

CMA Housebuilding Market Study

Vistry Group PLC Response to CMA Update Report Consultation

1 Introduction and Executive Summary

- (1) Vistry Group PLC (“**Vistry**”) welcomes the opportunity to comment on the CMA’s Housebuilding Market Study Update Report and Consultation on a market investigation reference (“**MIR**”) (the “**Update Report**”) and the CMA’s preliminary view that the MIR threshold is likely to be met in relation to private management of public amenities on freehold housing estates (“**freehold estate management**”) and housebuilders’ practice of holding large land banks.
- (2) Vistry acknowledges that the Update Report is preliminary in nature and that the CMA will be undertaking further analysis on other areas, such as competition in the market, barriers to entry and expansion, and the planning process. We look forward to engaging with the CMA further on these issues as the market study progresses. Given the CMA is undertaking additional work on these topics, the focus of this submission will be on those areas where the CMA considers the MIR threshold may be met.
- (3) In our view, a MIR is not the appropriate course of action to address potential concerns relating to either freehold estate management or land banking.
- (4) In relation to freehold estate management, while accepting improvements would be beneficial, Vistry considers there to be more appropriate, proportionate and efficient ways of addressing these issues outside the remedies available through the MIR process. This could for example take the shape of recommendations to the Government to improve the legal framework around freehold estate management and/or to increase transparency and protect the interests of our customers.
- (5) Vistry does not consider there to be any adverse effect on competition associated with strategic retention of land for development (or land banking). The practice of land banking has been considered in detail in the past, including by the UK Parliament and the Office of Fair Trading.¹ Vistry (and other housebuilders) acquire land to maintain a pipeline of projects in order to minimise the risks associated with the planning process and the challenges of (ever) evolving environmental and safety regulations. Further, as explained below, this practice has no adverse impact on SMEs or on outcomes for consumers, and as such, housebuilders’ land banking practices do not prevent, restrict or distort competition. In any event, as the CMA signalled in the Update Report, Vistry agrees that any issues relating to this topic are most appropriately dealt with through the Government introducing reforms to improve the efficiency of the planning system (including the impact of environmental regulations).

2 Private management of public amenities

2.1 Response to potential concerns identified on adoption of roads and public amenities

- (6) Vistry agrees with the CMA’s observation that non-adoption roads and public amenities can be a significant issue for customers and housebuilders. Customers may be required to pay

¹ See the [Callcutt Review of housebuilding delivery](#) (2007), OFT’s [Homebuilding Market Study](#) (2008)

substantial estate management fees, in addition to their council tax, and housebuilders face high costs navigating the current adoption system.

- (7) As an initial observation, we note that Vistry's aim is to always have suitable roads adopted by the local authority. We consider this to be the preferred outcome because it transfers the ongoing liability and maintenance costs from the housebuilder and customer to the local authority, who are the most appropriate and experienced entity to manage roads. Public amenities (such as open spaces, play areas, sporting and recreational facilities, etc.) present a different, but equally challenging, set of issues. In many cases, a housebuilder will be required to develop public amenities to secure planning approval (for example to comply with environmental regulations). They are also desirable community assets which customers expect to be included in leading housing developments. However, public amenities can be expensive to maintain and there is no obligation on local authorities to adopt these. Vistry normally seeks adoption for public amenities (via agreements under Section 106 of the Town and Country Planning Act 1990 ("**Section 106 Agreements**")), however this may differ depending on the type of amenity (and the associated maintenance obligations).
- (8) Over the past 10 years, Vistry has observed an increasing reluctance on the part of local authorities to adopt public amenities. Over this period, the average length of time between completion of a site and adoption of roads has increased significantly, from approximately three years to six years (assuming there are no complications with the road, e.g. no connection to an existing highway). As the CMA has highlighted, we consider these increased delays are due to the lack of resources at local authorities which limits the expertise available at the council to assess and sign-off on public amenities and budgetary constraints arising from maintaining the amenities. Although local authorities are obliged to adopt roads under the legislative framework where certain conditions are met, the process with the local authority can be protracted: in one case, Vistry is still working to have a road adopted for a site in [redacted] that was initially subject to an agreement under Section 38 of the Highways Act 1980 ("**Section 38 Agreement**") in 1999. This is clearly an unacceptable outcome as it provides places significant uncertainty on housebuilders and residents. This also has a financial cost for Vistry, because bonds are typically taken out for a three-year period at a flat fee. If a bond is required for longer, it is classified as overdue and additional fees are payable.
- (9) Vistry agrees with some of the core issues identified by the CMA in relation to freehold estate management. Our comments on each of these are set out below.

2.1.1 Shortcomings of legal framework for adoption

- (10) We agree that there are shortcomings around the legal framework for adoption, particularly for public amenities, including a lack of clarity and wide discretion afforded to local authorities.
- (11) As the CMA has pointed out, a local authority cannot refuse to adopt a road built to an adoptable standard. Practically, however, difficulty arises from the inconsistent standards for the design and construction of roads between local authorities and the wide discretion that local authorities have to determine what meets the threshold for 'adoptable' under their technical standards.
- (12) Adoption of roads is often contingent on appropriate drainage systems being put in place (via a Section 38 Agreement or an agreement under Section 104 of the Water Industry Act 1991), however requirements for sustainable drainage systems are a material planning consideration for major developments and are not yet covered by national standards.

- (13) Adoption of public amenities is not subject to a standard legal regime. Public amenities are normally adopted pursuant to Section 106 Agreements, which requires the developer to pay a commuted sum for ongoing maintenance. However, there is no obligation for these to otherwise be adopted. Housebuilders experience difficulty negotiating with counterparties for adoption, given:
- there are no national standards relating to public amenities, so there is broad discretion for councils to refuse adoptions; and
 - there is no standard authority required to adopt public amenities (cf. local authorities adopt roads and water/sewerage companies adopt drainage).
- (14) This adds to the time and complexity of negotiations. In some circumstances, this might also deprive residents of use of the public amenities. For example, at the [redacted], Vistry completed the construction of a children’s play area under a Section 106 Agreement three years ago, however this area is still not open to the residents due to delays in the necessary assessments being carried out. [redacted].

2.1.2 Process for adoption is increasingly long and complex

- (15) It is also clear that the process for having roads and public amenities adopted is increasingly long and complex, but this is not due to any practices or behaviour of housebuilders.
- (16) We have observed an increase in the time it takes to negotiate Section 38 Agreements (a necessary precursor for the adoption of roads). In many cases, negotiations have become long and protracted, increasing from around [redacted] on average. This is largely due to a lack of resources at the local authorities, as well as uncertainty around the cost of Section 38 Agreements bonds and inconsistent approaches being taken by different local authorities. We note the value of Section 38 Agreement bonds have also been rising significantly over time (rising from a maximum of £321,421 (2017-18) to £2,861,892 (2021-22)).² This is causing delays in the negotiation process and to the ultimate adoption of the road.
- (17) As noted above, the average time taken to adopt roads after construction has increased significantly in recent years. In our view, this is linked to lack of resources available to assess and sign-off on public amenities as well as the fragmented regulatory framework that requires coordination between a large number of different authorities (Highway Authority, Lighting Authority, Local Planning Authority, and water/sewerage companies) and potentially involve other statutory consultees.
- (18) With regards to the adoption of public amenities, as mentioned above, the lack of a coherent legal framework and national standards on approach to adoption means there is considerable variability and unpredictability in the process and timing for adoption (where it is an option).

2.1.3 Local authorities lack financial resources

- (19) Vistry is also concerned that many local authorities are in a perilous financial position, and that this risks having a negative impact on the adoption process.
- (20) A number of large local authorities are effectively bankrupt and cannot meet their financial obligations, including Birmingham City (2023), Woking (2023), Croydon (2022), Thurrock (2022), and Slough (2021). It has been reported that up to 30% of UK Councils are

² [HBF Submission to CMA dated March 2023](#), page 35

considering issuing a notice under Section 114 of the Local Government Finance Act 1988 due to their financial position.³

(21) This clearly has a significant impact on the adoption process for roads and public amenities because:

- it reduces the incentive for local authorities to adopt where possible (i.e. because they can collect council tax from residents without the corresponding maintenance obligations);
- it leads to local authorities requesting higher commuted sums to cover their liabilities (with no certainty that money will be spent on maintaining the public amenity); and
- it reduces the resources available to negotiate agreements and undertake the inspections necessary to progress adoptions.

2.1.4 Housebuilders' commercial incentives not to have roads adopted

(22) Vistry strongly disagrees with the CMA's claim that housebuilders have a commercial incentive not to have roads or public amenities adopted.

(23) As stated above, Vistry's aim is to have all suitable roads adopted, and expects this is the case across the major housebuilders. Vistry continues to hold roads eligible for adoption on its books until they are formally transferred to the relevant local authority. This means we remain liable for maintenance and insurance against any personal injury claims (with approx. [£<] of all claims against Vistry relating to unadopted roads).⁴ Holding the associated bonds is also a significant financial burden for Vistry, with approx. [£<] outstanding (compared with an estimated [£<] required to complete the works to an adoptable standard). This capital could otherwise be deployed by the business to increase housing supply. The cost relating to these bonds is generally increasing over time because:

- the cost of capital has risen over the few years (although we note that Vistry itself is a larger business than in the past, which reduces its cost of capital);
- local authorities are demanding higher bonds to satisfy their obligations and bonds are outstanding for longer periods of time, which increases Vistry exposure to bonds; and
- as noted above, the proportion of bonds held for longer than the three year period is increasing, which requires payment of additional fees.

(24) Non-adoption of roads and public amenities also reduces the potential sales value of Vistry's properties. All things being equal, long term higher estate management charges will impact the maximum size of the purchaser's loan (i.e. because of reduced serviceability) and makes them less attractive compared with other new and existing homes in the area.

(25) More generally, transferring roads and public amenities to management companies represents a reputational risk to Vistry, which can also harm our commercial interests.

(26) Given the above, Vistry has a strong commercial interest in ensuring a predictable and efficient adoption regime for roads (and other public amenities). Exposure to a large number of unadopted roads and public amenities is not in our financial interests.

³ [How many UK councils have gone bankrupt? | Evening Standard](#)

⁴ Since 11 November 2022, [£<] personal injury claims against Vistry relate to unadopted roads/paths.

2.2 Response to potential concerns related to management companies

- (27) Vistry understands that consumers have raised a number of concerns with the behaviour of estate management companies (“**MCs**”) during the market study process.
- (28) Vistry’s normal process is to set up resident management companies and contract MCs only where it is unable to secure adoption of the roads and public amenities. We do not transfer public amenities or roads to estate management companies until they are properly finished, and these are fully maintained by Vistry until they are formally transferred to the MC. Once the assets have been transferred, the MC is responsible for future maintenance on behalf of the residents.
- (29) We respond to the key concerns raised by the CMA below.

2.2.1 Resident management companies market power

- (30) The CMA has raised concerns that the process housebuilders use to appoint MCs may confer on them significant market power.
- (31) Vistry follows a rigorous competitive process when selecting MCs on an estate-by-estate basis, to ensure that MCs provide a high level of services and customers have an optimal experience.
- (32) Vistry’s process involves a multi-stage tender process to determine the best candidate. After the best candidate is selected, we put in place a service level agreement (“**SLA**”) which places obligations on the MC to operate at the standard expected by our customers. The SLA requires the MC to, among other things, maintain high standards of customer service, effectively manage service charge budgets, and provide information in a timely fashion to the customer when requested (a copy of a pro-forma SLA is attached as Annex 1). To ensure ongoing compliance with the SLA, we conduct periodic performance reviews until the development is handed over to the resident management company. A copy of the Vistry’s policy guide ‘Managing Agent Process and Management 2023’ is attached at Annex 2.
- (33) Vistry has contracts in place with a number of MCs across its estates based on the tendering process, including: [redacted]. Vistry’s approach does not confer significant market power as suggested by the CMA. If residents are not satisfied with the performance of their management company, they can replace the manager or put in place a resident-controlled management company. This further militates against any market power a MC may have over residents.
- (34) Vistry does not track the number of residential management companies that have been put in place in the ordinary course of business.
- (35) We believe we have a robust selection process that limits any market power of MCs and ensures only those companies capable of providing quality services are selected. This is reflected in the low number of complaints we have received ([redacted]) in the last two years against MCs.

2.2.2 Resident management company fees and charges

- (36) Vistry notes the CMA’s potential concerns relating to information available at the point of sale. Vistry ensures that all relevant information on the cost of managing roads and public amenities are provided to customers at various stages of the process. This includes:

- general information on MCs on each of our brands' websites;⁵
 - further information on MCs as part of the homeowners' manual; and
 - specific MC information is provided to customers pre-sale, on reservation, and on completion (for example, with information on the relevant changes).
- (37) Vistry also provides its staff with training on consumer protection, which includes a module entitled 'Selling within the law'. This discusses our obligations to customers to be transparent and provide sufficient disclosure on MCs.
- (38) Despite the steps taken by Vistry, we accept that transparency on issues such as estate management charges could be improved. Estate management is often not a priority for customers during their sales journey while they are arranging their financing, the legal transfer of the property, and are considering modifications to their new home. It is often only after they have completed and moved in that customers focus on estate management issues.
- (39) This is why the industry is taking steps to improve transparency and disclosure of key information, such as estate management charges. As set out in our response to the CMA's Section 174 Notice dated 22 March 2023, submitted on 30 March 2023, the New Homes Quality Code ("NHQC") aims to provide a more standardised process and fulsome disclosure of estate management fees. For example, housebuilders will be required to include in the terms of reservation (and in an affordability schedule) an estimate of the expected costs for the period of 10 years.
- (40) Vistry anticipates that it will go live with the changes under the NHQC in late 2023 or early 2024.

2.3 MIR and alternative approaches

- (41) Vistry believes that a MIR is not an appropriate outcome to the potential issues identified in the Update Report. In our view, there are alternative routes that are more proportionate and would provide long term solutions, better address the concerns, and could be implemented in a more timely manner.
- (42) In the circumstances, Vistry believes the most effective solution would be to make recommendations to the Government to change the legal and policy framework. This could include:
- (i) Implementation of a common legal framework for the adoption of roads, sewers, and drainage across UK that requires local authorities to follow a more standard process. This could cover time limits (e.g. for Section 38 Agreement negotiations and subsequent inspections), address variations/inconsistencies between local authorities on technical approvals, and standardise the value of bonds.
 - (ii) Implementation of a common legal framework for the adoption of other public amenities that requires local authorities to follow a standard process and (where proposed by the developer) obliges the local authority to adopt the public amenities. We note this may have an adverse effect on the size of commuted sums, but this

⁵ For example, see [Management Companies | Bovis Homes](#); [Management Companies | Linden Homes](#); [Management and maintenance of facilities at developments \(countrysidepartnerships.com\)](#)

could be mitigated by clear guidance (including that this would apply from a certain date and be forward looking in nature to remove any uncertainty).

- (iii) Recommending creation of an independent body responsible for ensuring the standards set out in (i) and (ii) above are consistently followed.
 - (iv) Recommending creation of an ombudsman to assist residents resolve concerns or disputes with MCs.
 - (v) Recommending increased funding to local authorities, providing them with sufficient resources and expertise for the adoption process.
- (43) In addition to legal and policy changes set out above, the CMA could consider proposing industry solutions to address some of the issues identified, such as transparency issues and concerns about unfair estate charges. This could take the form of a code of conduct for MCs, requiring them to provide more information to residents, to charge reasonable fees for services provided, and to ensure they maintain acceptable service levels. It could also provide additional rights for freeholders. Such changes could be implemented in cooperation with the housebuilding sector. In our view, there is significant consensus among stakeholders on the relevant issues and the appropriate solutions. Housebuilders, and other market participants, are interested in ensuring these issues are resolved quickly and efficiently, and we believe changes could be implemented as part of an industry solution without needing to wait for Government policy changes and legislation, and without the need to divert stakeholders' resources on a more protracted and onerous MIR process.
- (44) We believe that these recommendations have a high likelihood of being accepted by the Government. We note the Government's attempt to amend the Levelling Up and Regeneration Bill to remove red tape caused by planning, signalling a commitment to reducing the impact of planning and boosting the supply of housing.⁶ Housebuilding is a priority for the Government⁷ and it will likely be receptive of well-considered solutions to the potential areas of concern the CMA has clearly articulated during the market study.
- (45) For these reasons, we do not consider it appropriate or proportionate to progress this issue to a MIR.

3 Land banks

3.1 Response to potential concerns identified

- (46) Land banking is a consistent, and necessary, feature of the housebuilding sector. The expansion of Vistry's land bank over the last five to 10 years has been driven by the following key factors:
- The growth of the Vistry Group and housing output, which reflects the need to maintain a steady pipeline of land for development to deliver homes at competitive prices as the business continues to grow. Given the scale of Vistry Group the size of our land bank is expanding in absolute terms but remains a similar proportion in terms of overall delivery of housing by the business.

⁶ UK Government, '[100,000 more homes to be built via reform of defective EU laws](#)'

⁷ For example, see comments from Hon. Rachael Maclean, who was Minister of State at the Department for Levelling Up, Housing and Communities at the time ([Source](#))

- The increased length of time it takes to secure planning permission, particularly for the large and complex housing developments that Vistry (and other large housebuilders) constructs. Vistry secures sites via Option Agreements for a sufficient time to facilitate more than a single attempt to promote the site through a plan-led planning system, secure implementable planning permission and acquire the site to enable delivery of new residential units. However, all sites are brought forward as quickly as possible to the delivery phase.
- The increased risks involved in the planning system, including (i) continuous changes to the planning system creating delays and uncertainties (e.g. by Levelling Up and Regeneration Bill, National Planning Policy Framework, etc.); and (ii) complexity of (ever) evolving environmental regulation (e.g. Biodiversity Net Gain rules, nutrient neutrality, water neutrality, Special Area of Conservation designations, etc.). This creates a risk that planning permission will be delayed or outright rejected.
- Under-resourcing at local authorities and the need to consult with a large number of statutory consultees to secure planning permission.

(47) As can be seen from the table below, Vistry’s land bank has generally increased proportionately to its output in recent years (with reasonable adjustment to account for the risks referred to above).

Table 1 – Size of Vistry’s land bank⁸

Year	Size of landbank	Completions (Units)	Completions as a % of land bank
HY2023	142,767	6,050 (to date)	8% (on a FY basis)
2022	147,155	11, 951	8%
2021	82,770	8,639	10%
2020	74,271	6,131	8%
2019	72,100	3,867	5%

(48) As the CMA recognises in the Update Report, it is essential for housebuilders to maintain a sufficient land bank to mitigate against various risks set out above. To illustrate the risks that Vistry faces, we have set out some recent examples below:

- [X]: Vistry submitted an application for [X] dwellings in December 2016 on a site allocated for at least [X] dwellings where there were additional, unallocated dwellings in the settlement. We have faced significant delays due to Highways England and the local authority seeking for Vistry to work with the promoters of the unallocated sites and (financial) viability issues. From 2019 to 2022, development of the site has been held up due to nutrient neutrality requirements. In 2022, the local authority proposed a solution to support a finite number of dwellings, and requested that Vistry reduce the number of houses from [X].

⁸ [Vistry Annual Reports 2019 – 2022; Vistry HY23 Update](#)

- [X]: [X] have refused to enter into a Planning Performance Agreement with the Vistry Group on an allocated site as they do not have the capacity to resource their commitments, preventing Vistry from bringing the site forward. This could also cause problems post-application submission as the Council will not have been involved in the scheme development creating further delay and cost burden.
- [X]: [X].
- **Nutrient moratorium:** Over [X] Vistry homes are currently blocked due to the nutrient moratorium on new housing developments and [X] homes are blocked due to recreational pressure on protected sites. These are houses that can come forward as soon as Government / local authority adopt a new nutrient mitigation scheme. One example is [X] where [X] homes are currently blocked by recreational pressure on the [X]. Aside from this issue, we otherwise have full permission and only have one more condition to discharge before the permission is fully implementable.
- **Second staircases:** Approximately [X] homes due to start construction in 2023 have been cancelled or delayed by more than six months due to the changes to the regulations around second staircases. While Vistry does not underestimate the importance of fire safety in new buildings, the way the announcements have been made and a lack of clear transition arrangements have led to significant delays. This has directly impacted our portfolio of [X] projects across London.

(49) On average, we typically allow [X] from submission of the site application to drawing down consent on a scheme of around [X] units. However, as noted above, there is a risk that sites will take significantly longer than this to progress through the planning system. Given the length of time it takes to draw down houses from the land bank, and the high possibility of delays and potential increases in costs to Vistry (sometimes after planning permission has been approved), it is essential for housebuilders to maintain a sizeable land bank to ensure a continuous pipeline of supply.

(50) Given the importance of maintaining an appropriate land bank, we believe the CMA's concerns around the size and/or composition of land banks are unfounded, as explained in the following sections.

3.1.1 Availability of developable land in the market

(51) The CMA has attributed the restrictions on the availability of developable land to the large land banks of volume housebuilders, and the power of large housebuilders to control supply. However, this contradicts statements made elsewhere in the Update Report that "*there is land across all regions of England which in principle could be developed for housing*"⁹ – up to 43.6% of land in England is available for development.¹⁰

(52) Given there is no restriction on the availability of developable land, housebuilders of all sizes have an equal opportunity to acquire land. There is significant competition between housebuilders for the acquisition of land means that sellers are able to consider a range of different proposals, including price, size of land, resilience to market changes, commercial awareness of the bidder, etc.

(53) The CMA's preliminary conclusion also rests on a misapprehension around housebuilders' business model, i.e. that profits rely on maximising land value. In reality, housebuilders

⁹ Para 2.104 of the [CMA Update Report](#)

¹⁰ Para 2.104 of the [CMA Update Report](#)

generate the vast majority of their profits from the sale of houses, not land, therefore it has little to no incentive to restrict supply by artificially reducing build-out rates or holding land for longer than is necessary. As the CMA is aware, this has been confirmed by previous Government reviews into the sector, e.g. the Letwin Review.¹¹

3.1.2 Concentration in certain local markets leading to poor outcomes for purchasers

- (54) We note the CMA's conclusion that, at a national level, the market for housebuilding is not concentrated – with the largest five housebuilders accounting for just over 30% of new houses built (2021). We consider the market to be highly fragmented, with thousands of active housebuilders operating across the UK, and many smaller housebuilders focused on smaller, local markets.
- (55) At a local level, we understand the CMA is concerned that there may be significant concentration in particular geographic areas (through the control of a significant proportion of developable land), which could allow housebuilders to exercise market power to lead to slow build out rates, thereby charging higher prices and producing lower quality / less diverse houses. However, this does not reflect our experience of the market, as we continue to face fierce competition.
- (56) We understand that the CMA has relied on the views of housing academics (which the CMA notes are not all in agreement) to support this view. However, academic studies are unlikely to reflect the current challenges in the housebuilding market and the commercial realities facing housebuilders. For a more accurate understanding of the dynamics of the local market, the CMA would benefit from conducting data driven concentration analysis and affording greater weight to the views of housebuilders on their commercial approach. If the CMA does choose to undertake a local area analysis, Vistry requests that the CMA engages with housebuilders for input on the methodology to ensure the outputs are accurate and representative of the market.
- (57) Our view is that the fundamental issues causing a lack of supply are related to planning and not the actions of housebuilders. For example, in [redacted] (especially around [redacted]), there is poor affordability and a large unmet demand for housing. There is no evidence that houses built in this area are lower quality than in other areas or that housebuilders have not been able to enter the market.
- (58) Furthermore, in potentially concentrated local markets, new build housebuilders are inevitably constrained by existing housing stock. We consider existing and new homes to be highly substitutable, with consumers likely to shift away from new builds if the prices are too high, as anyone who has recently searched for a new home will attest. Vistry's sensitivity to the prices of existing homes is evident from the competitor reports previously provided to CMA (see for example Annex VG.S174.II.1a.30). To a lesser extent, housebuilders are also constrained by the self-build segment of the market. In situations where there may potentially be higher concentration in a particular local market, this is likely to be transitory only, and diminish once additional supply is brought to the market.
- (59) We also note the CMA's concerns in relation to the quality of construction and diversity of houses. It is important to note that quality must be balanced against cost – with higher priced, more bespoke housing likely perceived as being of 'higher quality' than volume

¹¹ See [Letwin Review \(2018\)](#)

housebuilders' products. Objectively, however, Vistry consistently produces high quality houses: the HBF rates Vistry as a 5-star housebuilder and our homes are backed by a 10 year warranty. Even in areas where Vistry has a large number of sites, such as [§<], we have worked proactively with the Council to bring sites forward and achieved high levels of customer satisfaction.

3.1.3 Impact of land banks on lack of transparency as to the ownership and control via options of land

- (60) In the Update Report, the CMA observed that large housebuilders are controlling land via options, and that this may hinder small and medium sized housebuilders from identifying and securing suitable land for development and make it more difficult for them to appraise the nature of competition in a given local area.
- (61) Vistry does not believe that option agreements are used disproportionately or at a greater rate than in the past. They are a standard feature of the industry and widely used to mitigate uncertainty and risk of the planning system, by allowing housebuilders to secure a parcel of land after planning permission has been granted. They are also an essential capital management tool, allowing capital to be deployed in other areas of the business (including to build out sites). As an added benefit, land subject to option agreements can be used for its current purpose until such time as planning permission is secured and construction starts – this means the land will continue to be productive.
- (62) Options are typically exercised according to a defined timeframe. It is common for housebuilders to ensure the period allows for more than one attempt at promoting the site through the planning system (given the increased length of time it takes to secure planning permission). Not all sites controlled by options agreements will be able to achieve planning permission because of unexpected delays. However, Vistry brings sites forward as quickly as possible to the delivery phase. Given this, option agreements do not unduly tie up land for development or reduce transparency around ownership for extended periods.
- (63) We note that small and medium sized housebuilders have the ability to enter into options themselves and would derive the same benefits as volume housebuilders. In fact, given capital constraints on smaller housebuilders, they are likely to be a very efficient means of reducing barriers to expansion in the housebuilding industry.

3.2 View on MIR and alternative outcomes

- (64) In view of the above, Vistry does not agree that a MIR is appropriate in respect of land banking. We further submit that the reference test is unlikely to be met because there are no reasonable grounds to suspect that the practice of land banking prevents, restricts, or distorts competition.
- (65) In any event, even if the CMA finds reasonable suspicion that competition in the market is being prevented, restricted, or distorted by land banking issues, Vistry believes that the most appropriate and proportionate cause of action would be to provide recommendations to the Government, focusing on reforming the planning system and environmental regulations. This would reduce risks and delays in the planning system, limiting the need for housebuilders to maintain a larger land bank.