

Housebuilding Market Study
Persimmon plc's response to CMA update report and consultation on a market investigation reference (the "Report")

1. Executive Summary

1.1 Persimmon's headline comments are set out below. Persimmon looks forward to engaging further with the CMA in particular on the forthcoming working papers.

1.2 Persimmon notes that the CMA is consulting on making a Market Investigation Reference (**MIR**) in relation to land banking; and/or amenities.

(i) Land banking.

- There is no evidence to support the CMA's interim conclusion that the test for an MIR is likely to be met. See paragraphs 2.1 to 2.4 below.
- In any event, to the extent there is a concern, it arises due to deficiencies in the planning system. It follows that advice to government (and not an MIR) is the appropriate solution. See paragraphs 2.5 to 2.7 below.

(ii) Amenities

- Persimmon uses resident management companies (not embedded companies) and provides transparency to consumers at the point of reservation. See paragraphs 3.5 to 3.9 below.
- Persimmon has found that, in practice, the low level of adoption of public open spaces is driven by the actions of local authorities. The adoption of roads is more closely governed by legislation (s.37 of the 1980 Highway's Act) where the CMA recognises that the normal practice is that only relatively narrow roads serving a small number of houses are not to be put forward for adoption. See paragraphs 3.1 to 3.4 below.
- Therefore, to the extent there is a concern arising from any insufficient adoption, it is better addressed by way of recommendations to government. See paragraph 3.10 below.

1.3 Persimmon welcomes the CMA's findings on planning (see paragraphs 4.1 to 4.2 below). As above, deficiencies in the planning system (rather than any business strategy of housebuilders) are the key driver of land banking.

1.4 Persimmon notes that the CMA is proposing to conduct further analysis in particular on (a) profitability; (b) local concentration; and (c) any correlation as between local concentration and build-out rate and/or prices.

- Persimmon has previously provided its own analysis which shows that there should be no concerns in relation to profitability (see paragraph 6.2 below).
- Persimmon has also conducted its own analysis which shows that there should be no concern around local concentration (see paragraph 2.4(ii) below). In any event,

Persimmon does not have regard to local concentration when considering build out rates or prices (see further below).

- More generally, it is critical that the CMA involves housebuilders in its analysis and provides them with the opportunity to comment on its preliminary findings ahead of the final report.

1.5 Persimmon also notes that the CMA is proposing to conduct surveys (50 owner occupiers each) on (a) amenities; and (b) quality/customer satisfaction. The CMA needs to be careful in drawing conclusions from such small sample sizes.

2. Land banking

Test for an MIR is not met

2.1 The CMA adopts a broad definition of a “land bank” being “*the amount of land which housebuilders own or control (for instance via options to purchase the land).*”

2.2 The Letwin review found that major housebuilders were not attempting to ‘lock up’ land and that their business models depended on generating profits out of sales of housing (and not from increasing the value of landholdings).¹

2.3 The CMA’s analysis to date is consistent with those findings. The CMA recognises:

- (i) There are good reasons why a housebuilder may wish to hold significant land - in particular to manage the risk and cost associated with the planning process (2.25; 2.40; 3.12-3.14).
- (ii) While housebuilders have increased the number of plots in both their “short-term” and “long-term” “land banks” (as defined above), there is little change measured in the number of years of future supply (Figure 2.3).

2.4 In particular, there is no evidence cited by the CMA to support a finding of an AEC in relation to the areas it identifies as being of possible concern:

- (i) Lack of availability (and/or transparency) acting as a barrier to entry to SMEs:
 - The CMA finds that land availability is good (para 36). It suggests some land may not be suitable for SMEs (2.126(b)) but it provides no support for this acting as a barrier.
 - The CMA rightly recognises other barriers to SMEs, in particular planning (2.126(a)); and access to finance (2.126(c)).

¹ Independent Review of Build Out Final Report dated October 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752124/Letwin_review_web_version.pdf (the “**Final Report**”) and Independent Review of Build Out Rates Draft Analysis dated June 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718878/Build_Out_Review_Draft_Analysis.pdf (the “**Draft Analysis**”) (together the “**Letwin Review**”) (paragraphs 5.31 – 5.41 of the Draft Analysis).

(ii) Insufficient competition:

- The CMA finds national shares are not concerning – the largest 10 housebuilders accounting for c. 40% of new build houses (2.114/2.115).
- The CMA proposes to assess data on local competition. Persimmon has conducted its own analysis which shows that that only 1 of Persimmon’s 30 OpCos accounted for more than 10% of all planning applications (measured by number of units) in their local area between 2020-2022, with most OpCos accounting for less than 5%.

Any concerns are better addressed through reforms to the planning regime

- 2.5 The CMA correctly identifies the planning regime as a potential cause of any “land-banking” (3.14). In Persimmon’s experience, delays and unpredictability in the planning system are causing housebuilders to hold more land in order to meet their build targets. There are two key reasons for this. First (and most obviously) land is held longer without development due to delays in the planning process. Second, housebuilders need to hold more land given the inherent risks associated with the delays and unpredictability of the planning system. By holding more land housebuilders therefore improve the prospects of bringing homes to market in a timely manner which improves outcomes for consumers. Housebuilders would have minimal incentive to hold such land if they could be certain that planning consent would be granted within a short and predictable timeframe.
- 2.6 The CMA recognises that advice to government would then likely be more appropriate (3.25).
- 2.7 The CMA does however raise the possibility of divestments as a suitable remedy in concentrated markets (3.25). As above, there is no evidence that markets are concentrated; and Persimmon has no regard for local concentration when considering build out rates. But in any event there is no evidence that land banking is due to a business strategy aimed at exercising market power; such that it is unclear what divestiture would achieve.

Next Steps

- 2.8 The CMA proposes to assess data to analyse local competition (2.41).
- 2.9 Persimmon welcomes any robust quantitative analysis of local concentration. As above however, it is critical that the CMA involves housebuilders in its analysis and provides them with the opportunity to comment on its preliminary findings ahead of the final report.
- 2.10 Persimmon also notes that the CMA is to pursue further engagement with SME housebuilders to investigate the impact of land banks on their ability to enter and expand within the housebuilding market (2.42). Persimmon notes that the HBF conducts an annual survey of SMEs. This consistently identifies planning (and not land banking) as the key barrier to entry to SMEs. The CMA should regard the HBF survey as a useful, independent source of information.

Methodological Concerns

- 2.11 The CMA needs to be careful in identifying “land banks”. In particular:
- (i) As above, the CMA uses the term ‘land banks’ to refer to the amount of land which housebuilders own or control (for instance via options to purchase the land) (2.24 with emphasis added). The CMA should recognise that a housebuilder will not “control” the development/build out of land subject to an option in its favour unless/until both (a) planning is secured; and (b) a price is agreed with the landowner.
 - (ii) When looking at the length of time to obtain planning the CMA needs to exclude any land “controlled” by housebuilders which has not been “allocated” for development under the relevant local development plan. A housebuilder is not able to apply for planning on non-allocated land.

3. Adoption/Amenities

Low levels of adoption driven by local authorities

- 3.1 In relation to open spaces, housebuilders face considerable challenges in persuading many local authorities to adopt and indeed some will not adopt open spaces at all. The CMA is correct therefore to identify the key drivers for relatively low levels of adoption as a weakness in legal framework (2.56(a); 2.57; 2.59); the complex/slow adoption process (2.56(b); 2.60)); and in particular, local authority constraints/incentives (2.56(c); 2.61).
- 3.2 Housebuilders do not benefit financially from the running of management companies and do not otherwise have any significant incentives to resist adoption. Not seeking adoption avoids the payment of commuted sums, but that would not be a material factor were local authorities to take a consistent, reasonable and proportionate approach². The CMA should consider making a recommendation to Government to ensure that commuted sums are transparent, appropriate and reasonable.
- 3.3 This is borne out by the position on roads³ where the CMA recognises that the normal practice is that only relatively narrow roads serving a small number of houses are not to be put forward for adoption (2.65).
- 3.4 This contrasts with the position on open spaces where it was once relatively common to see Councils accepting a transfer of open spaces but it is now the case that this happens only in a minority of cases. Indeed, planning agreements (s.106) will often dictate the management structure (that is to say, to incorporate a management company to take care of its future maintenance).

Test for an MIR is not met

² Evidence shows that Councils' estimates of construction costs (on which bonds are based) vary considerably and are higher than Persimmon's costs estimates.

³ When assessing the extent of non-adoption for roads, CMA needs to look at roads that are capable of being adopted because (i) they were capable of being constructed to an adoptable standard; and (ii) they would be acceptable to the Highways Agency for adoption because they are of sufficient utility to serve the public (e.g. exclude shared driveways).

- 3.5 The CMA's concerns can be grouped as follows:
- (i) A lack of transparency for consumers in particular at the point of sale i.e. reservation (2.51 (b); 2.74(b)(c); 3.17(a)); and
 - (ii) The market power of management companies (in England and Wales) in particular: a limited ability to challenge charges/disproportionate powers of enforcement (2.81); concerns with use of rentcharges under Rentcharges Act '77 (2.76-2.78); and a lack of protection for freeholders (2.80).
- 3.6 It is not clear how either of these has a bearing on competition between housebuilders; so as to give rise to an AEC.
- 3.7 In any event, in relation to transparency; Persimmon has always provided details of the service charge (the annual estimated sum) prior to reservation. It also requires its sales teams to provide the whole breakdown of the budget and have developed a training module for sales to improve knowledge (so that service charges can be explained to customers).
- 3.8 In relation to the market power of management companies, it seems to Persimmon (although the report is not clear) that the CMA's concerns only arise from the use of embedded management companies. Wherever possible, Persimmon uses resident management companies (not embedded companies).
- 3.9 In relation to service charges, Persimmon would support a code of practice to provide freeholders with similar protection to those enjoyed by leaseholders.

Any concerns are better addressed through recommendations to Government

- 3.10 It follows from the above that (to the extent the CMA has concerns) these are better addressed by way of recommendations to government (as recognised by the CMA (3.24)) and/or industry.

Next Steps

- 3.11 The CMA proposes to conduct qualitative consumer research; in particular, through a survey of 50 owner-occupiers (2.84; 3.23). Persimmon notes the very small sample size. The CMA should take care not to put too undue weight on such a small survey.

4. Planning

- 4.1 Persimmon broadly supports the CMA's conclusions on the planning process (2.93) and the role of local plans/LPA objective (2.94; 2.95).
- 4.2 Persimmon believes that the supply of land is being constrained to some degree by the planning system. The CMA notes that the majority of LPAs in England exceed their Housing Delivery Test (HDT) targets (2.10). The CMA needs to treat HDT statistics with caution. The Government did not publish the results this year (Jan 2023). The results for the two previous years (Jan 2022 and Jan 2021) are heavily skewed due to the special

(and in Persimmon's view generous) dispensation made to lower the targets to reflect the covid pandemic.

5. Competition in the Market

5.1 As above Persimmon notes the CMA's finding that national shares of supply are not concerning; and its own analysis suggests there should be no concern around local concentration.

5.2 Persimmon notes that the CMA proposes to assess any correlation as between local concentration and build-out rate and/or prices (2.117; 2.121). Again, Persimmon does not have regard to local concentration when considering build out rates or prices. As Persimmon has previously submitted, it is important that the CMA includes second hand homes when assessing competition. This is because second hand homes comprise the overwhelming majority of residential housing transactions and it is clear that second hand prices constrain the asking prices new housebuilders may set for new developments.⁴

5.3 As above, it is critical that the CMA should involve the housebuilders in its analysis and share its preliminary findings ahead of the final report.

5.4 To the extent there are fluctuations in concentration across local areas, these are the result of ordinary market forces and should not be a competition concern. Regardless of the number of developers operating, local areas remain contestable by other housebuilders, who must compete vigorously to meet local needs and to compete against second hand homes.

6. Outcomes

6.1 Persimmon notes that the CMA's findings to date are consistent with a market in which competition is working effectively. In particular:

(i) Supply: The CMA recognises that the amount of housing that is supplied to the market depends on a range of factors which are outside the control of housebuilders; including government policy; broader macroeconomic conditions; the planning system and how well it functions; and natural constraints such as the quantum of developable land (2.8).

(ii) Quality: The CMA notes that customer satisfaction has improved (2.13). Persimmon introduced the "Persimmon Way" following a review in 2019 which led to a range of recommendations and embedded processes regarding its build quality and customer care standards which have been subsequently implemented and contributed to Persimmon's 5 star rating in HBF's customer survey.

(iii) Innovation: The CMA finds evidence of investment in off/near site pre-manufacturing (2.19).

⁴ See Persimmon's response to the CMA's Statement of Scope, paragraphs 1.4(iv), 2.4(v), 7.2 – 7.4.

- 6.2 The CMA proposes to undertake an assessment of profitability to understand whether levels of profitability are consistent with a competitive market. The CMA needs to take care with any such analysis – in particular:
- (i) The nature of the housebuilding industry means that housebuilders' reported financials must be assessed carefully and take into account the risks of a full business cycle and time value of money when applied within an economic profitability assessment framework.
 - (ii) Drawing a link between economic profit and homebuyer detriment serves to neglect the influence of macroeconomic conditions on house prices and the significance of the second-hand homes market.
 - (iii) Persimmon has previously provided its own analysis which shows that there should be no concerns in relation to profitability (see KPMG's report prepared for Persimmon on profitability in the housebuilding sector dated 23 June 2023).
- 6.3 In looking at competition for the sale of new homes, the CMA also needs to take into account the constraint from existing homes.
- 6.4 As above, it is key that the CMA involves the housebuilders in its analysis and shares its preliminary findings ahead of the final report.