complaints in relation to new homes – covering the whole process of buying a new home and all items included in the price of the home[36] (as the OFT had found that the then-current system provided insufficient redress to homebuyers[37]).	• The CCHB Code provides for "*free*" and "*speedy*" Independent Dispute Resolution Scheme to determine a housebuilder's responsibilities, without a buyer having to take to legal action, applicable for complaints made up to two years from the date when the Home Warranty Body's insurance certificate starts.[39] • The NHQB Code establishes the New Homes Ombudsman scheme that has been approved as an ombudsman scheme by the Ombudsman Association. In the event of a dispute between a customer and developer this provides free, independent

[28] OFT Report, paras 6.63 – 6.64; also para 6,70.

[32] NHQB Code, para 2.7-2.8.

[33] OFT Report, para 1.19.

[34] Adjudication case summaries: Anonymised summaries of the cases that have been referred to the Independent Dispute Resolution Scheme can be seen here.

[35] NHQB Code, December 2021, Part 4.

[36] OFT Report, paras 7.5; 7.7-7.8.

[37] Ibid., paras 6.36-6.54.

[39] Accessible here.

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The OFT suggested that the proposed dispute resolution / redress scheme should include the then-existing system of warranties, which was covered by the Financial Ombudsman's remit. The OFT therefore raised the possibility that the entire homebuilding industry, rather than just the warranty/insurance element, could come under the umbrella of the Ombudsman.[38]	redress for the customer. If a builder fails to meet the required standards, or comply with a New Homes Ombudsman decision, this can lead to a range of sanctions for the builder including removal from the register of registered developers.[40] • The Financial Ombudsman regulates organisations providing financial products – an activity that warranty providers undertake in providing warranties which are insurance products. House builders as such would not seem to fit under this remit. The NHQB and NHOS is very aware of the need for the various Ombudsman services operating in the sector to operate in parallel and is drawing up memorandums of understanding with them to ensure there is clarity of jurisdiction.
Community Infrastructure Levy ("CIL")	
Timing of the CIL – the OFT recommended that consideration should be given to the timing of the payment for the proposed CIL for small housebuilders, noting that (i) since profits are only realised at the end of a project, and the CIL paid at the beginning, this was likely to place extra pressure on small housebuilders;[41] and (ii) if the CIL was extended to self-build developments, it should be paid at the end, rather than the beginning of a project to ease development funding pressure by reducing the up-front pre-mortgage costs faced by self-builders.[42]	Since 2008, there have been a number of amendments to CIL, predominantly designed to broaden the applicability of CIL and to increase local authorities' discretion in how they choose to collect the CIL (e.g. in instalments). A summary of amendments is detailed below. • 2011: Regulations were amended to allow councils to set their own flexible payment deadlines and offer developers the option to pay the CIL by instalments, and removing the £50,000 minimum threshold for payments in kind, so charging authorities can accept a payment in kind in respect of any liability payable to them. Other amendments reduce administrative burdens on councils and developers, and make minor changes to clarify and correct the operation of the regulations.[43] Although local authorities can still allow payment by instalments, the authority may revise or withdraw the policy when appropriate.[44] • 2011: Local authorities are able to contract out / outsource their levy functions to other organisations.[45]

[38] OFT Report, paras 7.16-7.17.

[40] NHQB Code, December 2021, Part 3.

[41] OFT Report, paras 1.20; 7.28.

[42] OFT Report, paras 1.21; 7.27.

[43] The Community Infrastructure Levy (Amendment) Regulations 2011; Explanatory Memorandum to the Community Infrastructure Levy (Amendment) Regulations 2011; Archived: Background CIL legislation and Government documents, Planning Advisory Service.

[44] See: Community Infrastructure Levy - GOV.UK (www.gov.uk), "Can payment be made in instalments?"

[45] Letter to Chief Planning Officers: Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011 and explanatory memorandum.

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	• 2012: Technical changes and amendments to the CIL regulations.[46] • 2013: Regulations were amended to include details of how the CIL would be allocated among local authorities.[47] • 2014: Regulations were amended to include new mandatory exceptions for self-build housing, and for residential annexes and extensions.[48] • 2015: Regulations were amended to extend mandatory social housing relief from the CIL to cover a wider range of dwellings that were rented below the market rate.[49]
Government and regulatory initiatives	
Government initiatives to limit the negative impact of regulatory reforms – the OFT recommended that the "*Government should take steps to ensure that regulatory intervention in the homebuilding industry does not increase the regulatory barriers to entry and expansion.*"[50]	• **Funding support for SME housebuilders**. The Government has committed to support SME housebuilders through its Plan for Jobs initiative, by extending the Short-Term Home Building Fund.[51] In addition, the Government has provided investment to SME developers through the Levelling Up Home Building Fund.[52] Developers and landowners can apply for Government support through the Home Building Fund.[53]
Support for small housebuilders in facing the zero carbon challenge – the OFT recommended that Government and the Welsh Assembly Government should consider the need to assist small housebuilders and individuals building their own homes so that they can access the necessary technologies to overcome the zero carbon challenge (notably since many of the necessary resources come from abroad and small / individual housebuilders were considered unlikely to have the resources and/or knowledge to explore these options.	• The Government has shown little to no meaningful engagement with private individuals and developers seeking to retrofit their homes to be environmentally sustainable.[54] Given the context that new homes comprise only a small minority of the housing market, this lack of engagement should not be ignored by regulators, or the CMA in its consideration of the housing market.

46 The Community Infrastructure Levy (Amendment) Regulations 2012.

47 The Community Infrastructure Levy (Amendment) Regulations 2013.

48 Community Infrastructure Levy, Guidance, Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government, 12 June 2014; Archived: Background CIL legislation and Government documents, Planning Advisory Service.

49 The Community Infrastructure Levy (Amendment) Regulations 2015; Explanatory Memorandum to the Community Infrastructure Levy (Amendment) Regulations 2015.

50 OFT Report, para 4.120.

51 Plan for Jobs, July 2020, HM Treasury, CP 261, para 2.56.

52 Levelling Up Home Building Fund - development finance, Guidance, 2 February 2022.

53 Home Building Fund - Infrastructure Loans, Guidance, 2 February 2022.

54 *Homes - the biggest zero-carbon challenge*, 31 January 2022, G. Clarke.

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Group self-build support by local authorities – the OFT recommended that local authorities support “group self-build” initiatives by making publicly owned land available to overall ‘enablers’ who would then control the overall design of the site, divide it into suitable plots and plan necessary infrastructure to allow people building their own homes to develop these plots.[55]	• The Local Government Association launched a ‘Self and Custom-Build Fund’ which offers support to English local authorities to “unlock and accelerate” the release of sites by September 2024 through capital grant funding. Applications were limited to certain sites.[56] • In 2022, the Government announced that the new Self-Commissioned Homes Delivery Unit would explore integration of self-commissioned home delivery within the Delivery Partner Dynamic Purchasing System[57] and the viability of funding self-commissioned home enablers. Whilst this is therefore in train, this has not been comprehensively explored and implemented since the OFT Report.[58] • In 2021, the Government launched a £150 million “Help to Build” scheme[59] which offered equity loans to individuals seeking to build their own home.[60] The scheme included £2.1 million additional funding to help communities decide where they want new homes, shops and offices to be built and what they should look like.[61] The Help to Build scheme comes in recognition that self and custom build could deliver 30-40,000 new homes a year, potentially comprising a significant contribution to the country’s housebuilding ambitions.[62] The scheme is part of the government’s wider Plan for Jobs as the new plans will also benefit small building firms. SME builders account for 1 in 10 new homes and the scheme is expected to help scale up the number of self and custom build homes built every year.[63]

[55] OFT Report, para 1.23. See also the 2021 Bacon Review (here), Recommendation 3: Support Community-Led Housing, Diversity of Supply and Levelling Up (pp.13-14).

[56] Self and Custom-Build Fund details, Local Government Association.

[57] Government procurement system to bid to develop homes on land from Homes England and other public sector bodies.

[58] *Independent review into scaling up self-build and custom housebuilding: government response*, Policy Paper, 24 June 2022.

[59] Over £150 million funding to kickstart self building revolution, 24 April 2021, Press Release from the Ministry of Housing, Communities & Local Government.

[60] Help to Build: Equity Loan customer guide, 27 June 2022.

[61] Over £150 million funding to kickstart self building revolution, 24 April 2021, Press Release from the Ministry of Housing, Communities & Local Government.

[62] Over £150 million funding to kickstart self building revolution, 24 April 2021, Press Release from the Ministry of Housing, Communities & Local Government.

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