

**Taylor Wimpey's response to CMA Update Report and Consultation on
Possible Market Investigation Reference****1. Executive Summary**

1.1 On 25 August 2023 the CMA published an update report on its housebuilding market study (the "**Update Report**"). The CMA stated in the Update Report that it has decided to open a consultation on a proposal to make a market investigation reference ("**MIR**") in relation to two issues: (i) housebuilders' land banks; and (ii) the private management of public amenities on housing developments.

1.2 Taylor Wimpey ("**TW**") welcomes the opportunity to provide its views on the Update Report and the CMA's consultation on a potential MIR. TW also looks forward to working with the CMA throughout the second half of the market study to help inform any CMA recommendations to industry and the government.

1.3 TW welcomes a number of the Update Report's preliminary findings, in particular that:

- (i) the level of competition in the housebuilding market is healthy with low concentration at the national level;¹
- (ii) housebuilders are competing to build homes in innovative ways;²
- (iii) there is "sufficient land available for development" (i.e., land as a raw input which could potentially be purchased for development) in Great Britain ("**GB**");³ and
- (iv) the planning system is not operating effectively – with planning timeframes becoming increasingly long and uncertain – as a result of its complexity, the constant changes to planning policy, and the significant resourcing burdens faced by some Local Planning Authorities ("**LPAs**").⁴

1.4 However, in respect of (i) land banks and (ii) the private management of public amenities, TW does not agree with a number of the Update Report's preliminary findings, and TW does not consider that the purported concerns outlined in the Update Report in respect of these areas would justify an MIR, for the reasons summarised below:

- (i) With respect to land banks, there are sound operational reasons for housebuilders to secure access to land for future development. Housebuilders must have sufficient land to deal with the protracted planning process in GB, and the significant uncertainty and delay caused by the planning regime. Land bank size is also driven by macroeconomic factors outside of housebuilders' control including successive downturns, a high inflationary (and high interest / mortgage

¹ Paras. 39 (Executive Summary) and 2.115 of the Update Report.

² Para. 2.19 of the Update Report.

³ Para. 36 (Executive Summary) of the Update Report.

⁴ Para. 30 (Executive Summary) of the Update Report.

rate) environment and shortages of materials and labour as a result of Covid.⁵ The size of TW's short-term land bank reflects these factors. The evidence is clear that the size of housebuilder land banks can therefore be attributed to features of the market, including the nature of the planning system, rather than business strategies by TW or other housebuilders aimed at gaining or exercising market power.⁶ In any event, when measured in land bank years, the CMA's analysis indicates that the size of housebuilders' land banks has remained broadly stable in recent years. TW (like other housebuilders) is strongly incentivised to develop land as quickly as possible because its profitability depends on maximising output.⁷ In Q3 2023, TW had started (or was due to start) on 99.6% of sites with implementable planning permission. Indeed, the CMA's finding that there is sufficient land available for development undermines any suggestion that housebuilders such as TW could derive any benefit from buying (or optioning) more land than they need. It follows that housebuilder land banks cannot represent a feature of the market which prevents, restricts or distorts competition, and thus cannot form the basis of an MIR.

- (ii) With respect to the private management of public amenities, TW considers that the issues identified in the Update Report are a function of a legal and regulatory regime that is not fit for purpose. While there is a statutory regime governing the adoption of roads, meaning that the vast majority of roads that TW builds are ultimately adopted by the local authority ("LA"), no such regime exists with respect to the adoption of open spaces or other public amenities. This is the core issue that needs to be addressed with respect to estate management, since in TW's experience, this leads to the majority of LPAs resisting adopting these public amenities owing to the important resource and financial constraints that they face. TW therefore does not agree with the suggestion that housebuilder behaviour is contributing materially to the concerns raised in the Update Report. It is not in a housebuilder's interests to appoint an embedded management company, and it is TW's strong preference for public amenities to be adopted at a reasonable cost wherever possible.

- 1.5 Even if the CMA ultimately finds that the statutory test for an MIR has been met, an MIR would be an inappropriate course of action. To the extent that the concerns identified in the Update Report need to be addressed, they would be better addressed by way of targeted recommendations to the government. The remedial powers available to the CMA in a market investigation would not be appropriate to address these issues, and the use of such powers would likely result in lower levels of competition and worse outcomes for consumers, including reduced housing delivery and investment in the sector. An MIR

⁵ Land bank years change depending on the number of completions each year, and that this is heavily influenced by the macroeconomic conditions that affect demand such as the general state of the economy, inflation, interest rates, the availability of affordable lending products, the cost of materials, employment, the cost of labour, population growth etc.

⁶ Para 2.43 of the Update Report.

⁷ Against the current challenging macroenvironment, TW's profit has fallen in 2023H1 and its UK-wide operating margin is down from 20.2% in 2022H1 to 13.8% in 2023H1, largely driven by a reduction in TW's completions.

would also only delay reform and so exacerbate existing concerns in relation to the availability of housing.

2. Land banks

- 2.1 In respect of land banks, TW does not consider that the statutory test for an MIR is met, or that an MIR would be an appropriate course of action, for the reasons set out below.
- 2.2 **As the Update Report recognises, there are sound operational reasons for housebuilders to secure access to land for future development.** Securing appropriately located land with good planning prospects for residential development is fundamental to TW's ability to deliver homes to customers.
- 2.3 At each stage in the development of strategic land, there are delays outside of TW's (or any housebuilder's) control, from acquiring land, allocation, promotion, planning, building and completions.
- 2.4 Even after receiving detailed planning, TW still needs to go through various stages before it can legally start works on site. This can include a statutory judicial review period of six weeks, discharge of pre-commitment conditions including technical approvals and legal agreements, detailed design process and infrastructure adoption agreements.⁸
- 2.5 It is these external delays (together with build-out rates and market absorption rates meaning it is impossible for the whole capacity of a site to be delivered immediately) that drives the need for a reserve of land. Without a continuous flow of land successfully passing through the planning process, it would be impossible to ensure that housing can be delivered in line with market demand.
- 2.6 **The size of land banks is driven by features of the market outside of the control of housebuilders.** As recognised in the Update Report, TW and other housebuilders operate in a highly challenging and unpredictable planning and regulatory environment.⁹ This is consistent with the position of many third-party studies including those of Lichfields¹⁰ and HBF.¹¹
- 2.7 The size of TW's land bank reflects the significant risks and expenditure involved in navigating this challenging planning and regulatory environment – as well as the macroeconomic conditions that affect the number of completions each year. The key challenges of the planning system include:

⁸ For example, S278, TRO's, S38 and environmental licenses.

⁹ Para. 51(d) of the Update Report.

¹⁰ Lichfields, 'Making a bad situation worse? The impact of the proposed NPPF changes on housing supply' (27 February 2023), accessed at: <https://lichfields.uk/blog/2023/february/27/making-a-bad-situation-worse-the-impact-of-the-proposed-nppf-changes-on-housing-supply/>.

¹¹ HBF, 'Government planning reforms could see housing supply fall to record low and cost 400,000 jobs' (1 March 2023), accessed at: <https://www.hbf.co.uk/news/government-planning-reforms-could-see-housing-supply-fall-record-low-and-cost-400000-jobs/>.

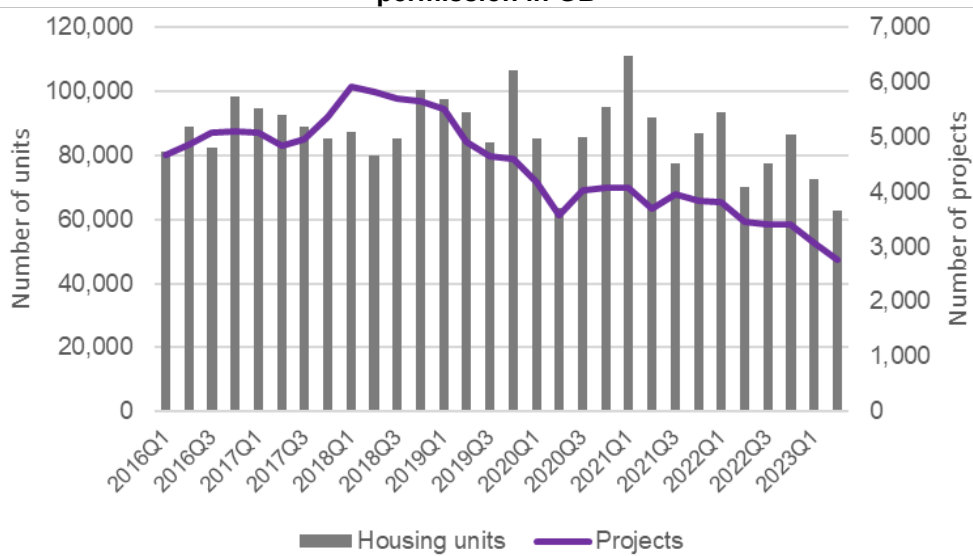
- (i) Time and uncertainty over obtaining planning permission.
 - (ii) Time and uncertainty to convert to implementable planning permission.
 - (iii) Costs and delays with planning conditions.
 - (iv) Delays to the production and adoption of Development Plans in a plan-led system.
 - (v) Obligations on under-resourced LPAs and statutory bodies.
 - (vi) Uncertainty over complex regulatory requirements and allocations for residential development.
- 2.8 Planning challenges are not just affecting output from private housebuilders; they are also restricting delivery by social housing providers, Build-to-Rent,¹² and SME housebuilders who are disadvantaged by the lack of funding. These challenges pose a significant challenge for potential new entrants into house building.
- 2.9 The problems with the planning system are only getting worse. TW notes that rather than increasing the rate of planning permissions required to improve the delivery of housing stock, the rate of planning permissions per year is falling across the country.
- 2.10 As illustrated in Figure 1 below, there has been a broadly decreasing trend in residential planning approval in GB in recent years.^{13 14} The trend has continued into (at least) 2023Q2 with detailed planning approvals having declined by c. 43% in terms of housing units, or c. 32% in terms of projects, compared to the peak in 2021. Notably, this downward trend is seen across large, small, private and social housing projects.

¹² Build-to-Rent is a distinct asset class within the private rented sector. As defined by the National Planning Policy Framework, it is “[p]urpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.” See UK Government, ‘National Planning Policy Framework - Annex 2: Glossary’ (undated), accessed at: <https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary>.

¹³ HBF, ‘New Housing Pipeline Q2 2023 Report’ (7 September 2023), accessed at: https://www.hbf.co.uk/documents/12810/HPL_REPORT_2023_Q2_v2.pdf. The figure is based on Glenigan’s data (as cited by HBF) for residential projects of all sizes, residential units on non-residential schemes and conversions.

¹⁴ There was a short-lived uptick in 2021Q1 reflecting local authorities addressing some of the backlog of planning permissions post-Covid lockdowns, followed by a sharp drop in the subsequent quarter.

Figure 1: Number of residential housing units and projects securing detailed planning permission in GB



Source: HBF, Glenigan

2.11 However, planning permissions need to be increasing. Lichfields estimates an additional 4 to 5 medium (50-250 home) sites per District of England per year are required in order to achieve the UK Government’s target of building 300,000 homes per year.¹⁵ If the downward trend continues, it will only exacerbate existing housing shortages.

2.12 **The size of housebuilders’ land banks can be measured in land bank years. Under this measure, the CMA’s analysis indicates that the size of housebuilders’ land banks has remained broadly stable.** With respect to the alleged increase in the size of housebuilders’ short-term and strategic land pipelines in the last decade:¹⁶

- (i) The Update Report’s finding of an increase in land bank size is based on the number of plots owned or controlled by each major housebuilder, which is not the most informative metric to look at. The CMA itself acknowledges that this increase in the absolute size of the land banks *"has not always corresponded with changes in the number of years of future supply"*.¹⁷
- (ii) The analysis in the Update Report (see Figure 2.3) actually shows that most housebuilders’ (including TW’s) land bank years - i.e., land bank relative to completions in each year - have stayed broadly the same since 2012 with respect to short-term land and have only marginally increased with respect to strategic land.¹⁸

¹⁵ Lichfields, ‘Feeding the Pipeline – Assessing how many permissions are needed for housebuilders to increase the supply of homes’ (30 November 2021), accessed at: <https://lichfields.uk/content/insights/feeding-the-pipeline>.

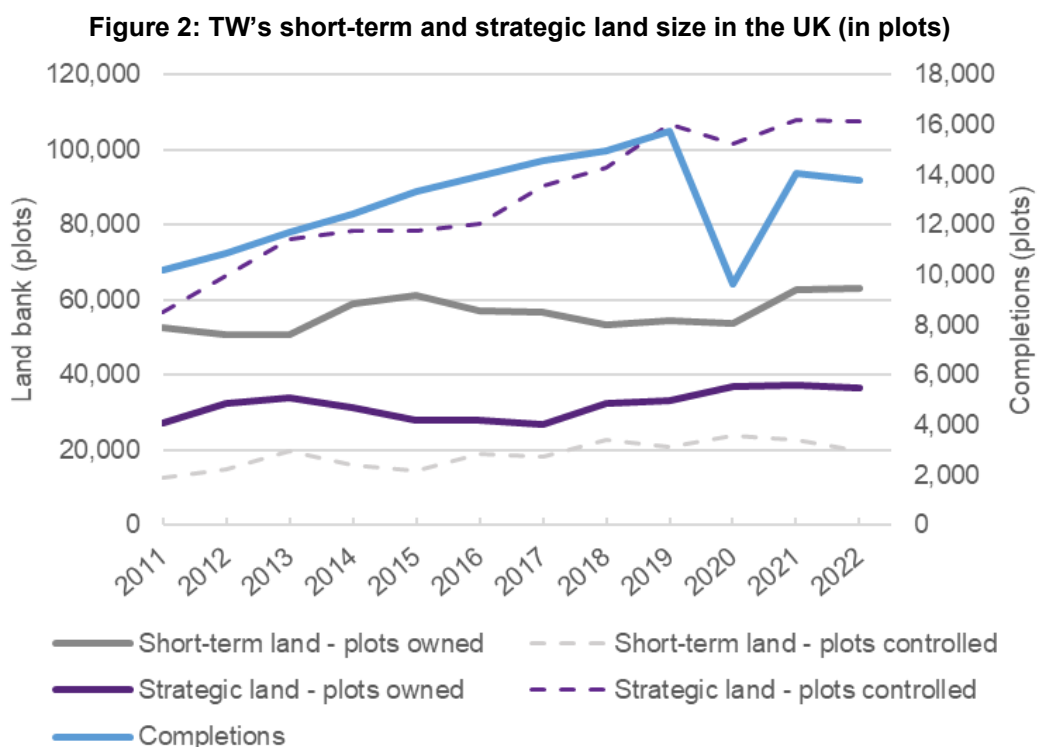
¹⁶ Figure 2.2 and Figure 2.3 of the Update Report.

¹⁷ Para. 2.35 of the Update Report.

¹⁸ The only exception is 2020/2021, when there was a crunch in completions due to Covid. These land bank years will be "artificially" higher given an exceptionally lower level of completions (i.e., a smaller denominator).

2.13 Even if you consider the size of the land banks in terms of plot numbers (which TW does not consider to be the correct metric), any increase in the size of TW’s and other housebuilders’ land banks in recent years is directly related to and caused by increases in the regulatory difficulties and macroeconomic factors that housebuilders have faced, particularly with respect to planning.

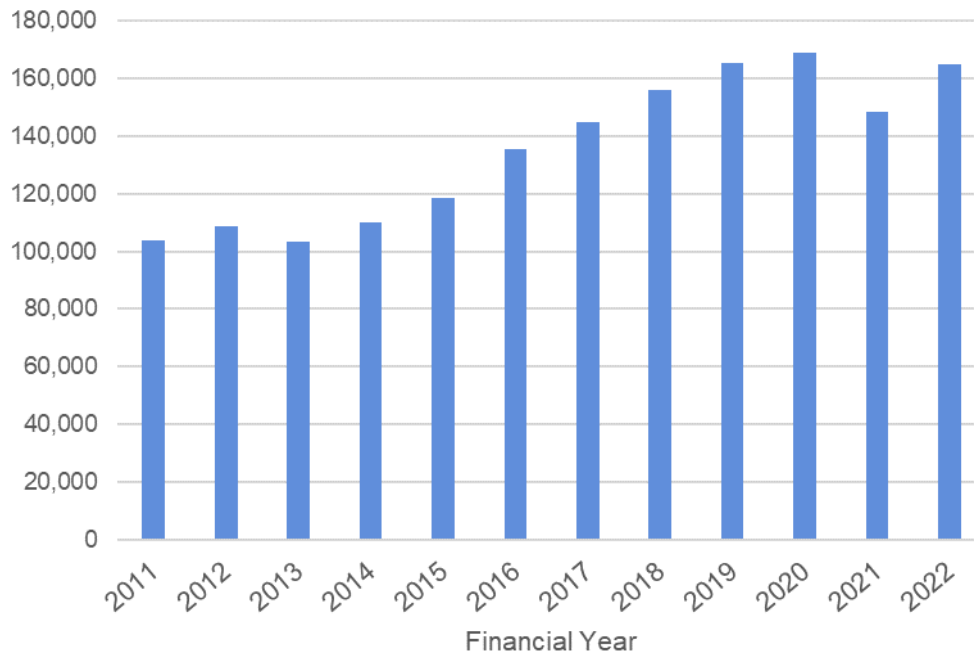
- (i) Contrary to the Update Report’s finding, the amount of short-term and strategic land owned by TW (in plots) has stayed fairly stable over the last decade, as shown in Figure 2 below. There has been an increase in the strategic land controlled by TW, which is a consequence of increased emphasis in policy terms on planning in accordance with the development plan, planning delays and other uncertainties experienced by TW.¹⁹



Source: TW’s ARAs

- (ii) Consistent with this, most housebuilders including TW have increased their output over the years (up until the outbreak of Covid), as illustrated in Figure 3 below. Their (absolute) land bank size has merely increased at a similar rate as their output, which is necessary to ensure a stable supply of land to meet the demand for housing.

¹⁹ It should be noted that TW’s strategic land size in plots as presented in Figure 2.2 of the Update Report does not seem to align with the data reported in TW’s ARAs. While the exact figures are not visible from Figure 2.2, the CMA’s 2019 figure appears to differ significantly from TW’s reported figure of c. 140k plots.

Figure 3: Total number of private dwellings completed in UK

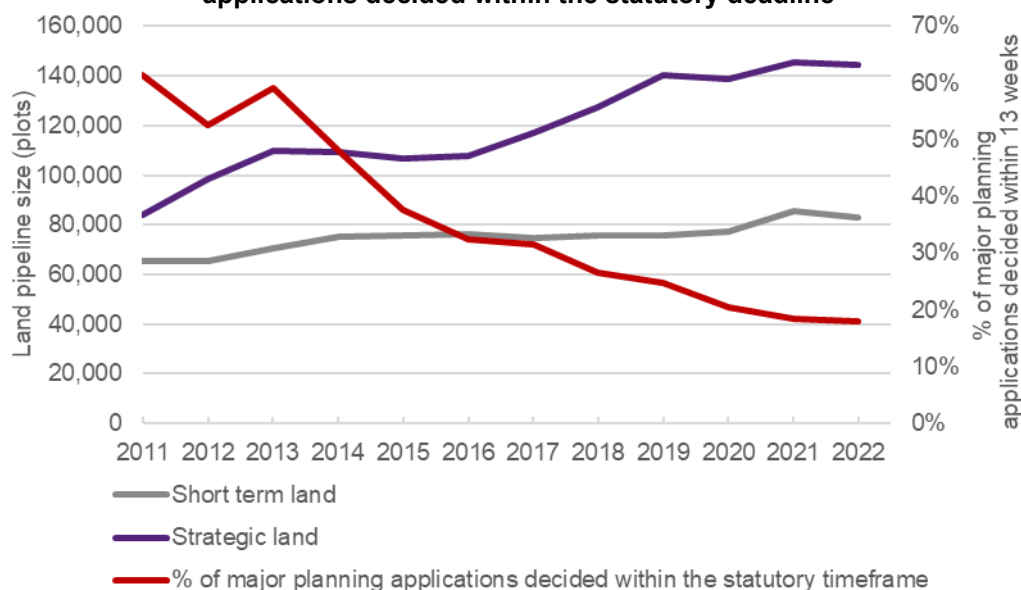
Source: ONS

2.14 The purported increases in the size of housebuilders' land banks over a longer period e.g., the past 10-15 years, corresponds with a significant increase in planning timelines over the same period together with a lack of demand between 2008 and 2011:

- (i) For example, based on the CMA's own analysis, the planning timeline has increased significantly over time. The CMA notes that, "*the percentage of the major dwelling planning decisions that were made within the statutory 13-week deadline fell significantly from above 50% in 2009 to below 20% in 2021... the average time taken to make an outline planning permission decision was over a year and often took much longer than that, whereas for a detailed or reserved matter application the average time taken was between 35 and 55 weeks*".²⁰
- (ii) The continued increase in planning timelines means that in order to maintain a similar level of output as before, housebuilders like TW would need to account for a longer lead time. This in turns increases the size of land TW would need in its land pipeline. Indeed, there is a clear correlation between TW's land bank size (in plots) and planning delays (as per the same metric as the CMA's abovementioned analysis) since 2011 as shown in Figure 4 below.

²⁰ Para. 2.92 of the Update Report.

Figure 4: TW's land size in the UK (in plots) and the proportion of major planning applications decided within the statutory deadline



Source: TW ARAs and ONS data

- (iii) As above, (absolute) land bank size is not the best metric to look at.
- (iv) When considering land bank years, the purported increases for TW and the majority of housebuilders largely disappear.

2.15 **The evidence is clear that the size of short-term land banks or strategic pipelines is not due to any lack of competition in relation to either the purchase or development of land.** In particular, the evidence unambiguously shows that TW faces intense competition:

- (i) Of the land allocated in adopted Local Plans in England, [redacted] is controlled by TW (considering both strategic and short-term land).
- (ii) In respect of strategic land: TW and other housebuilders face intense competition for strategic land from other parties such as land promoters,²¹ land developers, investors, housing associations and the public sector.²² In the public sector, Homes England in particular has around 250,000 housing units worth of land under its control.²³ In addition, many non-residential land users are now capable

²¹ For example, Gladman, L&Q, Gallagher, Peel, Dandara, Pigeon, Hill and Richborough Estates. There has been a significant growth of land promoters in strategic land segment in the last 10-20 years, as noted in TW's and others' SoS responses e.g. the response to the SoS of the Home Builders Federation ("**HBF**"), Land Promoters and Developers Federation and Dr Chris Foye et al., as well as the Lichfields report, Realising Potential: The scale and role of specialist land promoters in housing delivery (March 2018), accessed at: <https://lichfields.uk/media/4132/lichfields-lpdf-report-one-realising-potential-2018.pdf>.

²² For example, Local Authorities and Homes England.

²³ The Telegraph, 'Michael Gove's housing agency accused of land banking' (2 July 2023), accessed at: <https://www.telegraph.co.uk/business/2023/07/02/michael-gove-housing-agency-accused-land-banking/>.

of paying more for land than housebuilders in many areas of the country, which has further intensified the competition for land.

- (iii) In respect of short-term land: While TW does not have data on its precise share of short-term land, TW notes by proxy that TW [redacted] of homes sold in the UK as of 2022²⁴ and [redacted] across all regions. The Update Report also found that at the GB level, the market is unconcentrated.²⁵
- 2.16 TW therefore does not agree with the small number of academics who suggest in their Statement of Scope (“**SoS**”) responses that the large housebuilders may hold market power, as the evidence clearly shows competition is intense.
- 2.17 All respondents to the CMA’s SoS dated 28 February 2023 agree that housebuilders do not buy large quantities of land without a plan for its development and then hold the land (without progressing it) to benefit from the appreciations in its value.
- 2.18 **TW is strongly incentivised to deliver houses as quickly as the market will absorb them and reinvest capital into new sites.** TW is a price taker that is unable to “hoard” land to influence housing market prices.
- 2.19 Any strategy involving “hoarding” land in the hope that housing market prices would increase at a later date would be both extremely costly and risky, particularly in the current housing market climate and with the rate of pace of regulatory change. This is supported by previous studies such as the Letwin Review²⁶ and reinforced by the Update Report’s finding that there is “*sufficient land available for development.*”²⁷ Ultimately, in a market where it is established that there is no shortage of the relevant input (developable land), it is not a rational strategy to hold onto the input with the intention of increasing the price of the output product (as such increases would only occur where there is a limited supply of the input). The fact that there is sufficient land for development therefore means that housebuilders cannot “hoard” enough land to drive up prices downstream, and therefore have no incentive to do so.
- 2.20 “Hoarding” land in this way would tie up TW’s resources and investments leading to increased costs and less capital available to invest into new sites, resulting in reduced profits. It would also reduce TW’s Return on Capital Employed (“**ROCE**”) and company valuation, impacting returns to stakeholders and share price, with no corresponding benefit in terms of increased house prices. Housing market prices are instead determined by external macroeconomic factors including availability and attractiveness of second-

²⁴ Para. 4.7 of TW’s SoS response.

²⁵ Para. 2.115 of the Update Report.

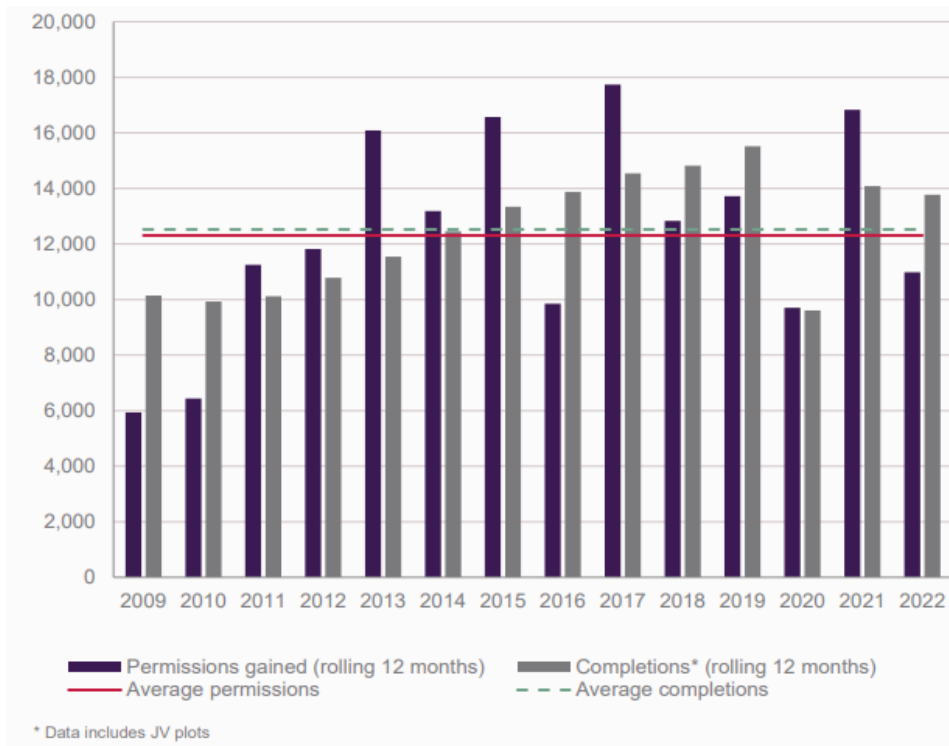
²⁶ UK Government, ‘Independent review of build out: final report’ (29 October 2018) (the “**Letwin Report**”), accessed at: <https://www.gov.uk/government/publications/independent-review-of-build-out-final-report>. For the adverse impact on housebuilding from higher interest rates and lower consumer confidence, see Financial Times, ‘UK housebuilders feel the strain from higher interest rates’ (25 August 2023), accessed at <https://www.ft.com/content/6844d3f9-31aa-4990-af89-f668569b6e2d>.

²⁷ Para. 36 of the Update Report.

hand homes, consumer preference, mortgage rates and affordability, and government policies e.g., Stamp Duty Land Tax.

2.21 The evidence clearly demonstrates that TW does not “hoard” land. In Q3 2023, TW had started (or was due to start) on 99.6% of sites with implementable planning permission. TW’s completion rates demonstrate that it delivers houses as quickly as it is able to. Figure 5 below illustrates that TW’s average completion volumes align closely with the average number of planning permissions secured since 2009 and in 3 of the last 5 years TW has been building and completing sites faster than the planning system can service consents. This would not be possible without a land bank.

Figure 5: TW’s completion rates and planning permissions secured



Source: TW’s ARA

2.22 TW’s relatively high completion rate has been achieved despite various external constraints faced by housebuilders. The low availability of materials and labour are a constraint on housing delivery. Successive downturns have reduced the capacity of the sector. The skilled workforce is ageing, and material suppliers have not always invested to improve their output in time to meet increased demand.

2.23 In addition, both material and labour shortages have become more prevalent in recent years and were particularly heightened during 2021 and 2022 as a result of Covid. Further issues impacting TW’s speed of completion can also arise on site or in the supply chain, with, for instance, delays and restrictions in infrastructure delivery limiting initial output.

2.24 [redacted]. Across the industry, there is a clear relationship between build-out rate and market demand, which is impacted by broader macroeconomic factors. A recent report

by Savills for Richborough Estates and the LPDF found, "*The average sales rate per outlet across our sample of major housebuilders was around 0.62 to 0.68 between 2003 and 2007, before it fell sharply during the GFC to hit a low of 0.40 in 2008. Since then, the average sales rate has gradually increased, reaching a fairly stable level of approximately 0.73 again between 2015 and 2019. Sales rates then fell during the first Covid lockdown, before rising to an average of nearly 0.87 during 2021 and 2022.*"²⁸ In other words, it is clear that sales rates (and therefore build-out rates) rise during periods of high demand (such as 2021-2022) and fall during periods of low demand (such as during the global financial crisis).

- 2.25 **There is no basis for a concern in respect of housebuilder land banks given that there remains “sufficient land available for development” in GB, and healthy competition in the purchase of land.** TW therefore does not agree with the suggestion that housebuilder land banks might operate as a barrier to entry for SME housebuilders. Rather, deficiencies in the current planning regime described above are the main barrier.
- 2.26 Similarly, TW does not recognise the concern around a lack of transparency in relation to the land holdings of housebuilders acting as a potential barrier to SMEs. As previously explained in TW’s Supplementary Evidence on Strategic Land submission on 7 July 2023, most of TW’s strategic land is controlled via option agreements with landowners. These options are registered on title with the Land Registry, so information on TW’s landholding in options is publicly available. TW also notes that transparency of land ownership will be further increased by changes envisaged under Part 11 of the *Levelling-up and Regeneration Bill*, which should further dispel any concerns the CMA may have in this area.
- 2.27 **TW is confident that, on further investigation by the CMA, it will become clear that there are no local areas of concentration in relation to housebuilders’ land banks.** TW faces significant competition in the purchase and development of land across all the areas of GB in which it operates.
- 2.28 That said, as discussed in our in-person session with the CMA on 6 June 2023, TW considers that it will be difficult for the CMA to conduct any meaningful local analysis in the context of the housebuilding market. Most notably, housing is a highly heterogeneous product, and there is a wide range of factors that consumers consider when choosing properties. Different (groups of) consumers tend to prioritise different considerations, which can also change over time. As a result, TW considers that it will be challenging to define the boundary of the “local” markets appropriately.
- 2.29 **TW is therefore confident that the CMA will find that the statutory test for an MIR is not met in respect of land banks.** This is because there are no reasonable grounds to suspect that land banks prevent, restrict or distort competition in the housebuilding market. In particular, the CMA’s analysis suggests that the size of developers’ land banks has remained broadly stable over time when considering the proper metric (land bank

²⁸ Savills, ‘A New Normal for Housebuilding? The importance of sales outlets in a market without Help to Buy’ (1 March 2023), accessed at: <https://www.lpdf.co.uk/wxuploads/files/newsletters/Richborough%20Estates%20and%20LPDF%20%20a%20new%20normal%20for%20housebuilding.pdf>.

years). Any increases in the size of the land bank are a symptom of failures in the regulatory and planning regime, rather than a symptom of a lack of competition in the land market. The size of the developers' land banks closely match their requirements in order to bring sufficient land to development within the constraints of this regime. As explained above, the size of housebuilders' land banks does not restrict competition in any way, as evidenced by the fact that there remains sufficient land available for development (as noted in the Update Report).²⁹

- 2.30 **Even in the alternative scenario where the CMA finds that the statutory test is met, an MIR would nonetheless be an inappropriate course of action.** In particular, an MIR is not the most appropriate remedy since the competition problems identified in the Update Report would be better addressed through other means available to the CMA.
- 2.31 Use of the CMA's order-making powers would not act to address the underlying issues – i.e. the highly challenging and unpredictable planning and regulatory environment in which housebuilders operate – that determine the size of land banks which housebuilders need to hold in order to ensure a stable pipeline of development. These issues should instead be addressed through recommendations to the government for changes to the planning and regulatory regime.
- 2.32 For completeness, any use of the CMA's order-making power to limit the size of housebuilder land banks or divest land banks to a third party would also have severe negative consequences:
- (i) TW is highly experienced at bringing land through to development quickly and efficiently. Imposing structural remedies to limit TW's land pipeline would only slow down the volume of houses brought to market. Moreover, any such remedy would be very difficult to justify in light of the finding in the Update Report that there is no shortage of land available for development.
 - (ii) A pipeline of land is needed to secure ongoing supply of new homes. All else being equal, limiting or reducing that pipeline would have the effect of reducing TW's output of new homes, reducing the contribution that TW is able to make to the government's housebuilding targets.
- 2.33 **TW would therefore instead welcome targeted recommendations being made by the CMA to the government with the objective of creating a more predictable, stable and less complex planning system.** A more efficient planning system would reduce the need for a land bank and increase the speed at which housing can be delivered. If the core challenges within the planning system are addressed this would provide benefits to all parties operating in the housebuilding sector, including SMEs who feel the effects of the deficiencies of the current system more acutely.
- 2.34 Recommendations that provide certainty and appropriate land availability throughout the life of a plan by maintaining a five-year supply of deliverable housing sites would assist

²⁹ Para. 36 of the Update Report.

all builders (both large and small) with delivering houses to market. TW's recommendations for improvements to the planning system are as follows:

- (i) **Introduce a National Plan and Policy:** The government should set out a minimum housing need and provide cohesion to deliver key outcomes (housing numbers; national infrastructure; environmental, social and economic objectives). As part of this, the government should make clear the opportunity to rebalance the economy and support regional growth. The current NPPF only provides policy guidance for plan-making and decision-taking rather than providing national policy and clear targets. A coherent national policy with clear targets will facilitate the increased delivery of housing. For example, in order to achieve these targets, LAs will need to improve the efficiency of the planning process, and they will require additional resources to do this. A quicker and more predictable planning system would be expected to reduce the amount of land that developers need to hold (reducing the size of the land bank).
- (ii) **Devolved authorities should be given powers to prepare Strategic Plans at a regional level:** This could address both the failure of 'Duty to Cooperate'³⁰ and criticisms of Regional Spatial Strategies ("RSS") prepared by regional planning bodies.³¹ Recent Strategic Plans, such as the Greater Manchester Spatial Framework (now Places for Everyone), Black Country Plan and West of England Joint Spatial Plan have all been delayed or abandoned due to local politics and an unwillingness from the government to introduce sanctions. However, any introduction of Strategic Plans must not result in delays to local plan preparation and decision making, and the duty of planning authorities to deliver their housing targets as a minimum. Having devolved authorities prepare Strategic Plans to meet housing requirements at a local level can provide a solution in most parts of the country whilst also taking account of constraints. This in turn would provide the stability and certainty to consistently plan for housing growth and delivery through allocations in Local Plans which would help to address the delays to housing delivery caused by the failure of LAs to have a local plan in place, and in turn would be expected to reduce the amount of land that developers need to hold.
- (iii) **Clarity should be provided on incentives for LAs for local plan preparation and sanctions for failure to implement a local plan:** LPAs are required to identify and maintain a five-year supply of deliverable housing sites.³² However,

³⁰ Duty to Cooperate is a legal test that requires cooperation between LPAs and other public bodies to maximise the effectiveness of policies for cross-boundary strategic matters in Local Plans, such as the distribution of housing requirements. LPAs must demonstrate that they have satisfied the Duty to Cooperate or their Local Plan will not proceed to adoption. However, in practice the Duty to Cooperate has done little to ensure that any shortfall in housing in one area is made up elsewhere. There have been many examples where a Duty to Cooperate has failed, including in Birmingham, Bristol, Sussex and London.

³¹ RSSs were abolished by the UK Government in 2010. It was recognised that RSSs were expensive, time-consuming, and added unnecessary bureaucracy to the planning system which discouraged people to build in their local area.

³² Para. 74 of the NPPF.

in recent years, this requirement has not been met by over a third of LPAs.³³ Incentives should be provided for LAs to prepare a local plan. LPA local plans help LPAs decide on planning applications and set out how development including housing, business construction and infrastructure (roads, facilities, and others) can best benefit the area for which the LPA is responsible. This in turn would be expected to reduce the size of the land banks that developers need to hold.

- (iv) **Introduce a ‘strong presumption’ in favour of sustainable development where the LPA has failed to update its plan / cannot demonstrate Five-Year Housing Land Supply or meet its Delivery Test:** This could involve fast-tracking appeals for a period of time where councils do not have an up-to-date plan in place or fail to maintain a five-year housing land supply, or fail to perform against the delivery test.³⁴ As above, this would help to address the delays to housing delivery caused by the failure of LAs to have a local plan in place, and in turn would be expected to reduce the amount of land that developers need to hold. This would need to be supported by increased resources and funding to LAs, together with a more efficient appeals system and early mediation.

3. Private management of public amenities

- 3.1 **In relation to the private management of public amenities, TW does not consider that an MIR would be an appropriate course of action, for the reasons below.**
- 3.2 **TW considers that the issues identified in the Update Report are almost entirely a function of a legal and regulatory regime that is not fit for purpose, leading to under-resourced LAs being unwilling and unable to adopt public amenities at a reasonable cost.** Effectively, the Update Report has identified concerns that potentially arise in respect of public amenities in circumstances where adoption does not occur.³⁵ However, if the adoption regime was fit for purpose, and adoption by LAs happened as a matter of course for a reasonable commuted sum with respect to all relevant assets, these issues would not arise. This seems to be the view of the large majority of respondents to the CMA’s market study so far.³⁶ In addition, the Home Builders Federation (“HBF”) recently released a report that estimates a total of £2.8 billion unused home builder contributions may be unspent in LA bank accounts³⁷ The current deficiencies in the

³³ Savills, ‘Planning Data Update 2023’ (11 January 2023), accessed at: https://www.savills.co.uk/research_articles/229130/338073-0.

³⁴ TW suggests that the planning inspectorate offers a mediation service for Planning Authorities and Applicants to help avoid unnecessary appeals.

³⁵ Para. 3.17 of the Update Report.

³⁶ Para. 2.51(g)(i) of the Update Report.

³⁷ HBF, ‘Councils sitting on £2.8bn of unspent funding for affordable housing, roads and schools’ (10 September 2023), accessed at: <https://www.hbf.co.uk/news/councils-sitting-on-28bn-of-unspent-funding-for-affordable-housing-roads-and-schools/>.

regime, however, lead to housebuilders having to find alternative solutions for the upkeep of unadopted amenities, such as the use of Resident Management Companies (“RMCs”).

- 3.3 **The majority of the concerns identified in the Update Report do not apply to roads.** Unlike the adoption of open spaces and other public amenities, there are designated statutory processes governing the adoption of roads.³⁸ This means that provided the road is built to the required standard, a road put forward for adoption by a developer will ultimately be adopted by LAs. TW does not avoid adoption by lowering its building standards. It is in TW’s interest to build roads to the requisite standard and have them adopted, and this also represents the preference of TW’s customers. [redacted]. This means that TW (and the other major developers as far as TW is aware) ultimately have the significant majority of their roads successfully adopted by the LA.
- 3.4 However, due to a lack of proper funding and resourcing for LAs, there are often significant delays in the process of the adoption of roads. In addition, roads will generally not be adopted by LAs until the utilities below the roads are adopted, which is a problem particularly for larger sites. While these delays are expensive for housebuilders (and reduce the ability of housebuilders to deliver housing developments quickly and efficiently) this does not have a detrimental effect on customers/residents. During the period between the road being built by TW and the LA eventually adopting the road, TW pays for the maintenance of the road – so there is no negative impact on the customers/residents resulting from the delay – the cost impact is felt instead by the developer.
- 3.5 **The adoption of open spaces and other public amenities is at the discretion of LAs, who are not held to any standard of transparency or reasonableness.** In TW’s view, it is not equitable for the residents of a development to have to pay for the ongoing maintenance of community assets that benefit the entire community (while also paying standard council tax). Open spaces and other public amenities that are available to all should be funded by the LA. This is also the preference of the customer, [redacted].
- 3.6 However, unlike roads, LAs are not required to adopt open spaces and other public amenities put forward for adoption. There is therefore significant local variation in this regard, with some LAs having a general policy to adopt, some having a general policy not to adopt, and others where adoption is a matter of discretion/negotiation.
- 3.7 Even where an LA is willing to adopt in principle, in practice, LAs often make adoption unviable as an option for the housebuilder (applying the principle of ‘cost in perpetuity’ when considering the size of the commuted sum for adoption). This is because there is no legislation or regulation that requires LAs to act reasonably and with transparency when determining the size of the commuted sum that a developer must pay to the LA for the adoption of the asset. This allows the LA to set the commuted sum at an exorbitantly high level, without providing any breakdown or justification of the costs, and leaving the developer with no option but to have the asset maintained privately.

³⁸ See The Highways Act 1980, section 38, accessed at: <https://www.legislation.gov.uk/ukpga/1980/66/section/38>.

- 3.8 The issue of the lack of adoption of open spaces and other public amenities stems from LAs that have become increasingly concerned about the ongoing cost of maintenance in perpetuity of these areas. In particular, LAs are concerned about the impact the additional maintenance would have on council tax. There are also concerns that the LA might be blamed over concerns about the quality of the maintenance – i.e., LAs do not want to take on responsibility for resident satisfaction. A further constraint on adoption is that LAs may be concerned that if an accident occurs on an adopted public amenity, the LA could attract liability for the accident.
- 3.9 These factors have meant that over time, LAs have become increasingly resistant to adoption of these assets. The financial pressure on LAs since the great financial crisis has exacerbated the problem. The issue is analogous to that seen in other contexts with respect to other statutory bodies who - through lack of funds and resources - have also become unwilling to adopt or take responsibility for linear and social infrastructure, such as roads, river walls, flood mitigation areas, bus services etc.
- 3.10 Further, it is likely that these tensions will increase, rather than improve, for a number of reasons including:
- (i) The continuing and increasing resistance TW is experiencing from LAs to adopt open spaces and other public amenities.
 - (ii) The increasingly complex management structures being envisaged by, for example, the Building Safety Act for higher density development.
 - (iii) The likely removal of freeholders from the apartment market (increasing the need for RMCs) and the rising costs of managing these assets.
- 3.11 The lack of an appropriate legal/regulatory regime to govern the adoption of public spaces and other local amenities (as exists today for roads), combined with the lack of proper funding and resourcing to LAs, leads to a lack of adoption of these assets. Without addressing these two problems directly, there is no easy answer to these issues. However, any proposed solution that results in increased costs or complexity for developers is likely to result in fewer viable developments and a reduction in housing delivery overall.
- 3.12 **Notwithstanding these challenges, when public amenities do have to be managed privately, TW is incentivised to ensure customers are satisfied with the arrangements and receive good service from the management company.**
- 3.13 TW is very aware that when customers have concerns with respect to an aspect of the estate management, this concern is often directed towards TW. This means that customer satisfaction with estate management is a key part of customer satisfaction with TW generally. As a result, the performance of a management company or its managing agent can have a direct impact on the metrics used to assess TW's customer satisfaction, such as TW's HBF's 5* award for customer satisfaction, which TW considers to be of key

importance to its brand and marketing strategy.³⁹ TW is therefore strongly incentivised to ensure that customers are treated fairly as part of the estate management process and that they receive a good level of service from the management company.

- 3.14 TW recognises some of the concerns highlighted in the Update Report with respect to embedded management companies and their managing agents, such as high charges, an inability to contest these charges, and difficulties in changing management company. Therefore, where adoption by the LA is not possible, [redacted].⁴⁰ TW notes that where a development uses an RMC, the CMA's concerns that apply to embedded management companies would largely disappear.
- 3.15 With respect to developments where TW has (historically or unavoidably) appointed an embedded management company, TW considers that it has an ongoing responsibility to the customer to ensure that they receive good service from the management company. For this reason, and due to TW's incentives with respect to customer satisfaction described above, [redacted]. This remains the case even if the complaint is raised several years after completion.
- 3.16 **With respect to all aspects of the development process, including any necessary private management of public amenities, TW treats customers fairly and transparently.** As with any aspect of the customer's engagement with TW, when dealing with the estate management process TW treats customers fairly and is open and transparent with them regarding their obligations. Treating customers fairly is a key part of TW's ethos and business model, and TW also considers this to be relevant to customer satisfaction – which is a key priority for TW as described above.
- 3.17 TW provides customers with clear and transparent information on the arrangements, the initial and expected ongoing costs of the estate management charges, and any other obligations on the customer, very early on in the process – at the reservation stage. This means that customers are made aware of these details in advance of their decision to legally commit to purchase the property, and they are given the opportunity to raise any questions that they may have during the reservation meeting.
- 3.18 This information is provided by members of TW's team who are specifically trained in the importance of transparency and treating customers fairly. Customers who are due to pay service/maintenance charges are also given an "Important Information Sheet" which makes clear that the charges may vary depending on the actual cost of providing the maintenance/service.⁴¹

³⁹ The HBF 5* Award is awarded to home builders that achieve above 90% in the percentage of customers who would recommend Taylor Wimpey to a friend.

⁴⁰ This may not be possible where, for example, the residents are unwilling to take on this responsibility.

⁴¹ See the following documents provided with TW's seventh response to the RFI dated 22 March 2023: (i) DISC ID: TW00000492; (ii) DISC ID: TW00000548; (iii) DISC ID: TW00000571; (iv) DISC ID: TW00000576; and (v) DISC ID: TW00000598. See also the reservation guidance provided with TW's first response to the RFI dated 14 August 2023 DISC ID: TW00000858.

- 3.19 TW also considers that there are good indications that the industry generally is moving in the direction of increased transparency. TW notes that the New Homes Quality Code ("NHQC") includes provisions targeting a lack of transparency when dealing with customers. This means that any developers signing up to the NHQC will be required to provide clear and transparent information to customers throughout the sales process, which should significantly address any transparency concerns that the CMA may have.
- 3.20 **The statutory test for an MIR in respect of the private management of public amenities is not met.** Due to the separate statutory framework concerning the adoption of roads, roads built by TW and other major developers are typically ultimately adopted. While there are significant delays to this process, these delays do not impact consumers, as developers bear the costs. Moreover, these delays cannot be remedied by any powers that the CMA would gain under a market investigation – they are the result of inefficient and under-resourced LAs. The test for an MIR is therefore not met with respect to roads.
- 3.21 With respect to open spaces and other public amenities, while TW agrees that there is an issue with a lack of public adoption, this issue is caused by a legal and regulatory regime that is not fit for purpose, and a lack of proper funding for LAs and/or an unwillingness to take on the political/reputational risk of adopting public amenities.
- 3.22 As noted above, where TW is unable to persuade an LA to adopt public amenities, TW will [redacted]. This step would be avoided entirely if adoption took place as a matter of course under a transparent and reasonable commuted fee arrangement.
- 3.23 In any event, in circumstances where adoption does not take place, TW provides customers with sufficient transparency and has a strong preference to [redacted] where possible, thereby avoiding purported concerns around market power for embedded management companies, or high barriers to residents switching to another provider.
- 3.24 It follows that, in TW's view, the issues identified in paragraph 3.17 of the Update Report do not result in a prevention, restriction or distortion of competition in the housebuilding market, and the statutory test for an MIR is not met in respect of the private management of open spaces or other public amenities.
- 3.25 **Even in the alternative scenario where the CMA finds that the statutory test is met, an MIR would nonetheless be an ineffective course of action.** The use of the CMA's order-making powers would not address the underlying issues that result in the system for the private management of public amenities being unsatisfactory. The increased remedies available to the CMA following a market investigation would not help in addressing the root causes that result in a lack of LA adoption of public amenities; in particular, the lack of a proper regime to govern the adoption of open spaces and other public amenities, and the lack of proper funding for LAs. Addressing these issues head on is required to ultimately resolve the CMA's concerns.
- 3.26 **TW would welcome the CMA making recommendations to the government to improve the current system.** TW acknowledges that there are various issues with estate management. TW considers that the CMA should make the following recommendations to the government, many of which are alluded to in the Update Report itself.

- 3.27 With respect to the lack of adoption of public amenities, TW suggests the following recommendations:
- (i) A requirement for LAs to charge developers a reasonable amount with respect to the commuted sum for adoption, and for there to be full transparency as to how the figure was calculated, including a full costs / estimates breakdown.
 - (ii) LAs to be encouraged to adopt wherever possible (to avoid the inequitable scenario of a small number of residents paying to maintain community assets) provided that the commuted sum is reasonable and transparent, as above. To achieve this, LAs will need to be properly funded and resourced.
- 3.28 With respect to concerns about developers being transparent regarding private estate management, and management companies treating customers fairly, TW suggests the following recommendations:
- (i) Changes to the legislation should be made to give equivalent statutory rights between freeholders and leaseholders with respect to challenging management company charges, or changing management company. As noted in the Update Report,⁴² leaseholders currently enjoy superior rights in this regard.
 - (ii) Embedded estate management companies and managing agents should be regulated to ensure that they are treating customers fairly, and in particular that they are not over-charging or charging for services that are not being adequately performed. TW notes that the equivalent of embedded management companies in Scotland (known as “property factors”) are already regulated in Scotland, and there is a clear process in place for residents to change property factor, challenge charges, or make a complaint.⁴³

4. Other comments on the Update Report

4.1 TW welcomes the Update Report’s findings in several areas:

- (i) The Update Report finds that across GB, there is healthy competition in the supply of new houses and “*concentration in the industry is relatively low*”.⁴⁴ Existing housing accounts for 85% of the market and constrains pricing nationally and locally. In TW’s view, the CMA’s further investigation of potential local concentration is unlikely to give rise to any issues.

⁴² Para. 2.51(e) of the Update Report.

⁴³ See further explanation of property factors at: <https://www.mygov.scot/property-factors>.

⁴⁴ Para. 2.115 of the Update Report.

- (ii) The Update Report finds that innovation competition is healthy, with most large housebuilders having made investments in order to build homes more efficiently and sustainably.⁴⁵
- (iii) The Update Report finds that there is a sufficient supply of land for development in GB.⁴⁶
- (iv) The Update Report finds that the planning system is complex and characterised by frequent rule changes.⁴⁷ As explained above, this system has a direct impact on a number of features of the market, including the size of housebuilders' land banks.
- (v) Evidence in the Update Report that shows that planning timeframes are long and uncertain and have become increasingly so since the last market study by the OFT.⁴⁸

4.2 TW wishes to make the following comments on the Update Report's proposed approach to further investigation:

- (i) As explained in Section 2, TW considers that it will be difficult for the CMA to conduct any meaningful local analysis due to the difficulty in defining the boundary of "local" markets in the broader housebuilding market. TW therefore considers that any apparent results or trends identified following this analysis should be treated with appropriate caution.
- (ii) TW considers that the CMA should be reluctant to place too much emphasis on the findings from surveys. At para 1.7(d) of the Update Report, the CMA said it commissioned qualitative research with "*a sample of 100 owner-occupiers of new-build homes*" with 50 interviews on each of two topics, namely (i) quality and (ii) estate management charges. A survey of this type may be subject to several common limitations, such as:
 - (a) Small sample size. While the Update Report has indicated that this would be "qualitative research", a sample size of 50 each is unlikely to be big enough for any meaningful inference or quantitative analysis.
 - (b) Sampling bias. It will be crucial to ensure the sample selected is representative and covers the different types of homebuyers, otherwise the results will be skewed.
 - (c) Self-selection bias. If owner-occupiers who have strong opinions on the topics surveyed (or who have had issues with quality and/or management

⁴⁵ Para. 16 of the Update Report.

⁴⁶ Para. 36 of the Update Report.

⁴⁷ Para. 2.91 of the Update Report.

⁴⁸ Para. 32 of the Update Report.

charges in the past) are more likely to participate in the survey, the results will be biased and misleading.

- (d) Survey design issues. The way questions are phrased can significantly impact responses, especially in the context of interviews. Ambiguous or leading questions can produce unreliable data.
- (e) Response subjectivity or bias. Survey responses are inherently subjective. Any owner-occupiers surveyed can only speak to their own experiences and expectations, which may be unobjective or even biased.

5. Conclusion

- 5.1 The preliminary issues identified in the Update Report are: (i) caused by factors unrelated to the state of competition in the market and (ii) more appropriately addressed by way of legislative and policy changes, rather than CMA-imposed remedies that would be available to the CMA following a market investigation.