

Vistry Group PLC Response to the Consultation Questions in the CMA's Statement of Scope dated 28 February 2023

Vistry Group PLC (**Vistry**) welcomes the opportunity to participate in the CMA's market study into the supply of new homes to consumers in England, Scotland and Wales, and looks forward to engaging with the CMA productively through the process.

This response sets out our response to the questions contained in the CMA's Statement of Scope dated 28 February 2023.

If the CMA has any questions on our responses below, we would be happy to assist by providing further information.

Consultation Questions

General questions

- 1. Do you agree with our proposed geographic scope for the market study, as set out in paragraph 2.32? If not, why not? In particular, do you think that Northern Ireland should be included in the scope of the market study?**

We agree with the proposed scope of the CMA's market study. However, given that the CMA has indicated that certain outcomes are better in Northern Ireland than the rest of the UK, it may be sensible to expand the scope of the study to allow it to consider what features of the market are working well in Northern Ireland and what lessons can be applied to the market in Great Britain.

- 2. Do you agree with our areas of focus for the market study, as set out in paragraphs 2.1 to 2.31? If not, what other matters should we focus on and why?**

We refer to the Home Builders Federation's (**HBF**) submission to the consultation questions, which we have had benefit of reviewing while preparing our response to the CMA. Broadly, we agree with points raised by the HBF on the areas of focus of the market study, and suggest that the CMA consider the influence of complementary markets (e.g. mortgages and existing homes) on housebuilding, the macroeconomic environment facing the housebuilding industry as a whole, and the complex local and national policy framework.

Further, we wish to reiterate the importance of the following factors which could hinder the effectiveness of the housebuilding supply chain:

- There is currently lack of clarity and consistency in the planning system and policy. In our experience, there are often continuous changes to the planning system, which can lead to some projects being redesigned part way through the development process. More generally, the speed that planning permissions are being progressed by local authorities can slow down the supply of houses to the market.
- The current lending environment for home buyers, in particular the impact of government-backed mortgage schemes for purchasers with low deposits and other first time buyer (**FTB**) products and assistance.
- Regulations and the use of 'modern methods of construction' (**MMC**). In particular, the tension between each LPA's desire to have bespoke and aesthetically pleasing houses but with the energy efficiency standards and benefits that are enabled by MMC, which is by its nature a much more standardised product.

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;**

[REDACTED]

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

[REDACTED]

As a general comment, COVID-19 has had a significant impact on LPAs. It has become much more difficult to progress planning decisions in a timely fashion due to working from home arrangements and illness of key staff.

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

There is generally a low level of concentration in the housebuilding sector at a national level, with the largest 10 developers accounting for approximately 38% of new build completions nationally in 2022.¹

However, this varies from region to region. [REDACTED]

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

We have observed a significant under-delivery of housing in a number of regions relative to local need, ostensibly due to Habitat Regulations (i.e. nutrient and water neutrality and biodiversity requirements etc.)

[REDACTED]

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

Broadly, LPAs are imposing more conditions on new developments than in the past. However, in our experience, some Councils are less likely to add conditions when they are dealing with a partner housing association.

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

We are not aware if the areas listed have a significantly higher proportion of SMEs than in other parts of the UK.

To our knowledge, the areas in the south of England tend to have the highest prevalence of SMEs in the country, particularly the Home Counties.

In those LPAs which have adopted more stringent Habitat Regulations, there appears to be a lower proportion of SMEs because of the costs associated with complying with the regimes and obtaining approval.

4. How can competition in this market be strengthened?

¹ HMI report and housing stats (HBF)

The housebuilding market is highly competitive and there are a large number of firms competing to acquire land to develop and sell residential properties.

This is evident from the fact that the share of new build completions for the largest 10 housebuilders (by output) has not meaningfully changed in the last five years (to 38% in 2022 from 37% in 2018).²

However, we consider that the market would function better with:

- Reforms to the planning regime, to provide housebuilders with greater certainty on timescales for developments. For example, there is currently no centralised body to deal with planning applications and building developers must deal with several stakeholders during the process (e.g. LPAs for planning applications and Department for Environment, Food & Rural Affairs for nutrient neutrality, etc.). The lack of holistic approach creates unnecessary complexity and increases the risk of project delays. Planning risks have grown significantly in recent years, which requires housebuilders to use a greater share of their resources to mitigate risks across the various stages of the development process (which could otherwise be deployed to increase the housing supply). Reforms would help housebuilders more accurately model their investment decisions and allow the market to function more freely.
- Greater support for consumer demand, including a replacement for the Help to Buy Equity Loans. Greater demand will increase supply from both large and SME housebuilders.

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

See response to Q4 above.

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. Including on whether the CMA should make a market investigation reference under section 131 of the Act.

No response.

The operation of the market

As a general comment, we understand the key issues facing the market are:

- **Supply side constraints:** The lack of supply of land and the onerous planning process has a direct impact on the functioning of the land market and significantly increases the cost of land. This restricts some new firms from entering the market and existing firms from expanding their build-out rate.
- **Demand side constraints:** Demand side activity is critical for the market to operate efficiently. Affordable housing grants and FTB support provide housebuilding companies with investment certainty, which supports housebuilders to acquire new development sites.

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

² HMI report and housing stats (HBF)

a. The role of land promoters and land agents in transactions.

In any dealings with land promoters, we ensure that contracts include triggers for certain planning permission milestones, such as s106 and occupation conditions that can at time limit scheme viability and delay the delivery of homes.

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

In our experience, most landowners use land agents when selling land to assess the value of the property, the deliverability of purchasers, and the viability of the scheme permissions.

Land agents will also often recommend using a land promoter because they believe it will support the sale price. In recent years, there has been an increasing prevalence of land promoters in the market.

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

The use of land agents and land promoters can complicate the planning process due to a misalignment of incentives with developers.

Land promoters are typically compensated for securing planning permission and are not involved in the later stages of a housing development. As a consequence, they are not incentivised to concern themselves with the long-term prospects or implementation of the project or the quality of the LPA's planning permission. From the perspective of a developer, the planning permission that has been secured by a land promoter is often not deliverable in its current form and will require amendment to be practically and commercially viable. This includes, for example, renegotiating with LPAs under s106 to include affordable housing. Therefore, developers often end up having to incur additional costs and delay.

We note that, unlike land agents, there are no professional bodies enforcing standards and ethics for land promoters.

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

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

The time and cost for developing new housing sites has increased considerably over the years. This is largely due to: (a) new requirements in the planning system (e.g. sustainability, biodiversity net gain, etc.) and the reports and documentation required to support planning applications; and (b) increased risk of legal challenges to development sites for failing to meet standards imposed on the planning system.

b. Likelihood of success in securing planning permission.

It is difficult to comment on the change in the 'likelihood' of success. As noted above, the planning regime has become more complex, but the likelihood of securing planning permission varies according to the characteristics of each individual development site.

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

This has not changed significantly over time and continues to depend on the specific circumstances in the area under development, for example of the robustness of the market, what other infrastructure is required, and if the LPA has adopted a community infrastructure levy.

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

The current s106 system has been in place for some time and, given this stability, LPAs and developers are familiar with the process.

LPAs conduct a robust negotiation process and have been successful in securing more affordable housing in their regions. The outcomes are regularly tested against the local development plans to ensure they are meeting targets. Practically, this means we allocate at least 20% of each development site to affordable homes.

However, LPAs' focus on more affordable housing in recent years often comes as a trade-off with public amenities that would otherwise be enjoyed by all residents. We note that Vistry developments do not differentiate between affordable and other housing and therefore the need for investment in affordable housing (necessarily utilising some of the land at the site) may be misinterpreted as an underinvestment in public amenities on the site.

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?

In our view, the points raised in response to questions 7 and 8 are determined less by the size of the development and more on the status of the site.

Although larger applications are more likely to be advanced with a draft allocation or adopted allocation, and therefore may have a greater likelihood of success in achieving planning permission at the local level, these sites typically have more significant infrastructure requirements (on and off site). This may reduce the viability of a development project.

Local authorities can also negotiate for affordable housing on larger sites, which can further reduce the viability of a development project if it is not rigorously assessed at the plan-making stage (see questions below).

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

The size and identity of the applicant may affect how it is viewed but generally reputation and a proven track record are more important than size per se. Large developers who have shown themselves willing to provide a greater level of public amenities and affordable housing are likely to have a better relationship with LPAs and to have a better reputation than developers who are not proactive in these areas. However, this may create an expectation on the part of the LPA that the developer will necessarily provide more concessions during the planning process (e.g. over deliver on affordable housing).

Applicants who have an interest in the deliverability of a site (i.e. developers rather than land promoters) are more likely to address viability of a project 'up front' during the negotiation of planning permission (including to provide for affordable housing).

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

The key barriers to the provision for affordable housing are:

- **Existing 'in-house' arrangements:** A majority (~60%) of LPAs already have their own in-house capability or partner to deliver affordable housing.
- **Policy and regulatory burden:** The cumulative burden of policy and regulations affects the capacity and appetite to provide affordable housing (e.g. building codes, safety regulations, habitat regulations etc) and increases the cost of providing affordable housing.
- **Policy changes:** Government policy changes can divert resources away from housing associations. Presently, many housing associations are focused on maintaining and upgrading their existing stock, for example addressing issues such as mould and cladding, before they can buy more new affordable housing.

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).**

In recent years, local authorities have become more reluctant to adopt communal areas and instead require developers to set up an estate management strategy. Under these plans, residents must pay towards the upkeep of such areas through an estate charge, which increases the annual outgoings for residents and impacts on mortgage affordability.

This trend may be driven in part by a lack of resources available to the local authorities to maintain roads and other public amenities.

There is also arguably a national shortage of quality managing agents in England & Wales to maintain roads and other public amenities, leading to worse outcomes for residents.

- b. **Estate charges, and their materiality.**

See response to Q11 a. above.

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

If a developer or resident management company imposes an estate charge on a dwelling purchaser, the property title must include a restriction on the purchaser of the property requiring them to enter into a deed of covenant with the resident management company. This is because the charge is a positive covenant in law and cannot itself run with the title

of the dwelling. This process places an additional administration burden and cost on both the management company and the seller of the property.

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?**

The primary issue for developers is the difficulty in achieving timely planning permission for each site. Significant delays can be caused by biodiversity requirements, nutrient neutrality, affordable housing agreements etc. This delays construction and reduces the supply of homes available for purchase.

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

The outcome of the planning permission process has a direct impact on the landowner's ability to sell land. Challenges around speed of approval for reserve matters and requirements to make large infrastructure investments upfront can delay sales.

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

The issues raised above are less problematic in periods where demand for housing improves, because more sales allow for re-investment into projects at varying stages.

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

- a. How transparent are estate charges and covenants (including how they may change over time) to prospective house buyers on freehold estates at all stages up to the point of sale?**

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

- c. Post-sale, what safeguards exist to ensure the quality of the management service or that the estate charges applied are fair, reasonable, and transparent?**

- d. Are freeholders' rights (including to redress) in relation to estate management services and charges, and how covenants are applied, adequate? If not, what are the key gaps?**

Vistry is transparent about the covenants and estimated estate charges homebuyers will pay after purchase at each stage of the process, as required under the existing consumer code.

Prospective homebuyers are provided with a legal document pack and a customer reservation agreement that clearly sets out the estimated charges (based on the annual budget prepared by the managing agent), the relevant covenants contained in the contract, the structure and purpose of both resident management company, and the role of managing agents pre-purchase. We note, however, some consumers may be less engaged with or focussed on the issue of estate charges and covenants prior to moving into their new home.

Residents are ultimately in control of the estate management company. After the development is complete, but before the final property is sold, residents can approach Vistry to change the estate management company. After the final property is sold, each resident becomes a member of the management company. Control of the resident management company is then passed to the homeowners, who can then choose to replace the existing managing agent if they are not satisfied with their performance.

Until completion of the development, Vistry remains liable for all costs and is responsible for maintaining the development. There are no additional charges to the homeowner between completion of the property and handover to the resident management company.

After completion, Vistry covenants with the homeowner that if the management company becomes insolvent, or if the management company substantially defaults in their performance of any of the covenants or obligations, it will (to the extent it is able to do so) provide reasonable assistance to the homeowners to appoint a successor company to the to perform the covenants and obligations of the management company.

Vistry considers the covenants to be adequate and fair to ensure that homeowners have sufficient control of the residents management company. To further support its customers, Vistry intends to adopt the New Homes Quality Board's *New Homes Quality Code* later this year, which requires even more detail and more transparency around estate charges and covenants.

Vistry is happy to provide more detail on this issue as part of its response to the section 174 Notice.

Market interactions

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

Land promoters and land agents secure contracts with land owners / developers either through a tender processor or by dealing directly with counterparties (who they have a pre-existing relationship or partnership with).

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

The key factors and objectives that LPAs need to balance whilst taking decisions on housebuilding should be understood in the context of the national and local policy frameworks.

For example, the National Planning Policy Framework (**NPPF**) provides a framework for locally-prepared plans for housing and other developments and places an emphasis on achieving sustainable development. Relevantly, it notes:

8. *Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

*a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and*

*c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

*9. These objectives should be delivered through the preparation and implementation of plans ... **[that] take local circumstances into account, to reflect the character, needs and opportunities of each area.***

In this context, each LPA implements its own local development plan, taking into account the needs of the local area. For example, Milton Keynes’ 2016-2031 Local Plan³ includes 17 strategic objectives including a target to deliver land for a minimum of 26,500 net new homes and mitigate the impact on climate change (including by locating development away areas of flood risk and significant biodiversity value).

Unitary local authorities may have more difficulty in developing and implementing a Local Plan because of the much wider area and remit under their control. This requires the authority with constrained resources to balance a wider range of competing needs, including social care, green space, biodiversity, etc. as well as affordable housing.

The need to balance the national and local planning objectives, whilst taking into consideration the knowledge and opinions of statutory consultees and existing communities, may lead to tension between housebuilders and LPAs around planning applications – particularly where an LPA does not have an up-to-date Local Plan or if there are considerable resource constraints resulting in delays in the decision-making process.

However, we note that in many respects the key objectives the LPAs are balancing when making decisions on planning applications are aligned with housebuilders objectives, i.e. the need to provide increase the supply of housing.

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?

In our view, the balance of bargaining power is currently weighted towards LPAs, as they are the decision maker.

³ [Plan:MK 2016-2031 \(milton-keynes.gov.uk\)](http://milton-keynes.gov.uk)

Developers are under significant time pressure to make an investment decision and commence construction of a project, which may require them to make significant concessions to an LPA. This issue is more acute in later stages of the planning process, after significant sunk costs have already been incurred by the business.

Developers are ultimately dependent on the LPA to make the decision. Any adverse planning decision can jeopardise the viability of the development because the appeal process is typically time consuming and costly. Although we note that some LPAs have a countervailing incentive to increase housing supply, there are approximately 74 local authorities across England where the home building market is effectively non-existent due to nutrient Habitat Regulations. This underscores the lack of bargaining power developers have with LPAs, who have the power to withhold all development approvals.

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 typically negotiated and signed prior to the grant of outline planning permission.

In some circumstances, a s106 Agreement may be renegotiated after the grant of outline planning permission where there is an unforeseen event.

The LPA and developer will work together to see if there is an acceptable way forward for both parties. However, it is ultimately within the power of the LPA to agree (or reject) an alternative s106 agreement. Any new agreements will be considered in the context of the Local Plan, national planning policy, the economic climate, statutory consultees and most importantly whether the development can still meet the threshold of a 'sustainable development'

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

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

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

In line with Government guidance, Vistry strives to deliver affordable homes on-site in its new development wherever possible. However, where this is not possible, for example where there are sound planning or housing reasons supporting off-site delivery, an LPA may accept an off-site commuted sum of broadly equivalent value in lieu of part or all of the affordable housing provision on a site.

In these circumstances, Vistry will make payment of a commuted sum to the local authority as part of its planning obligations under a s106 Agreement, allowing affordable housing to be delivered on another site. Commuted sums may also be paid under s106 Agreements for other public amenities.

Vistry makes these payments to the local authority in good faith for that purpose, to secure planning, however it is ultimately the local authority's responsibility to decide where to allocate that money.

Exploitation of market power

19. Do any of the participants in the market (including but not limited to housebuilders, land agents, and land promoters) have market power? If so, what drives this and how (if at all) do they exploit it?

In our view, no participants in the housebuilding market exercise market power.

In respect of housebuilders specifically, there are a large number of firms who compete to purchase small, medium and large properties. From our perspective, we consider that there is vigorous competition for the purchase of land and supply of housing.

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

A number of factors influence the size of a developer's land bank, including:

- Planned output in the short to medium term.
- Significant delays to planning approvals by third parties (such as LPAs and statutory consultees). Given that construction can only start after all planning permissions and technical approvals are granted, delays will "inflate" the size of the land bank.
- If a site has outline planning consent, development might only start after approval of the reserved matters. Approval often occurs on a phased basis, to ensure that each phase addresses customer demand, as possibly evidenced by sales activity on previous phases. In these circumstances, a developer might have a larger land bank while waiting for reserved matters approval.
- Developers will increase or reduce the build out rate in response to customer demand. In periods of low demand, a developer may slow its build rate, leading to it having a larger land bank.

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.**

We refer to the HBF response to Q21. We agree with their submission and note that changes over time are overwhelmingly due to macroeconomic issues and planning policy.

In particular, we note that there are many examples where Vistry has had to withdraw its planning applications when planning requirements change, either temporarily (to redesign the project) or entirely (where the project is no longer feasible).

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

The key factor determining the build-out rate is supply of land and demand from customers. Developers will typically increase or reduce their build out rate in response to these factors.

Barriers to entry and expansion

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

- a. **The types of developments they develop (eg types of housing provided).**
- b. **The type of land they develop on (eg size of site, propensity to use greenfield vs brownfield sites, urban vs rural).**

The key barriers include the availability of land, access to finance, understanding of local planning regimes (which differ between England, Scotland and Wales, and between LPAs), and other regulatory barriers (such as permits, etc.).

Overall, the barriers to entry in the housebuilding market are generally low, and there are opportunities available for large, medium and small housebuilders firms across the UK.

While housebuilders may face some difficulty when they seek to expand their output, these challenges no greater than those faced by businesses in other industries looking to scale up production.

Broadly, both large and SME housebuilders face the same set of issues when attempting to enter the market or expand output, such as lack of available land (i.e. larger developers will not purchase smaller sites and smaller developers will not purchase larger sites) and availability of finance and cash flow. However, housebuilders have a range of options available to overcome these barriers, including entering into joint venture arrangements and mergers and acquisitions.

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

- a. **Securing sites for development?**
- b. **Securing planning permission?**
- c. **Building-out sites?**

N/A

25. What differences (if any) exist between the developments built by large, medium and small builders, eg in terms of quality of housing built, speed of build, diversity of housing built

Larger developers are more heavily influenced by policy and its impact on consumer demand when building houses. [REDACTED]

Further, larger builders will be more constrained by the size of the site and the number of buildings in the plan. To reduce costs and increase efficiency, Vistry's houses tend to be more uniform. In contrast, SME developers are able to design and build more bespoke houses.

There is no inherent difference in the level of build quality between larger and SME developers, and all are subject to the same build quality scoring. However, larger developers are often held to a higher standard than SME developers, due to the obligations to report quality metrics. These are typically included in developer's annual reports and in the league tables published by the HBF. Vistry puts an emphasis on the quality of its construction and exceeds the benchmarks set by the HBF.