

Barratt Developments Plc**Response to CMA Housebuilding Market Study Update Report and Consultation on a Market Investigation Reference****1. Introduction**

- 1.1 The CMA Housebuilding Market Study Update Report (the “**Update Report**”) identifies two principal issues that may, after further investigation, warrant a Market Investigation Reference (“**MIR**”). Firstly, the fact that large housebuilders hold substantial land banks and secondly that public roads and amenities are often not adopted by the relevant authorities and this gives rise to potential competition issues. In Barratt’s view neither of these issues warrants a market investigation for the following reasons.

The land banks held by large housebuilders do not raise any competition concerns

- 1.2 The leading housebuilders build up land banks to secure a continuous flow of developable land for their businesses. The CMA is concerned that there may be some local areas where the largest housebuilders have control of a high proportion of the developable land and that they may therefore have the ability and incentive to drip feed new homes into these local markets with a view to increasing prices above competitive levels and maximising profits. There is no evidence in the report or of which Barratt is aware that substantiates these concerns. [%]
- 1.3 [%] This varies area by area, as is evidenced at paragraph 2.32. Barratt has strong incentives to build as many homes as it can sell on its sites, and to build them as quickly as possible, to ensure a reasonable return on the capital it has deployed to buy the land. A number of independent reports on landbanks corroborate this evidence.¹
- 1.4 The Update Report suggests that in local areas where the largest housebuilders own a high proportion of the developable land, prices of new homes may be higher than the competitive level and that the quality of new homes may suffer due to the lack of competition. This is implausible. First, in almost all local areas, the number of existing homes for sale far exceeds the new homes being built. [%] Large housebuilders cannot therefore pursue a strategy of drip-feeding new homes in any area with a view to driving up prices and there is no evidence that any such strategies have been pursued by Barratt or indeed to Barratt’s knowledge by any other housebuilder.
- 1.5 As to the quality of new homes, these do not vary according to levels of concentration. Barratt has provided clear evidence that it achieves very high-quality standards across its sites [%]. There is no evidence that site managers are less or more incentivised to achieve high performance according to levels of local concentration.
- 1.6 The existence of land banks is not a contributing factor to the low levels of new homes being built in the United Kingdom – the most significant factor inhibiting more rapid building is the

¹ See for example the Calcutt Review of planning reform, pg. 36: “housebuilders have a strong incentive to build out as quickly as possible. The basis on which investors measure their success demands that they build out sites promptly so as to release and recycle the capital and deliver a good return on capital”.

planning system which has failed to deliver the requisite levels of developable land. Barratt agrees with the Update Report in identifying the planning system as the problem to be focussed on in the final report. Barratt has set out at section 3 its views on the planning problems and how they might be resolved through legislation and looks forward to working with the CMA in the next phase of this inquiry on these issues.

Non-adoption of roads and public spaces

- 1.7 In Barratt's experience, roads are in the vast majority of cases adopted by local authorities after a number of years. [%]
- 1.8 There are therefore no competition concerns that arise in relation to roads. Housebuilders have a strong incentive to avoid the ongoing obligations involved in maintaining roads and the reputational risks of doing so given the need to get private roads funded by local residents. Highway authorities have the obligation to adopt roads that are built to the relevant standards, which facilitates the process of adoption. However, the process of adoption is time consuming, in particular because of the need to agree the level of contribution the housebuilder has to pay for ongoing maintenance in the form of commuted sums.² Currently it is taking sometimes several years to agree the levels of commuted sums and inspection fees that have to be paid to get roads adopted. This issue is not however a competition concern – it can easily be addressed by central government providing guidelines on how these should be calculated. This would speed up the process of adoption considerably.
- 1.9 As to public spaces, Barratt agrees that few of these are ever adopted by Local Planning Authorities ("**LPAs**"). They are reluctant to do so because of the additional costs involved in maintenance. LPAs also have no legal obligation to adopt public spaces. As a result, either resident-owned companies or third-party maintenance organisations have to be put in place. Barratt and other major housebuilders have a strong preference not to get involved in the management of public spaces and prefer that these are adopted. Barratt would therefore favour a change in the law which required LPAs to adopt public spaces that have been built to the requisite standard together with appropriate guidelines for the establishment of commuted sums. This could be complemented by extending existing industry codes of conduct for example, by extending either the New Homes Quality Code ("**NHQC**"), or the Consumer Code implemented by the Home Builders Federation (the "**HBF Code**"). These codes could be extended to address some of the other issues that can arise from the private management of new build estates – as detailed at paragraphs 4.29 and 4.30. There is already a process in place for dealing with breaches of these codes through an Ombudsman/Dispute Resolution Scheme. In addition, breaches of these codes can result in serious sanctions against the member in breach. In Barratt's opinion, an extension to one (or both) of these codes is likely to be an effective solution.

² Update Report, [2.56](b), [2.60].

2. Housebuilder land banks

2.1 The Update Report explains that it considers that the MIR test may be met in relation to issues stemming from the amount of land held by the largest housebuilders.³ The land banks of large housebuilders are not acquired or used for anticompetitive purposes. They are a necessary part of a large housebuilder's business model and, as the CMA recognises in its Update Report, they are driven in part by the nature of the planning regime.⁴ Large housebuilders have contributed to a substantial increase in the output of new houses in the UK in recent years and this would not have been feasible without a corresponding increase in their respective land banks.

2.2 The purpose of the land bank is to provide a secure supply of developable land to feed into the housebuilders' operations region by region. No large housebuilder operates without a land bank and that land bank is typically of a size commensurate with the housebuilder's target annual output. As housebuilders have sought to increase their outputs, so have they increased their landholdings. There is no evidence in any of Barratt's internal documents to suggest that its land banks in any local area are being used strategically to prevent others from developing competitive sites. Such a strategy is not feasible.

2.3 Addressing the points raised by the Update Report in turn:

(A) *"Restrictions on the availability of developable land as a result of volume housebuilders holding large land banks, and whether this may act as a barrier to entry, particularly for small and medium sized housebuilders."*⁵

(i) as noted in the Update Report there is no shortage of land that is suitable for development. The top 35 housebuilders accounted for just 11% of housing units in residential outline planning permissions in England between January 2022 and April 2023.⁶ According to the CMA's findings, Barratt's land bank accounts for just [%] of developable land (excluding Green Belt);⁷

(ii) although they do compete in the downstream market for the sale of homes, large housebuilders and small and medium sized enterprises ("**SMEs**") do not generally compete upstream for the same sites. Large housebuilders tend to compete for larger sites (as it is not viable for them to develop smaller sites) while SMEs tend to compete for smaller sites;

³ Update Report, [20], [52], [3.8] and [3.10].

⁴ Update Report, [3.14].

⁵ Update Report, [51(a)].

⁶ Third party analysis conducted by Lichfields. Planning data obtained from Glenigan in April 2023. The top 35 housebuilders are defined by turnover, as published in a register produced in the industry publication, Housing Today.

⁷ Update Report, [2.104] confirms that approximately 43.6% of land in England is available for development (excluding Green Belt). According to the Department for Levelling Up, Housing & Communities' land statistics, England's total land area is just over 13m hectares. Therefore, there is 5.7m hectares – or 14.1m acres – of developable land in England. Barratt's long-term land bank, [%] represents only [%] of that.

- (iii) more long-term land is held by landowners and land promoters than housebuilders. 71% of residential outline planning consents granted in England between January 2022 and April 2023 were secured by non-housebuilders such as landowners, land promoters and the public sector;⁸
 - (iv) due to (i) - (iii) above, the land banks of large housebuilders do not act as a barrier to entry for SME housebuilders - their holdings are simply not large enough to control the supply of consented land in any area of the UK, and the parcels of land they hold are generally not of the right size/type for SME developers;
 - (v) the most significant difficulty faced by both SMEs and large housebuilders in acquiring developable land relates to the delays and inefficiencies of the planning system. Additional difficulties for SMEs are largely related to financing and the planning system favouring larger sites;
 - (vi) when expressed in number of years of supply, the increase in large housebuilders' land banks is generally proportionate to the increase in supply of new builds (as the CMA's findings demonstrate)⁹;
 - (vii) the slight increase in the land holdings of large housebuilders is driven by increasing output targets as well as the ever-increasing uncertainties and delays associated with the planning system; and
 - (viii) it follows that the CMA should in its final report focus its recommendations on the key reforms to the planning system that are necessary to facilitate growth in the housebuilding market in the UK, for both new builds and renovation of existing buildings which is equally undermined by the planning system. There are a number of straightforward changes that could be introduced which would in particular help SME housebuilders, which appear to be one of the central concerns of the CMA in the Update Report.
- (B) *"The extent to which land banks compound the negative impacts of any lack of transparency as to the ownership (and control via options) of land. A lack of transparency 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. This effect is likely to be more pronounced the more land banking occurs."*¹⁰
- (i) since large housebuilders do not account for a high proportion of developable land, the lack of transparency as to the options over land held by large housebuilders is highly unlikely to provide a barrier to entry for SMEs;

⁸ Third party analysis conducted by Lichfields. Planning data obtained from Glenigan in April 2023.

⁹ Update Report, Figure 2.3.

¹⁰ Update Report, [3.11(c)].

- (ii) there is significant information produced by LPAs and the Land Registry in respect of the ownership and control of land. Moreover, SMEs, like larger housebuilders, liaise with land agents, land promoters and landowners in order to identify land with development potential. In general, they have access to largely the same resources to find developable land as large housebuilders; and
 - (iii) in any event, the Levelling-up and Regeneration Bill (which is expected to be passed in late 2023 and to take effect in 2024) addresses these concerns by facilitating the introduction of regulations that could require the disclosure of any contractual interests held by an undertaking in registered land.¹¹ As a result, no further action is required by the CMA in respect of the putative lack of transparency in the market.
- (C) *“Concentration in certain local markets through the control of a significant proportion of developable land by a small number of housebuilders, which if evidenced, may lead to poor outcomes for purchasers of new homes and for the housing market at large, including lower quality or less diverse new homes, and slower build-out rates.”¹²*
- (i) once large housebuilders have received planning consent, they have strong incentives to turn round short-term land into completed units as quickly as possible. Once planning consent is given, housebuilders generally have to pay for the land they wish to develop either by buying consented land on the market or by exercising their options. The costs of buying land are high and therefore housebuilders have strong incentives to build out their sites in short order. Furthermore, in the case of options, housebuilders have no incentive to delay planning consent in order to raise the land market value since any increase in that land value will be reflected in the market price paid by the housebuilder when it will exercise the option;
 - (ii) in particular, it is demand that drives build-out rate and not the proportion of developable land held. [%]
 - (iii) Barratt is disincentivised to reduce build-out rates because of the high costs involved in acquiring short-term land, the high levels of capital employed immobilised and the risk of a market downturn;
 - (iv) Barratt cannot control pricing through restricting the number of new homes that come to market in a particular area since it competes invariably with second-hand home sales as well as other housebuilders. Moreover, the amount of second-hand homes on the market generally far exceeds the amount of new build available in the same area. [%] and

¹¹ See sections 209(1), 209(2) and 211 of the Levelling-up and Regeneration Bill.

¹² Update Report, [3.11(b)].

- (v) large housebuilders such as Barratt build high-quality homes and a variety of different homes on their sites, the quality and diversity of which are not impacted by the proportion of local developable land held. This is strongly evidenced by the fact that, as measured by the NHBC - a wholly independent organisation – Barratt achieves high-quality buildings across all of its divisions and across all of its sites. [%] The quality of Barratt's buildings does not vary according to the level of concentration in local areas.

- 2.4 The remainder of this section expands on these points and provides additional observations in respect of the CMA's current analysis and emerging thinking as set out in the Update Report.

The size of land banks and the volume of land available for development

- 2.5 The Update Report notes that “*several of the largest housebuilders have increased the number of plots in both their short-term and long-term land banks*”.¹³ Whilst the land banks of some of the largest housebuilders may have increased in recent years, considering the size of land banks purely by number of plots can be misleading. Barratt considers that a better metric is the number of years of supply provided by land banks. This is because, as the number of new homes supplied increases, a corresponding increase in land banks is needed to feed that supply. Accordingly, whilst the Barratt short-term and long-term land bank has increased over time, this reflects its stated aim to grow to 20,000 completions by the late 2020s.
- 2.6 On this basis, when controlling for the number of new homes that are being delivered each year, the findings show that land banks measured in years of supply have in fact stayed relatively stable over time (as demonstrated by Figure 2.3 of the Update Report). Barratt's land bank is one of the shortest in the industry.
- 2.7 Recently, the size of Barratt's short-term land bank has reduced. As previously explained to the CMA, [%]. The decline in Barratt's short-term land bank is strong evidence that the size of its land bank is determined by market conditions and the output targets that are likely to be achieved. [%]
- 2.8 As confirmed by Barratt's latest results for the financial year ended 30 June 2023, Barratt's short-term land holdings have decreased to 59,248 plots of owned and unconditionally controlled land at 30 June 2023 (down from 67,687 one year earlier) as a result of its purchase freeze, ensuring that Barratt continues to align closely with its 3.5-year target at 3.6 years of completions.¹⁴ ¹⁵ This reflects the fall in output due to the fall in demand – it achieved 17,908

¹³ Update Report, [2.35], [36].

¹⁴ Barratt Developments PLC Annual Report and Accounts 2023, [pg. 7].

¹⁵ Barratt has conditionally contracted 11,142 plots of short-term land at 30 June 2023, down from 13,239 one year earlier and below its 1-year target for such land holdings, as per [pg. 27] of Barratt's Annual Report.

completions in FY22 and 17,206 in FY23,¹⁶ whereas in FY24 it anticipates only 13,250 – 14,250 completions, based on current market conditions.^{17 18}

2.9 [%]¹⁹

2.10 The CMA recognises that there are good reasons for maintaining land banks, for example in light of uncertainties related to the planning process, local market conditions and the availability of skilled labour and other resources.²⁰ This is also recognised in the Update Report, as the CMA notes that “[h]aving a supply of continuous land that can become ready to build on at different points may therefore help builders to manage these uncertainties to maintain a steady stream of properties coming to the market.”²¹

2.11 The CMA expresses concern that land banks may increase barriers to entry for SME housebuilders by limiting the availability of land suitable for development.²² However, the CMA’s own analysis indicates that almost half of England is suitable for development, and “indicates that there is land across all regions of England which in principle could be developed for housing”.²³ There are 14.1m acres of ‘developable’ land in the UK (excluding Green Belt).²⁴ Barratt’s long-term land bank of [%] acres, [%], represents only [%] of that. It is also important to highlight that Green Belt land, whilst protected, could also be developed in the right circumstances. SMEs therefore have access to significant land, in addition to their existing land banks.

2.12 Additionally, the CMA has noted that “no housebuilders or other parties have stated there are issues with respect to the availability of potentially developable land”.²⁵

2.13 Moreover, large housebuilders do not own or otherwise control most of the land that is identified by LPAs as suitable for development – they account for only a small percentage of that land. According to an analysis by Lichfield, between January 2022 and April 2023:

¹⁶ Barratt Developments PLC Annual Report and Accounts 2023, [pg. 26].

¹⁷ Ibid, [pg. 28].

¹⁸ Barratt’s forward sold position with respect to FY24 private home completions is based on the mid-point of wholly owned completions guidance at 13,100 (13,750 total completions less 650 JVs), as per [pg. 70] of Barratt’s Annual Report.

¹⁹ Barratt has secured 101,785 plots of long-term land at 30 June 2023, up from 91,440 one year earlier.

²⁰ Update Report, [2.25], [2.40], [3.12],[3.14].

²¹ Ibid.

²² Update Report, [2.37], [2.126(b)].

²³ Update Report, [2.104].

²⁴ Update Report, [2.104] confirms that approximately 43.6% of land in England is available for development. According to the Department for Levelling Up, Housing & Communities’ land statistics, England’s total land area is just over 13m hectares. Therefore, there is 5.7m hectares – or 14.1m acres – of developable land in England.

²⁵ Update Report, [2.104].

- (A) the top 35 housebuilders accounted for just 11% of housing units in residential outline planning permissions in England; and
- (B) 71% of units with residential outline planning permissions have been secured by non-housebuilders.²⁶

- 2.14 In addition, Barratt's experience is that it is rarely in competition with SME housebuilders upstream to acquire sites. SME housebuilders do not have the appetite, scale or the resources to acquire and develop large sites, and equally purchasing small sites is not profitable for large housebuilders. In Barratt's view, sites of c. 500 plots and above are generally of no interest to SMEs, whereas sites of c. 100 plots and below are generally of no interest to larger housebuilders. Barratt mainly competes with land promoters and other large housebuilders for the acquisition of large sites. [%] It is important to recognise also that developers of larger sites often bring smaller parcels of land to the market that can be secured by SMEs. The limited competitive overlap between Barratt and SMEs at the land acquisition stage does however not impact the significant competitive constraint these SMEs (alongside second-hand homes and other housebuilders) place on the pricing of Barratt's homes in any given local area.
- 2.15 Moreover, the competition that Barratt does experience in the acquisition of land is fierce. Barratt faces competition from many stakeholders, in particular: land promoters; the public sector; high net-worth individuals; institutional investors; and many other housebuilders. The market for short-term land is particularly competitive and it is not uncommon for upwards of 15 - 20 competitors to bid for a single piece of land being marketed. Because this process is so competitive, housebuilders must ensure that their pricing is as accurate as possible so the bid is competitive, but also realistic and achievable (i.e. housebuilders must estimate what prices they think customers will pay for their homes and the rate at which they can sell the homes).
- 2.16 The key issue faced by all housebuilders is obtaining residential planning allocations granted by LPAs in local plans for the sites which the housebuilder controls. It is up to the LPA to decide whether to allocate smaller or larger sites that have been proposed by housebuilders, including SMEs.
- 2.17 Some LPAs tend to show bias towards larger sites because both larger sites and smaller sites involve a similar level of planning resources, but larger sites help LPAs to meet their targets quicker. Larger sites also allow LPAs to adopt a less politically sensitive strategy by meeting housing targets across fewer sites overall, as allocating a greater number of smaller sites means that more communities will be impacted – which often leads to more opposition. As a consequence of these policies, the size of sites has also been increasing, further increasing barriers to entry for SMEs. LPAs could favour SME housebuilders by allocating smaller sites for development that would not be of interest to large housebuilders.

²⁶ Third party analysis conducted by Lichfields. Planning data obtained from Glenigan in April 2023. The top 35 housebuilders are defined by turnover, as published in a register produced in the industry publication, Housing Today.

- 2.18 As evidenced by the Update Report, the increasing delays in the planning system are also having a significant negative impact on the amount of land that is available for purchase and development, affecting both SMEs and large housebuilders.²⁷
- 2.19 Barratt therefore considers that reforms to the planning system are the most appropriate way of addressing any concerns regarding limitations on the land available for development in the market by both large and SME housebuilders (see section 3 for further detail).

Transparency of land ownership and control in local areas

- 2.20 The Update Report queries the extent to which land banks may compound issues relating to any lack of transparency as to the ownership and control of land.²⁸ The CMA has explained that in local areas “*a lack of transparency 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*”.²⁹ The CMA considers that any such effect is likely to be more pronounced the more land banking occurs.³⁰
- 2.21 As explained above, the extent of land banking by large housebuilders is not a cause for concern, as large housebuilders account for only a small percentage of developable land. Their holdings are therefore not of sufficient scale to have any significant impact on the transparency issues identified by the CMA.
- 2.22 Moreover, SMEs are not in practice at a material disadvantage to the larger housebuilders when it comes to identifying development opportunities, as they largely have access to the same information sources and software/tools. The use of publicly available Strategic Land Availability Assessments/Call for Sites information produced by LPAs often details landowner, land agent, land promoter and developer involvement.³¹ Details on ownership of individual land parcels can also be ascertained from the Land Registry by any organisation.
- 2.23 Moreover, Barratt supports the CMA’s conclusion that SMEs, like larger housebuilders, liaise with land agents, land promoters and landowners, in order to identify land with development potential.³² The CMA has concluded that promoters do not favour large housebuilders.³³ Promoters are major competitors of the large housebuilders in the upstream market for developable land and have a strong interest in promoting a wide range of potential buyers, including SME housebuilders, to whom they can auction their consented land holdings.

²⁷ Update Report, [2.91].

²⁸ Update Report, [3.11](c).

²⁹ Ibid.

³⁰ Ibid.

³¹ [%]

³² Update Report, [2.106].

³³ Update report, [37].

2.24 Furthermore, the current Levelling-up and Regeneration Bill (expected to be passed in late 2023 and to take effect in 2024) will enable the Secretary of State to introduce regulations requiring the disclosure of any information that would be useful for the purpose of understanding contractual rights in relation to the development, use or disposal of land in England or Wales.³⁴ Such regulations may also provide for the publication of such information.³⁵ Under such regulations, the Secretary of State could therefore require that any contractual interests held by an undertaking in registered land (including options) would need to be disclosed on the Land Register. This would effectively address any concerns that the CMA has regarding a lack of transparency as to the control of land via contractual options.

Concentration in certain local markets

2.25 The Update Report explains that the CMA is currently assessing whether local concentration of developable land in local markets could lead to poor outcomes for purchasers of new homes and for the housing market at large, primarily slower build-out rates, but potentially lower quality or less diverse new homes.³⁶

2.26 The Update Report explains that the CMA considers that control of land banks by established housebuilders could result in:

- (A) a decreased rate of land development, if other housebuilders could develop land in the locality more quickly;³⁷ or
- (B) increased prices for new homes, if the established housebuilder(s) in the locality “drip” houses onto the market in that area, thereby allowing them to limit supply and avoid undermining prices by “flooding” the market.³⁸

2.27 We expand on these potential concerns in the paragraphs that follow.

- (A) *Risk of slower build-out rates in local markets where there is a high level of concentration*

2.28 Firstly, [%]

2.29 Moreover, there are strong incentives for housebuilders to build as soon as planning is granted. Once planning consent is given, housebuilders must generally pay for the land they wish to develop either by buying consented land on the market or by exercising their options. In both cases, Barratt will end up paying the market price for the land. The costs of buying land are high and therefore housebuilders have strong incentives to build out their sites in short order,

³⁴ See sections 209(1), 209(2) and 211 of the Levelling-up and Regeneration Bill.

³⁵ See section 214(1)(c) of the Levelling-up and Regeneration Bill.

³⁶ Update Report, [3.11(b)], [2.41], [2.117], [2.121].

³⁷ Update Report, [2.26(a)].

³⁸ Update Report, [2.26(b)].

particularly as the share price of listed housebuilders tends to be highly correlated to their return on capital employed.

- 2.30 Barratt defines the viability sales rate of a given site when it decides to invest in the land and to build property on it. The viability sales rates reflect the rate at which Barratt expects to be able to sell its newly built homes to meet local demand.
- 2.31 [%] Barratt notes that the CMA seems to be using the terminology "build-out rates" in a broad sense and seems – in some instances at least – to refer in fact to "sales completion rates". The two notions are nevertheless very similar since housebuilders have strong incentives to sell homes as soon as possible when they are built.
- 2.32 [%]³⁹
- 2.33 [%]⁴⁰
- 2.34 [%]
- 2.35 [%]⁴¹
- 2.36 [%]

(B) Increasing prices in local markets by drip-feeding

- 2.37 A strategy of seeking to reduce output to drive up prices in local areas is not a feasible commercial strategy, as in all the local areas Barratt competes in, it faces competition from other housebuilders and from existing housing stock with similar characteristics to Barratt's homes (e.g., in terms of location, number of bedrooms, gardens, etc.).⁴² That is because the vast majority of homebuyers see new and second-hand homes as substitutable. [%],⁴³ [%]⁴⁴ ⁴⁵
- 2.38 The constraint imposed by existing housing stocks for sale is further evidenced by [%]⁴⁶ [%]

³⁹ [%]

⁴⁰ [%]

⁴¹ [%]

⁴² [%]

⁴³ [%]

⁴⁴ [%]

⁴⁵ This is also consistent with the OFT's 2008 Market Study, which found that "*significant price competition is exerted by existing homes over new homes*" (see [4.23]).

⁴⁶ [%]

2.39 There are many more second-hand homes for sale typically in local areas than new build. RBB's analysis presented to the CMA indicates that [%]⁴⁷ [%]

2.40 The key factors Barratt considers in determining prices of its new homes are:⁴⁸

(i) [%]

(ii) [%]

(iii) [%]⁴⁹

(iv) [%]

(v) [%]

(C) *Academic studies*

2.41 The CMA refers to submissions it has received from certain academics that raise concerns about the land banks of large housebuilders.^{50 51} In particular, the contribution made by Dr Chris Foye et al. who allege that large housebuilders exercise market power that enables them to (profitably) restrict the supply of land.⁵² However, this paper relies to a great extent on a collection of unsubstantiated claims and, as a result, contains various errors and biases.

2.42 First, although Foye et al. recognize that “*a theoretically sound definition of the relevant market is crucial to conduct an effective market study*”, they do not attempt to define a market (which, in any case, would likely be a very complex exercise).⁵³ Secondly, despite not defining a market, Foye et al. assert that housebuilders are effectively granted “*a spatial monopoly of housing supply*” in particular locations.⁵⁴ However, Foye et al. do not provide any evidence that housebuilders have high market shares. Third, Foye et al. make no attempt to explain the

⁴⁷ [%]

⁴⁸ Ibid.

⁴⁹ Mortgage valuers act as a significant constraint on the pricing ability of housebuilders. Down valuations can have a significant negative impact on returns for an affected development because a pattern of multiple down valuations on one site may force a housebuilder to review the pricing for the whole site. Down valuations also undermine consumer confidence in pricing and can have a negative impact on customer satisfaction.

⁵⁰ Specifically [2.32], [2.33], [2.89(c)], [(e)], and [(f)], and [2.103(b)] of the Update Report discuss stakeholder feedback from academics in response to the CMA's Statement of Scope.

⁵¹ As listed under the “Statement of scope responses” on the housebuilding market study case page (see <https://www.gov.uk/cma-cases/housebuilding-market-study>).

⁵² Submission of Dr Chris Foye et al, listed under the “Statement of scope responses” on the housebuilding market study case page (https://assets.publishing.service.gov.uk/media/647df4c75f7bb7000c7fa4df/Dr_Chris_Foye_et_al.pdf).

⁵³ Ibid, [pg. 2].

⁵⁴ Ibid, [pg. 20].

economic mechanism that would enable housebuilders to (profitably) restrict their supply of housing. In particular, their report lacks any discussion of:

- (A) the significant relevant costs associated with withholding supply, including for example:
 - (i) costs incurred by housebuilders to employ significant capital in land that would be withheld from completion; and
 - (ii) significant financial penalties and reputational costs vis-à-vis landowners if housebuilders do not progress their land through the planning system as efficiently as possible, as they are often legally obliged to.
- (B) the lack of benefits from withholding supply because housebuilders face important competitive constraints in the downstream market for selling homes, both from other housebuilders and second-hand homes. As discussed below, a housebuilder unilaterally withholding supply would likely lose volumes to rival housebuilders and to individual sellers of second-hand homes without affecting the market prices.

2.43 One telling example of the lack of rigour of Foye et al. is the way it presents the OFT's 2008 findings,⁵⁵ in which they omit to state the OFT's view that housebuilders are significantly constrained by the price of the existing housing stock.⁵⁶

2.44 The comments on the CMA's Statement of Scope from other academics do not express similar concerns. Notably, Professor David Adams' response provides a summary of his previous work on the topics of build-out rates and transactions between housebuilders and landowners.⁵⁷ In contrast to Foye et al.'s contribution, Adams' research on build-out rates finds that the main driver of the build-out rate set by housebuilders at a given site is the target sales rates underpinning earlier land bids.⁵⁸ He also considers that, were it not for constraints on the quantity of available short-term land due to planning issues, housebuilders could purchase more land and at lower bid price.⁵⁹ In turn, this could lead to higher build-out rates and lower selling prices of homes.

2.45 Similar views are expressed by Professor Pat McAllister,⁶⁰ whose research covers the role of intermediaries, land banks, concentration and profitability and finds that:

⁵⁵ Submission of Dr Chris Foye et al., [pg. 25].

⁵⁶ OFT's 2008 Market Study, [4.23].

⁵⁷ Submission of Professor David Adams, [pp. 2-3].

⁵⁸ Ibid, [pg. 1].

⁵⁹ Ibid, [pg. 2].

⁶⁰ Submission of Professor Pat McAllister et al, listed under the "Statement of scope responses" on the housebuilding market study case page [Professor Pat McAllister.pdf \(publishing.service.gov.uk\)](#)

- (A) there is little evidence of significant changes in land inventories after the 2008 financial crisis that would suggest a major change in market power of players in the housing land market;⁶¹ and
- (B) recent stock market performance of volume housebuilders implies that housebuilders are expected to have “*quite limited control*” over the cost and price levels at which they sell housing.⁶²

Lowering quality in local markets due to concentration

- 2.46 Barratt does not consider that potential differences in the concentration of land banks at the local level can have any impact on the quality and diversity of homes.
- 2.47 Barratt has rigorous quality controls across all of its sites (and would expect the same to be true of other large housebuilders). Quality metrics are evaluated and recorded at all stages of the building process; Barratt carries out weekly quality reviews across all sites, and its developments are subject to rigorous third-party inspections by the National House Building Council (“NHBC”). If there is an issue on any of Barratt’s sites, central management can be expected to take swift action.
- 2.48 Barratt’s approach to quality does not change according to local levels of concentration. Site managers are incentivised to ensure high-quality output regardless of the level of concentration in the area. Barratt seeks to achieve high standards across the country: its reputation is determined by the consistency of the quality of its buildings nationally and it is strongly incentivised to maintain these at a high level to ensure that it maximises its sales potential in all local areas.
- 2.49 In particular, [%]
- 2.50 In relation to customer satisfaction, more than 92% of Barratt’s sites achieved a score of 80% or higher across the 7,725 valid responses the HBF received between July 2022 and June 2023 in responses to its CSS, with 75% of Barratt’s sites even scoring higher than 90% on average across that same sample, giving Barratt its 5-star status, which it has held for the last consecutive 14 years.⁶³ This is consistent with the CMA noting in its Update Report that customer satisfaction has improved.⁶⁴

⁶¹ Specifically, Professor Pat McAllister noted that “*there is little evidence of any significant changes in their land inventories since the OFT report in 2008 that would suggest a major change in their market power in the housing land market*”.

⁶² Specifically, Professor Pat McAllister explains that “*the recent performance of the share prices of the listed housebuilders has been relatively poor*”, finding that over the period from 1 April 2022 to 20 March 2023, the share price of listed housebuilders has fallen by 38% against an increase by 9% for the FTSE 100 and a decrease by 15% for the FTSE 250. He notes that this suggests that “*the voting and weighing machines of the stock market are not confident in the abilities of the volume housebuilders to complete and sell at current cost and price levels over which, implicitly, they have quite limited control*”.

⁶³ The percentage measured by the HBF’s survey reflects the percentage of respondents that would recommend Barratt to others.

⁶⁴ Update Report, [2.13].

- 2.51 In terms of building quality, Barratt recently achieved first place within the “Benchmark Group 1 builders”, (i.e. the group of large housebuilders as defined by the NHBC/HBF) as it did in all 12 months preceding, [%].⁶⁵ [%]
- 2.52 The fact that Barratt consistently meets high-quality standards in the vast majority of its sites is at odds with the idea that Barratt would vary the quality it offers depending on the level of concentration within the local area. Moreover, a business’s reputation for quality is held at a national level. If Barratt were to build worse quality homes in one part of the country, the resulting customer dissatisfaction would spread to potential customers nationally, through national media or online review platforms like Trustpilot. This would affect Barratt’s reputation even in areas where it built higher quality homes.
- 2.53 The CMA has recognised the range and scale of investments by large housebuilders as indicating competition between businesses in building homes efficiently and sustainably, and as *“imply[ing] that competitors are sufficiently incentivised to improve their products, services and strategies to maintain competitive advantage”*.⁶⁶
- 2.54 Moreover, the large majority of customers compare the price of new-build homes with the price of comparable second-hand homes. Accordingly, were the quality or diversity of the large housebuilders’ offerings to deteriorate in any area, customers are likely to purchase more houses from the second-hand market instead.

3. Planning

- 3.1 Barratt strongly agrees with the CMA’s view that the planning process is a constraint on house building, in particular because it is becoming increasingly protracted.⁶⁷ Barratt notes that the CMA is continuing to review the evidence as to the causes of this.⁶⁸ As Crook notes, planning regulations act as an *“important constraint”* on the supply of developable land.⁶⁹ In Barratt’s view, the planning process is in fact the *principal* constraint on increased output of new houses (and investment in the renovation of existing homes) due to a number of factors, including:
- (A) the failure of many LPAs to have up-to-date local plans in place;
 - (B) chronic under-resourcing of LPAs; and

⁶⁵ A lower RI count indicates higher build quality.

⁶⁶ Update Report, [16], [2.19].

⁶⁷ Update Report, [2.91].

⁶⁸ Update Report, [2.99].

⁶⁹ Submission of Professor Tony Crook at pg. 6, listed under the under the “Statement of scope responses” on the housebuilding market study case page (https://assets.publishing.service.gov.uk/media/647df67d103ca60013039987/Professor_Tony_Crook_-_SoS_response_-_publication_version.pdf).

- (C) the emergence of greater regulatory burdens which impact the planning process and the deliverability and/or viability of sites – particularly where that emergence is unforeseeable.

3.2 Barratt considers that these issues are having a disproportionate impact on SMEs.

The protracted nature of the planning process

- 3.3 How well the planning system is functioning is highly relevant to competition within the market, as the planning process determines how much land is available to be developed and where. It also determines the size of developments (i.e., small, medium, or large). LPAs are responsible for allocating land for residential development, which is a critical factor in determining how much land is realistically available to be progressed through the planning system and ultimately developed on.
- 3.4 There is fierce competition between housebuilders and other participants in obtaining an allocation for land in which they have an interest. It is therefore crucial that LPAs are proactively allocating sufficient land in order to maintain this competition between participants.
- 3.5 Currently, as recognised by the CMA, planning applications are taking longer to determine and are rarely within the statutory timescales.⁷⁰ In 2021, only 49% of decisions were made within the statutory or agreed timescale; in stark contrast to the 85% of decisions made within statutory timelines in 2009.⁷¹ The same can be said of the number of requests to extend the statutory determination period, which were made in around 2% of applications in 2012-2013 and which are now made in around 65% of applications.⁷²
- 3.6 The Update Report highlights that significant underperformance against housing delivery targets is limited to a “*relatively small number of LPAs*”.⁷³ This understates the level of underperformance significantly: the recent data produced by Savills highlights that 80 LPAs (c. 25% of the total number) are not meeting 75% of their identified Housing Delivery Test need.⁷⁴ This is an increase on the 51 LPAs mentioned in the Update Report,⁷⁵ and this number is likely to grow as LPAs shy away from giving consents to developments in local areas in the face of frequent public opposition.

The importance of local plans

- 3.7 Local plans provide visibility on what the local housing demand is and provide greater certainty to housebuilders that their planning applications are likely to be successful by allocating a range

⁷⁰ Update Report, [2.92].

⁷¹ See: <https://www.rtpi.org.uk/media/12613/planning-agencies-rtpi-2022.pdf>.

⁷² Third party analysis conducted by Molior.

⁷³ Update Report, [2.10].

⁷⁴ See https://www.savills.co.uk/research_articles/229130/347959-0.

⁷⁵ Update Report, [2.10].

of sites suitable for development to meet housing requirements over the next 15 years.⁷⁶ Only allocated land has a reasonable chance of obtaining planning permission at a local level. The existence of a local plan is therefore critical in establishing the scale of housing needs in the local area and providing developers with the confidence to invest in developable land and in the planning process, which typically takes many years and incurs significant costs before outline consent is granted. This is recognised in Professor Tony Crook's submission to the CMA.⁷⁷ Without a local plan, applications for planning are much more speculative and more likely to take longer or fail.

- 3.8 Currently, over 60% of all LPAs have not adopted a local plan within the last five years, and the number of plans being adopted every year is continuing to fall. As the CMA has identified, "[a]nalysis of Planning Inspectorate data shows that as of 1 May 2023 less than 40% of LPAs in England had in place and adopted a strategic local plan that was less than 5 years old".⁷⁸ Moreover, between 2012, when the National Policy Planning Framework ("NPPF") was published, and 2020, an average of 29 local plans were adopted each year. In 2021 only 16 local plans were adopted, and in 2022 it was 15.
- 3.9 This has significantly worsened since the proposed revisions to the NPPF published in December 2022, which propose to remove the need to meet housing targets and to review the Green Belt (i.e., undeveloped land which is currently reserved as a buffer between towns and between town and countryside). So far this year, only 8 local plans have been adopted, whilst 60 LPAs have already withdrawn, abandoned or paused their local plans in order to reduce the number of sites to be allocated.⁷⁹ This is a reflection of the lack of proper implementation of the current system and the widespread non-compliance by LPAs.

Increasing regulations and restrictions

- 3.10 Barratt agrees with other stakeholders that new regulations and requirements have had a significant impact on the planning system.⁸⁰ Barratt's particular concern is unforeseeable changes in regulation. When bringing forward land for planning permission, Barratt has been prejudiced by sudden changes in advice from external bodies, most notably Natural England.
- 3.11 For example, in March 2023, Natural England advised a further 74 local authorities that new development should not proceed if the new developments in any way increased the level of

⁷⁶ Update Report, [2.94].

⁷⁷ Submission of Professor Tony Crook at pg. 2, listed under the under the "Statement of scope responses" on the housebuilding market study case page (https://assets.publishing.service.gov.uk/media/647df67d103ca60013039987/Professor_Tony_Crook_-_SoS_response_-_publication_version.pdf).

⁷⁸ Update Report, [2.94].

⁷⁹ See: <https://www.hbf.co.uk/policy/planning-policy/delayed-local-plans/>.

⁸⁰ Update Report, [3.11].

nutrients and failed to deliver nutrient neutrality, even though excess nutrient levels reflect the failures of the wastewater treatment industry and intensive agricultural use of fertilisers.⁸¹ This issue is materially impacting on the number of planning consents being issued and the ability of the housebuilding industry to deliver housing growth — the HBF has estimated c. 145,000 homes are currently held in abeyance in the planning system as a result of not yet having a strategy in place to deliver nutrient neutrality.⁸²

- 3.12 Following Michael Gove's announcement on 29 August 2023,⁸³ Barratt was encouraged that the Government had recognised the burden of nutrient neutrality rules on housebuilders and supports the Government's efforts to reduce these constraints in the house-building sector. However, Barratt notes the House of Lord's rejection of the nutrient neutrality amendment to the Levelling Up Bill. It therefore remains uncertain whether any nutrient neutrality reforms will succeed.
- 3.13 However, the emergence and implementation of other restrictions such as Water Neutrality in Sussex and Recreational Avoidance Mitigation zones in Hertfordshire have all put rapid stops to development schemes in the planning process which are located within affected zones (until a strategy is put in place to mitigate against any impacts). For SME developers with limited numbers of sites in total and a focus on a particular area, these often rapidly introduced developments are particularly damaging.

Under-resourcing

- 3.14 As the CMA has identified, there is a clear resourcing issue within LPAs.⁸⁴ Net spending on local planning reduced by 59% between 2010 and 2020, the largest of any local authority function. This has meant that there are fewer planners dealing with the same level of, if not more, planning applications being made. LPA planners, in many cases, simply cannot dedicate the time necessary to deal with applications within statutory timeframes. As Adams notes, insufficient resources and staffing levels in local government have a constraining effect on the rate of production of houses.⁸⁵
- 3.15 Similarly, many statutory consultees such as local Highways Authorities have seen resources fall since the COVID Pandemic which has meant in many cases, they are not able to respond within statutory timeframes (i.e., 21 days) starting from when they are consulted by the LPA. This also creates further delay as LPA officers are unable to determine applications until these comments are received. In Barratt's view, LPAs must bring in external consultant resources if

⁸¹ See [Natural England blog post](#) dated 31 March 2023.

⁸² See: <https://www.hbf.co.uk/news/nutrient-neutrality-four-years-of-government-failure/>.

⁸³ For further information on the announcement, see: <https://www.gov.uk/government/news/100000-more-homes-to-be-built-via-reform-of-defective-eu-laws>.

⁸⁴ Update Report, [2.89].

⁸⁵ Report by Professor David Adams and Dr Chris Leishman, 'Factors Affecting Housing Build-out Rates', CLG Housing Markets and Planning Analysis Expert Panel, [5.7] and [5.8] (see <https://thinkhouse.org.uk/site/assets/files/1587/glasgow.pdf>).

committed timescales cannot be met, funded through the wider utilisation of planning performance agreements (“PPAs”) where appropriate, with clear performance targets.⁸⁶

- 3.16 At the same time, as the Update Report recognises, the increasing complexity, uncertainty, and protracted nature of the planning process has also meant that the costs involved in managing the planning process have risen.⁸⁷

Impact of number of consents

- 3.17 The combined impact of these issues has resulted in the number of consents delivered declining in recent years down to 265,000 in England.⁸⁸ Moreover, the number of consents generally exceeds the number of additional homes being built by some margin, as a number of permissions being granted will be duplicates relating to the same sites, whilst others will be re-applications for permissions that have lapsed.
- 3.18 Third party analysis conducted for Barratt indicates that in order to meet the Government’s target of 300,000 new homes per year, planning consents must exceed this target by over 200,000 (i.e., over 500,000 consents are required per year).⁸⁹
- 3.19 The low level of planning permissions currently being granted is a key constraint on the current housing output.

Impact on SMEs

- 3.20 As well as having an impact on the housebuilding market generally, Barratt agrees with the CMA that the current underperformance by the planning system has a particularly negative impact on SME housebuilders, who are less able to absorb the rising fixed costs of managing the planning process and are less able to mitigate planning risk through diversified landholdings.⁹⁰ Barratt broadly agrees with the findings of Professor Tony Crook who has highlighted to the CMA the effects of the underperformance of the planning system on housebuilders, which he suggests disproportionately affect smaller housebuilders.⁹¹

⁸⁶ As noted by the CMA, PPAs are a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications.

⁸⁷ Update Report, [2.89].

⁸⁸ https://www.hbf.co.uk/documents/12810/HPL_REPORT_2023_Q2_v2.pdf.

⁸⁹ Ibid. Based on the number of permissions granted in a four-year period to achieve the potentially deliverable stock level of permissions at March 2021. This figure is the mid-point between a ‘best-case’ scenario where all planning permissions translate to completions (where 428,500 permissions would be required) and a ‘realistic’ scenario accounting for regional variation (where 608,400 permissions would be required).

⁹⁰ Update Report, [2.89].

⁹¹ Submission of Professor Tony Crook, listed under the under the “Statement of scope responses” on the housebuilding market study case page (https://assets.publishing.service.gov.uk/media/647df67d103ca60013039987/Professor_Tony_Crook_-_SoS_response_-_publication_version.pdf).

- 3.21 Moreover, as identified in the Update Report, access to finance and planning challenges for SMEs are intrinsically linked.⁹² SMEs must often demonstrate they have consented land to secure the finance to deliver homes, but the delays and costs associated with securing planning consents mean this is difficult to demonstrate in advance.
- 3.22 The costs of obtaining planning consents have also significantly increased which is a significant barrier for SME housebuilders.⁹³ Please see the article appended to this response, which highlights this and other planning-related issues.⁹⁴
- 3.23 The CMA notes that some LPAs tend to show bias towards larger sites because both larger sites and smaller sites involve a similar level of planning resources, but larger sites help LPAs to meet their targets quicker.⁹⁵ This issue is likely further compounded by the 59% drop in funding for local planning over the last decade. The most appropriate solution would be to require LPAs to allocate additional developable land for smaller sites under 50 units, which SMEs are better suited at developing.
- 3.24 Because of the failure of LPAs generally to allocate small sites in Local Plans, such small site opportunities tend to be 'off-plan' with higher planning risks.
- 3.25 The protracted nature of the planning process has also proven to be a particular impediment to SMEs. According to an analysis by Lichfields, between the 1990s and 2023, the wait time for outline planning permission for SME housebuilders has quadrupled from 14 weeks to a year.⁹⁶ Paul Brocklehurst, chairman of the Land, Planning and Development Federation which commissioned the report, has said that it can often take more than two years for SMEs to get full planning consent.⁹⁷

Additional observations regarding s.106 agreements and affordable housing

- 3.26 The Update Report notes that the CMA proposes to explore whether a reliance on large sites has diminished LPA 'bargaining power' with large housebuilders in negotiations and re-negotiations of planning conditions (including in relation to affordable housing).⁹⁸
- 3.27 It is the LPAs that are in a strong negotiating position since they choose which sites to allocate among the many sites that are put forward for allocation by both large and SME housebuilders and many other parties. As the largest housebuilders are repeat customers for the LPAs, they tend to have strong incentives to maintain strong reputations with LPAs as reliable partners.

⁹² Update Report, [2.126(a)], [2.126(c)].

⁹³ According to an analysis by Lichfields, in the 1990s, the cost of obtaining an outline permission was c. £28,000 (accounting for inflation), whereas now it is c.£125,000. See: <https://lichfields.uk/content/insights/small-builders-big-burdens>, [pg. 20].

⁹⁴ See: <https://www.telegraph.co.uk/business/2023/09/12/nimbys-leave-housebuilders-waiting-year-planning-permission/>.

⁹⁵ Update Report, [2.89(c)].

⁹⁶ See: <https://www.telegraph.co.uk/business/2023/09/12/nimbys-leave-housebuilders-waiting-year-planning-permission/>.

⁹⁷ Ibid.

⁹⁸ Update Report, [2.89(c)].

The LPA also writes the Local Plan and any Design Code/Infrastructure Delivery Statement which will confirm what is required by the LPA in terms of infrastructure and affordable housing. Planning permissions will be consented to on that basis.

3.28 It is also important to highlight that [%]

Potential reforms

3.29 Barratt believes that the planning system is therefore a key area in which the CMA's recommendations in its final market study report could have a real impact — in creating a more efficient planning system, increasing housing output and promoting competition.

3.30 Barratt suggests that the CMA should recommend legislative reforms that incentivise LPAs to have an up-to-date local plan and penalise them if they do not. Such reforms could include:

- (A) mandated local plan production timescales with clear penalties if such timescales are not adhered to;
- (B) allowing the Planning Inspectorate / Secretary of State to intervene and prepare local plans to address any LPA underperformance against production timescales;
- (C) minimum staffing and funding levels for LPA Local Plan teams;
- (D) linkage between infrastructure funding levels and levels of housing targets;
- (E) increasing the New Homes Bonus and introducing a New Homes Deficit penalty; and
- (F) a legal requirement to adopt a Local Plan if found sound by the planning inspectorate.

3.31 In addition, Barratt considers that reforms should be introduced to enable faster determinations of planning applications. Such reforms could include:

- (A) increased delegated powers to allow a Planning Officer to determine applications on allocated sites;
- (B) clear separation between:
 - (i) administrative resources required to determine housebuilder/minor applications; and
 - (ii) planning resources to determine large housing applications;
- (C) rendering it unlawful for LPAs to provide pre-application advice with conflicting guidance;
- (D) as regards PPAs, allowing bonus payments for quicker performance against agreed timescales, and the withholding of payments if timescales or agreed performance metrics are not adhered to;

- (E) monitoring LPA performance on actual determination periods rather than ‘agreed’ extension periods; and
- (F) a fast-track mediation service for minor and single-issue appeals.

3.32 More broadly, Barratt also considers that a more practical attitude should be taken to well-planned development. At present a significant problem is that allocated sites routinely get refused by Council Members, regardless of how quickly officers have agreed an acceptable scheme with applicants. Increased delegated powers for Planning Officers could prove particularly beneficial here.

3.33 The 2012 NPFF introduced a clear presumption in favour of sustainable development where there is no local plan in place, which meant that housebuilders could fill housing delivery gaps with a good degree of certainty. This provided a clear incentive for LPAs to get local plans in place. A return to the 2012 NPFF (reversing the changes brought by case law and the proposed reforms put forward in December 2022), supplemented with clear policies such as those set out above, could significantly boost housing delivery.

4. Private management of public amenities on housing estates

4.1 The Update Report expresses concern that the following issues may exist in relation to the private management of public amenities on housing estates:

- (A) strong incentives for both housebuilders and local authorities to minimise the level of adoption of roads and/or other public amenities;⁹⁹
- (B) significant market power is conferred to estate management companies (“**EMCs**”), and particularly embedded management companies (“**embedded MCs**”) by housebuilders through the process they use, and have used, for the appointment of embedded MCs. In addition, high barriers for consumers to switch EMCs and inadequate rights for freeholders facing unsatisfactory freehold management arrangements;¹⁰⁰ and
- (C) a lack of transparency for consumers in relation to material aspects of the way in which a newly built estate will be managed.¹⁰¹

4.2 Barratt strongly disagrees that it is incentivised to minimise the level of adoption of roads or other public amenities. Adoption eliminates complications and reputational risks that are linked to the private management of infrastructure and common facilities. Barratt as a matter of policy prefers adoption of roads and other public facilities.

4.3 As regards the adoption of roads, as explained above, Barratt’s experience is that the vast majority of its estates (that have roads suitable for adoption) will succeed in having roads adopted (for example, adoption has occurred or will occur for [%] of estates completed in FY

⁹⁹ Update Report, [3.18].

¹⁰⁰ Update Report, [2.76]–[2.78], [2.80], [2.81].

¹⁰¹ Update Report, [2.51(b)], [2.74(b)], [2.74(c)], [3.17(a)].

2017). However, this will often take a number of years to achieve. These delays in adoption are in significant part attributable to the time it takes to agree commuted sums with the relevant local authority.¹⁰² Barratt considers that these delays are likely to be materially reduced if a standardised commuted payment schedule is set for local authorities.

- 4.4 Barratt notes the CMA's comment that it has received mixed feedback as to whether or not local authorities are required to adopt roads on new housing estates. However, the legislation is clear. The Highway Authority is required to adopt, provided that the road is built to the appropriate standard¹⁰³ (albeit that in practice, adoption is often achieved through voluntary s.38 agreements with the local authority).¹⁰⁴
- 4.5 As regards the adoption of public spaces, Barratt agrees with the CMA that local authorities are incentivised to minimise adoption, and that they very rarely adopt these facilities, primarily in view of gaps in the legislative framework, as well as funding constraints.¹⁰⁵ Barratt also agrees that legislation is the best way of tackling this issue, and considers that local authorities should be obliged to adopt public spaces where they have been built to a specified standard. In addition, as for the adoption of roads, Barratt considers that a standardised commuted payment should be paid by the developer, to relieve the financial pressures on local authorities.
- 4.6 Barratt also recognises the issues faced by residents of some housing estates, particularly where an embedded MC is in place. Barratt agrees with the CMA that it would be beneficial to consider recommendations for legislation giving greater rights to freeholders of managed estates, in particular, to challenge unreasonable charges and to change EMCs.¹⁰⁶ In addition, Barratt considers there may be an important role for either (or both of) the HBF Code or the NHQC, in order to cover additional issues relating to estate management.
- 4.7 The HBF is the representative body of the home building industry in England and Wales. The HBF's member firms account for some 80% of all new homes built in England and Wales in any one year, and include companies of all sizes, ranging from multi-national, household names through regionally based businesses to small local companies. The HBF Code came into effect in April 2010, and applies to all housebuilders registered with the UK's main new Home Warranty Bodies: NHBC; Premier Guarantee; LABC Warranty and Checkmate and consists of 19 requirements and principles that housebuilders must meet in their marketing and selling of new homes and their after-sales customer service.
- 4.8 The NHQC came into effect in 2022. It was implemented by the New Homes Quality Board, which is a non-profit organisation endorsed by the HBF. The NHQC supplements, but does not replace, the standards set out in the HBF Code. It has been implemented in England, Wales

¹⁰² There are also a variety of other factors that may delay adoption in the long term for example, awaiting adoption of related infrastructure (delays to which may be caused by difficulties in agreeing relevant payments), and liquidation of the original contractor.

¹⁰³ Section 37 of Highways Act 1980.

¹⁰⁴ Section 37 of Highways Act 1980.

¹⁰⁵ Update Report, [3.18], [2.56](a), [2.56](c), [2.57], [2.59], [2.61].

¹⁰⁶ Update Report, [3.19], [2.80], [3.17], [3.24].

and Scotland. As of 3 March 2023, the NHQB had almost 200 members, including some of the very largest housebuilding organisations in the UK, as well as a broad range of SMEs. Once all registrations have been activated, this represents between 70-80% of the new build homes market in England, Scotland, and Wales.¹⁰⁷ The NHQB is funded by developer registration fees (which depend on each developer's size and turnover). It is also focused on fair dealing with purchasers of new homes and resolving any issues they might have with their new home.

- 4.9 The NHQC was expressly introduced to fill potential gaps in existing protections for customers, including to prevent issues of the type identified by the CMA. It followed a full public consultation on its initial draft (including 250 responses from consumers). If the CMA considers it does not achieve this, it would be open to the CMA to suggest reforms to update the NHQC (or the HBF Code).
- 4.10 Barratt notes that it has robust policies and practices in place to mitigate as far as possible the likelihood of customers experiencing issues in respect of EMCs. These follow the requirements of both the HBF Code and the NHQC. In particular:
- (A) [%]
 - (B) [%]
 - (C) [%]
 - (D) [%]
 - (E) [%]

The legislative framework governing the process of adoption and incentives regarding adoption

- 4.11 Barratt disagrees that it is incentivised to minimise adoption. Adoption avoids the complications, expense and administrative burden of setting up EMCs and is more attractive to prospective homebuyers. Barratt is highly incentivised to maintain its exceptional customer service record and its ability to do so is dependent on avoiding the kind of issues that often arise when EMCs are appointed. As explained above, Barratt has achieved HBF five-star status (the highest level achievable) for the last consecutive 14 years. Adoption eliminates complications and reputational risks that are linked to the private management of infrastructure and common facilities.

Roads

- 4.12 Barratt's experience is that for the vast majority of its estates that have roads suitable for adoption, it will succeed in having roads adopted within 5-years from completion. By way of example, of the 141 sites completed by Barratt in FY 2017 that have roads suitable for

¹⁰⁷ Further details are provided in the NHQB's Spring 2023 update, available at ([Spring 2023 update from the New Homes Quality Board \(nhqb.org.uk\)](#))

adoption: 91.49% have been or will be adopted. The remaining 8.51% of roads are cul-de-sacs that are not generally used by the public.

- 4.13 Highway Authorities are required to adopt roads by virtue of s.37 of the Highways Act 1980, provided the road has been built to the requisite standard. However, [%] it is generally more practicable to achieve adoption through a s.38 agreement with the local authority. S.38 of the Highways Act 1980 provides local authorities with the powers to enter into an agreement to adopt a newly constructed road.
- 4.14 Nonetheless, achieving the adoption of roads is not straightforward. The principal obstacle is the need to agree an appropriate commuted sum. The commuted sums required by local authorities often lack robust evidence as to how they have been calculated and any challenge to commuted sum payments invites considerable delays. There is tendency for the Highway Authority to significantly over-estimate the cost of highway works (sometimes more than 50%) and these estimated costs are the basis for Highway Authority inspection fees which are often excessive. Plainly this complicates and extends the process for agreeing commuted sums, although Barratt notes that this does not disadvantage its customers, as Barratt will typically fund the maintenance costs of roads during this period.
- 4.15 By way of example, a number of Highway Authorities refuse to accept Barratt's retained, competent contractor competitive tender submission for the highway works to be adopted. These tender returns are frequently much lower than disclosed Highway Authority costs and are usually determined from the Highway Authority's existing Framework Contractor costs.
- 4.16 The process of adopting roads would therefore benefit from the implementation of guidelines by central government which set out clear criteria as to how commuted sums payable by housebuilders should be calculated. Barratt notes in this regard that calculation criteria for commuted sums already exist in some areas – for example in England:
- (A) s.106 and/or local Supplementary Planning Documents stipulate the calculation criteria for certain elements, for example Local Equipment Area for Play, and Multi Use Game Areas; and
 - (B) some Highway Authorities have adopted the (discretionary) principles contained within the ADEPT (Association of Directors of Environment, Economy, Planning & Transport, formerly CCS, County Surveyors Society) Commuted Sums for Maintaining Infrastructure Assets Guide 2009.

Public spaces

- 4.17 Barratt agrees with the CMA's current thinking that local authorities are incentivised to minimise the level of adoption of public spaces to avoid the costs of maintain these spaces.¹⁰⁸ Local authorities do not have any legal obligation to adopt public spaces – this is in stark contrast to the obligations on Highway Authorities to adopt roads.

¹⁰⁸ Update Report, [3.18].

- 4.18 Barratt's experience is consistent with the CMA's understanding that there is an accelerating trend of non-adoption of public spaces.¹⁰⁹ Despite Barratt's policy on adopting public amenities, in the last three years, only [%] of Barratt's sites have been adopted by local authorities. This problem is increasing over time, as local authorities come under increasing pressure to provide enough public space to meet their own identified green infrastructure requirements, and to make this a condition of planning consent. However, when green spaces are not adopted, their management must be funded by residents.
- 4.19 As noted by the CMA, a significant concern for homeowners where public spaces are not adopted is that they are paying additional charges for services that should be included within their council tax.¹¹⁰ This is all the more frustrating for public spaces, where homeowners are funding amenities used by the general public.
- 4.20 Barratt's experience is that local authorities deploy different approaches when considering whether they will adopt new public open spaces, which can be fluid generally depending on whether they have up to date policies on the matter, and/or the financial and manpower capacity within the Council at the time of considering the adoption request. Some local authorities will not respond at all to requests for adoption of public open spaces. Barratt agrees that legislation is the most appropriate way of resolving these issues and would suggest that the CMA considers recommending to the Government that local authorities should be obliged to adopt public spaces at least where they are for the wider community provided that they have been built to the requisite standard and, importantly, provided that housebuilders contribute to the costs of maintenance through the payment of commuted sums.

Private Management of Public Amenities

- 4.21 The Update Report notes that, where customers purchase a home on a new housing estate that will be managed by an EMC, most housebuilders provide information in advance of:
- (A) the fact that the estate will be managed by an EMC;
 - (B) the identity of the current EMC; and
 - (C) the estimated costs for the first year.¹¹¹
- 4.22 However, the Update Report expresses concern that:
- (A) homebuyers may be less informed about the long-term implications of EMCs – for example, that the fees of an estate management charge can change significantly year-by-year – and about their rights under estate management arrangements, for example how they can change EMC or what they can do if they disagree over the types of work carried out etc. The Update Report states that such information is generally only

¹⁰⁹ Update Report, [2.65].

¹¹⁰ Update Report, [2.51(d)], [2.51(g)(i)].

¹¹¹ Update Report, [2.74(a)].

included in provisions in the transfer deed and in the articles of association of RMCs which are frequently provided at the end of the sales process;¹¹² and

- (B) large housebuilders are not taking sufficient practical steps to implement relevant policies and ensure that their sales staff properly inform customers about the cost and practical implications of buying a property on a privately managed estate.¹¹³
- 4.23 Barratt recognises that across the industry a lack of transparency has been an issue for some homebuyers. This has received significant focus, and as noted by the Update Report, the NHQB has recently been set up to mitigate these and other issues that can sometimes affect customers purchasing newly build homes. As noted above, it supplements the pre-existing standards set out in the HBF Code.¹¹⁴
- 4.24 The NHQC has specific provisions requiring transparency as regards the involvement of management companies, and projected costs relating to estate management, including an indicative costs schedule, which must reasonably identify likely costs associated with the tenure and management of the new homes for the next 10 years (not just the next year, a concern referred to at [2.74(b)] of the Update Report). The costs schedules must also clearly identify any financial obligations in respect of public amenities (such as street lighting, parks and landscaping).
- 4.25 The NHQC also requires that:
- (A) the content of any sales and marketing material relating to the new home is clear, fair and not misleading, legally compliant, and uses plain language;
 - (B) in describing the new home, the developer must inform and not mislead customers, including as to management services, service charges and any resale restrictions/covenants;
 - (C) employees do not make assumptions about the degree of knowledge that a customer has;
 - (D) the developer has systems and procedures in place to enable them to accurately and reliably meet NHQC requirements. This includes providing training on the NHQC to all employees who deal with customers; and
 - (E) any agents used by the developer must ensure that they are familiar with and meet NHQC requirements.
- 4.26 The NHQC has implemented a number of mechanisms for ensuring compliance. Most significantly, an independent certified Ombudsman ensures a route to redress for breaches of

¹¹² Update Report, [2.74(b)].

¹¹³ Update Report, [2.75].

¹¹⁴ Update Report, [2.14].

the NHQC.¹¹⁵ Residents have two years to apply to the Ombudsman for resolution of a dispute, which is sufficient time for disputes relating to transparency to have been resolved. The NHQC also has in-built mechanisms to test the success of its provisions:

- (A) the NHQB has implemented a developer audit process that will measure compliance with the NHQC, including but not limited to, Ombudsman outcomes, complaint trends, and customer satisfaction levels; and
- (B) the Ombudsman will publish anonymised case studies to provide developers with lessons learned on issues raised and resolutions.

- 4.27 Barratt agrees with the comments from other respondents¹¹⁶ to the CMA's Statement of Scope that further time is needed to assess the success of these aspects of the NHQB, as it was only launched in 2022, and it is desirable that unnecessary duplication of voluntary standards is to be avoided. Barratt also considers that the NHQB and/or the HBF Code (breaches of which are dealt with via an independent disputes service, and can attract serious sanctions) may benefit from being extended to cover the separate issues described at paragraphs 4.29 and 4.30.
- 4.28 Barratt looks forward to receiving the CMA's Autumn Paper and will provide further feedback as necessary at that time.
- 4.29 As regards the potential issues faced by some house-purchasers in respect of their EMCs (where applicable), including their power to challenge charges and replace the EMC, Barratt agrees that the CMA should recommend steps aimed at resolving these issues. Whilst Barratt has rigorous protections in place for the customers of its new estates, and will not appoint embedded MCs (unless adoption or an RMC is not possible), voluntary standards would be helpful in ensuring consistency across the industry backed up by legislation where appropriate to achieve what voluntary standards cannot.
- 4.30 Barratt would therefore be supportive of an extension to the NHQC and/or HBF Code and complaints process to further cover EMC-related issues, which might include – for example – rules as to the appointment and ongoing audit of EMCs.
- 4.31 In addition, Barratt agrees with the CMA that it should consider making appropriate recommendations to strengthen the legal rights/remedies available to freeholders of properties subject to EMC charges. Such legislation could include improved rights to challenge charges and to change EMC. The potential advantage of such legislation is that it may be able to cover homeowners on existing estates, where changes might otherwise be difficult to implement on a voluntary basis.

¹¹⁵ The Ombudsman is certified to Stage 1 in the Chartered Trading Standards Institute's Consumer Approval Scheme (CCAS). Barratt understands the NHQB is now working hard to achieve Stage 2 approval and become a fully accredited Code of Practice.

¹¹⁶ Update Report, [2.51(b)], [2.51(g)(vi)].

5. Response to the CMA's questions at paragraph 3.30

Do you agree with the CMA's reasons for suspecting that there may be features of the land and housebuilding markets leading to competition issues in the supply of houses and estate management services?

5.1 Barratt does not agree, for the reasons set out in the introduction to this response.

Are there any reasons why a market investigation reference may not be the most appropriate outcome of the market study? If so, please elaborate by reference to the criteria set out in paragraph 3.20, and in particular: —

- (A) Suitability of the use of the CMA's order making powers, given the issues that may exist in these markets**
- (B) Alternative possible solutions, drawing out, if appropriate, long-term solutions and measures to mitigate the issues the CMA has identified in the short-term**
- (C) Views on likelihood of alternative solutions being implemented and what factors may increase their likely success.**

5.2 It is Barratt's view that a market investigation reference in respect of land banking, the adoption of public roads or the adoption and management of open spaces and other public amenities would not be an appropriate outcome of the CMA's current market study for the reasons set out in the remainder of this section.

Land banking and the availability of developable land

(A) Suitability of the use of the CMA's order making powers, given the issues that may exist in these markets

5.3 In Barratt's view, the use of the CMA's order making powers would not be suitable in relation to land banking because:

- (i) for the reasons outlined in the introduction to this response, Barratt does not consider that any competition issues exist in the context of land banking;
- (ii) in any event, none of the CMA's order making powers would be suitable or proportionate in relation to land banking; and
- (iii) the constraint on the availability of developable land identified by the Update Report is the failure of the planning system – these issues are sufficiently explored in the Update Report to form the basis of recommendations to the Government for reform without the need for further investigation.

5.4 Barratt notes that the CMA has wide-ranging remedial powers available to it during a market investigation. For example, it can make orders to restrict particular conduct, regulate prices or

to require divestment.¹¹⁷ Before those orders can be made, the CMA must find that an adverse effect on competition exists, in which case the CMA can then make orders “*for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition*”.¹¹⁸

- 5.5 However, as explained, there is no feature, or combination of features, of a market that gives rise to any adverse effect on competition in the context of land banking. Barratt anticipates that this will become even clearer as the CMA progresses its market study. It follows that there will be no need for the CMA to resort to its order making powers in relation to land banking as part of a market investigation because those powers are directed towards addressing competition issues.
- 5.6 In any event, the use of the CMA's order making powers would neither be suitable nor appropriate in the context of land banking. By way of example, an order requiring divestment of Barratt's land bank in concentrated markets¹¹⁹ would be disproportionate as that term is understood in the CMA's guidance – in particular, it would be excessively onerous and burdensome on Barratt and would undermine Barratt's ability to maximise the output of new homes.¹²⁰ [%] Were Barratt's land bank to be reduced in any area, this is highly likely to reduce its ability to reach its output targets for that area.
- 5.7 Rather, as explained in further detail below, Barratt considers that there are alternative solutions available to the CMA, which would be more appropriate and proportionate in the circumstances.

(B) Alternative possible solutions, drawing out, if appropriate, long-term solutions and measures to mitigate the issues the CMA has identified in the short-term

- 5.8 As set out at paragraphs 2.16 to 2.19, and section 3 above, Barratt considers that reforms to the planning system are the most appropriate way of addressing concerns regarding limitations on the land available for development.
- 5.9 In particular, Barratt suggests that the CMA should recommend legislative reforms that (i) incentivise LPAs to have an up-to-date local plan and penalise them if they do not (see paragraph 3.30 above) and (ii) enable faster determinations of planning applications (see paragraph 3.31 above). In Barratt's view, these reforms — if implemented — would effectively address the issues raised by the CMA in its Update Report.
- 5.10 The CMA can make these recommendations as part of its current market study without the need to make a market investigation reference. In Barratt's view, the CMA should not delay the publication of these recommendations by prolonging unnecessarily its investigation. That is particularly so given the CMA is conducting only limited further analysis in the next six months

¹¹⁷ Schedule 8 of the Enterprise Act.

¹¹⁸ Enterprise Act 2002, section 134(4)(a).

¹¹⁹ As suggested by the CMA as a potential remedy: Update Report, [3.25].

¹²⁰ Update Report, [12].

of its market study, the results of which will be presented in its Autumn Working Papers and are highly unlikely to change the nature of the appropriate solutions. Barratt would also encourage the CMA to request that the Government expedite the process of implementing the recommended legislative reforms to the extent practicable.

- 5.11 Barratt also notes that not undertaking a market investigation in relation to land banking would be preferable in terms of proportionality. According to the CMA's guidance, the CMA can only make an investigation reference where doing so is a proportionate response.¹²¹ In deciding whether to make such a reference, the CMA may consider "*the burden on business, particularly in terms of management, time, and the public expenditure costs of an investigation*".¹²² It may then reach the view that a market investigation would likely be disproportionate in relation to any benefits that may be obtained from remedying any adverse effects.¹²³
- 5.12 In Barratt's submission, a market investigation into land banking would be disproportionate in the circumstances. It would not be an efficient or effective use of the scarce resources of the CMA and industry participants. It would also not be justified in circumstances where the housebuilding industry is experiencing highly challenging market conditions due to falling demand and lower profits.
- 5.13 Barratt further notes that according to the CMA's guidance, the CMA can only exercise its discretion to make a market investigation reference where it is "*the most appropriate way of proceeding*".¹²⁴ In Barratt's view, for the reasons outlined above, a market investigation is not an appropriate way (let alone the most appropriate way) of proceeding in relation to land banking. Rather, the most appropriate course is to continue with the market study and proceed with making recommendations proposed in this response, which are already available to the CMA without the need for a further market investigation. In those circumstances, the CMA should exercise its discretion not to make a market investigation reference in relation to land banking.

(C) *Views on likelihood of alternative solutions being implemented and what factors may increase their likely success.*

- 5.14 The solutions suggested by Barratt in relation to planning are primarily recommendations for legislative reform. It will be a matter for the Government to decide whether to act on those recommendations and, if so, the timing for implementation. However, in Barratt's view, support and consultation by the CMA in relation to the recommendations are likely to increase the likelihood of their success. Barratt would also encourage the CMA to request that the Government expedite the process of implementation.

Private management of public amenities

¹²¹ [CMA3](#), [1.12].

¹²² [OFT511](#), [2.27].

¹²³ [OFT511](#), [2.27].

¹²⁴ See [OFT511](#), [1.10].

(A) Suitability of the use of the CMA's order making powers, given the issues that may exist in these markets

- 5.15 In Barratt's view, the use of the CMA's order making powers would not be suitable in relation to the adoption of roads because no competition issues exist in the context of the adoption of roads, the vast majority of which will be adopted over time.
- 5.16 As regards the adoption of open spaces, which is a recognised problem area, the CMA recognises that the legal and policy framework underlying the adoption and management of public amenities "*plays a central role [in] shaping behaviour in the market*".¹²⁵ The CMA concludes that the legislative framework is the root cause of the issues it identifies.¹²⁶ In this way, the problem is not one of competition but one of failure of the relevant regulatory framework. In Barratt's view, it follows that the use of the CMA's order making powers would not be suitable because they would not address this root cause.
- 5.17 As regards the role of EMCs, Barratt considers that the most suitable remedy would be recommendations to amend and improve the legislative framework. In addition, there is a role for expanding existing voluntary codes of practice as set out in section 4 above. Barratt notes that all of these suggestions can be implemented without the need to rely on the CMA's order making powers. The use of those powers would therefore be disproportionate in circumstances where there are less onerous measures available, which would be adequate to achieve the aims of the CMA.

(B) Alternative possible solutions, drawing out, if appropriate, long-term solutions and measures to mitigate the issues the CMA has identified in the short-term

- 5.18 Barratt suggests that the CMA should make recommendations to the Government in relation to the legislative reforms set out in section 4 above in respect of guidelines for commuted sums, the adoption of open spaces and the rights of freeholders living on estates managed by EMCs.
- 5.19 This would have several advantages, including that the legislation would cover the entire sector, would provide clear, consistent rules (which, in the case of freeholder rights, may be readily adapted from the legislation that currently applies to leaseholders), and could be enforced under general law. Importantly, they would adequately address the concerns raised by the CMA. They would also each be a more proportionate solution when compared to any of the CMA's order making powers.
- 5.20 While legislative reform is a long-term solution, Barratt notes that making recommendations for such reform has the advantage of being available to the CMA as part of its current market study without the need to make a market investigation reference. In Barratt's view, the CMA should not delay the process of proposing solutions available already by prolonging unnecessarily its inquiry. Barratt would also encourage the CMA to request that the Government expedite the process of implementing the recommended legislative reforms to the extent practicable.

¹²⁵ Update Report, [55].

¹²⁶ Update Report, [54], [2.56](a), [2.57], [2.59].

- 5.21 In addition, Barratt would be supportive of extensions to the voluntary HBF Code or NHQC to address the CMA's concerns in respect of the lack of adoption of open spaces, as well as its concerns relating to the balance of power of EMCs. As regards to the adoption of open spaces, Barratt suggests that this would be an interim measure pending the implementation of legislation. A similar approach was taken in relation to the CMA's Road Fuel Market Study, where the CMA took action on a temporary basis by creating a temporary voluntary scheme for retailers to make their pricing data available, pending legislation to create a statutory fuel finder scheme.¹²⁷
- 5.22 Overall, Barratt considers that the combination of solutions it has suggested is the most appropriate and proportionate way to address concerns regarding the adoption and management of public amenities. It would also be disproportionate for the CMA to undertake a market investigation in relation to the adoption and management of public amenities in view of the factors outlined at paragraph 5.12 above.
- (C) *Views on likelihood of alternative solutions being implemented and what factors may increase their likely success.*
- 5.23 It will be for the Government to decide whether to act on recommendations as to legislation and, if so, the timing for implementation. However, in Barratt's view, support and consultation by the CMA will likely increase the likelihood of success. Barratt would also encourage the CMA to request that the Government expedite the process of implementation.
- 5.24 The proposed extension to the NHQC and/or HBF Code is a matter for the NHQB/HBF, but Barratt considers that they would be capable of implementing such a solution without undue delay. In Barratt's view, support and consultation by the CMA in relation to this would be welcome and would increase the likelihood of success.

¹²⁷ See [Open Letter from Sarah Cardell to Stakeholders in the Road Fuel Market](#) dated 10 August 2023.