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CMA Housebuilding Market Study

Response to CMA update report and decision on whether to consult on a Market Investigation Reference

1. INTRODUCTION

- 1.1 Bellway appreciates the update on the CMA's work to date and its emerging thinking set out in the Update Report and Consultation on a Market Investigation Reference ("MIR") dated 25 August 2023 (the "Update Report"). It welcomes the opportunity to respond to the CMA's Update Report and the consultation on a potential MIR on land banking and estate management charges. As discussed further below, Bellway does not consider that an MIR is warranted or proportionate.
- 1.2 The Update Report sets out that the CMA is continuing to explore its potential concerns in the next part of the Market Study, and that it intends to issue working papers on a number of aspects during Autumn 2023. Bellway stands ready to assist the CMA in the next stage of the Market Study to ensure that the CMA is able to reach a robust, complete and accurate view of the market.
- 1.3 Given that the CMA's analysis is continuing to evolve, this response does not seek to address every point raised in the Update Report but Bellway would like to make a few overarching key points at this stage.

2. OBSERVATIONS ON UPDATE REPORT AND THE CMA'S AREAS OF FOCUS FOR THE REMAINDER OF THE MARKET STUDY

General comments

- 2.1 It is essential that the CMA takes a proportionate approach both in terms of its approach to the Market Study and the consideration of any outcomes. Bellway considers that this would be best achieved by the CMA focussing its work on areas where this will have the most impact and will deliver for consumers.
- 2.2 As the CMA has recognised in the Update Report, a key driver of some of the matters that the CMA has been exploring is the legal, regulatory and policy framework. For example:
- 2.2.1 In respect of perceived land banking, access to land that can be developed is complicated by failures in the planning system, such as resourcing issues, local politics, differences in approach between authorities and the impact of certain authorities not having a local development plan;
- 2.2.2 The different approaches taken by highways authorities to adoption of roads and the use of their existing statutory powers creates uncertainty in terms of the

framework for adoption. This can be contrasted with the regime for drainage and water and other utilities where there are fewer providers who tend to have a greater commonality of approach; and

- 2.2.3 The increasingly complex regulatory requirements, such as the requirement for nutrient neutrality, which increases the burden on housebuilders and acts as a barrier for entry/expansion.

These legal, regulatory and policy framework issues are unrelated to the actions of housebuilders themselves but have a very significant impact on them and across the industry.

- 2.3 These are the essential issues where intervention by the CMA would be likely to have the most beneficial impact. They are also issues that the CMA can already seek to address as an outcome of the Market Study, through recommendations to Government, and which would enable the delivery of swifter changes which would benefit consumers without the need for a lengthy and burdensome market investigation.
- 2.4 Bellway sets out below some observations on specific targeted aspects of the CMA's Update Report (although as noted above, Bellway has not sought to respond to all the points raised given that the CMA is continuing to explore and develop its thinking in relation to a number of the issues).

Planning

- 2.5 Bellway welcomes the CMA's intention to focus on the planning system during the next stage of the Market Study, including the impact of the Levelling Up and Regeneration Bill and the National Planning Policy Framework, and looks forward to engaging with the CMA on its proposed planning system working paper.
- 2.6 Issues with the planning system go to the very heart of the housebuilding industry and impact on access to the market/land, barriers to entry/expansion and the number of houses built.
- 2.7 For example, as Bellway has previously commented to the CMA, in its experience, a significant challenge arises from the considerable divergence in the application of the planning process by local authority area. There are over 300 local authorities, with different approaches to development and the planning permission process and with varying degrees of resource and local political considerations. These ongoing issues have a dampening effect on the ability to secure an implementable planning consent across the majority of local planning authorities.
- 2.8 A planning system that is under-resourced, complex, time and cost intensive to navigate and often with uncertain outcomes (including where there are variations between local authorities) can lead to considerable delays in the ability to develop land, raises barriers to new and existing housebuilders, and ultimately impedes outcomes for consumers.

Competition in the market

- 2.9 Bellway considers there to be strong competition both for the acquisition of land and for the supply of homes to customers as between housebuilders. In particular, Bellway experiences strong competition in the following respects:
- Acquisition of land / development plots;
 - Access to skilled tradespersons;
 - Access to talented employees;
 - Procurement of building materials; and
 - Sale of completed dwellings.

- 2.10 In relation to the two areas specifically covered in the Update Report, namely competition for land and competition for the supply of homes to customers, Bellway notes that:
- 2.10.1 As regards competition for acquiring land, Bellway broadly agrees with the CMA's preliminary analysis of the land market in paragraph 2.111 of the Update Report. In particular: (i) there is sufficient land available across all regions that could be developed for housing – albeit Bellway notes that factors outside a housebuilder's control may affect this, e.g. the planning system, regulatory requirements, and commercial willingness of landowners to sell; and (ii) sales via intermediaries do not appear to privilege large housebuilders over SME housebuilders and do not suggest a clear preference for larger housebuilders; and
- 2.10.2 In respect of competition for the supply of homes to customers, the Update Report rightly recognises there is low concentration in the national market: there is a broad base of diversified housebuilders operating across the market, with the largest 10 and 25 firms representing only 35.5% and 45.6% of new build completions in the U.K. respectively), as well as competition for sales from existing houses.¹
- 2.11 In further assessing competition in the market, it will be essential for the CMA to take into account the role of existing housing stock – which is part of the same supply chain as newly built houses – if it is to properly understand some of the issues that the CMA intends to take forward in the next part of the study, e.g. pricing of land and new homes, build out rates for newly built homes, and the extent of concentration in local areas. The amount and quality of existing housing stock also has a material impact on the demand for new build housing in any particular location, as it will generate customers and demand for new build housing developments.

Barriers to entry/expansion and the role of SMEs

- 2.12 Bellway notes that the Update Report primarily focuses on barriers to entry/expansion in respect of SMEs. However:
- 2.12.1 In considering the impact of any barriers to entry/expansion to SMEs, it is important that the CMA takes into account that the market is highly competitive, with a significant number of players – made up of national housebuilders, supra-regional firms (covering multiple geographic regions), a number of regional firms, SME builders, housing associations, as well as competition for sales from existing housing;
- 2.12.2 Insofar as many of the potential barriers that the CMA has raised in its Update Report relate to the legal and regulatory framework and policy matters, these are issues that are common across all housebuilders, regardless of size, and are not driven by the actions of housebuilders;
- 2.12.3 The HBF (in conjunction with Travis Perkins and Close Brothers) carries out a detailed survey of the SME housebuilder market on an annual basis. The slide below shows the key areas of concern and barriers experienced by SME housebuilders as drawn out by the most recent survey for 2022-2023.² The CMA will note that: (i) all of the major challenges borne out by the survey relate to issues which are driven by forces external to housebuilders within the sector; and (ii) access to land is only 6th in the list in order of priority. This is also in line with the letter from the HBF signed by 160 SMEs delivered to the Prime Minister on 6 July 2023 which outlines barriers to SMEs from the planning system, the increasing regulatory requirements and the ongoing skills shortage.³

¹ HBF Paper, House Building in England Since the 1980's

² https://www.hbf.co.uk/documents/12334/HBF_Report_-_SME_report_2023v2.pdf

³ [FINAL - 6 July 2023 - SME letter to the Prime Minister - HBF.pdf](#)

4. Key challenges facing SME housebuilders

A comprehensive survey of SME housebuilders conducted by Close Brothers Property Finance, HBF and Travis Perkins has found that:

The planning system remains the most significant barrier to growth for SME housebuilders, as it was in our 2020 and 2021 surveys

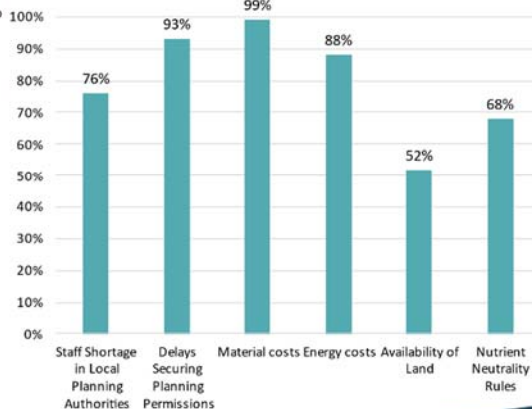
Delays in securing planning permissions were a major challenge for over 93% of respondents, and 76% believe Local Authority staffing shortages are the main cause of delays in the process

Rising material (99%) and energy (88%) costs are also a major concern for companies

Over two-thirds are impacted by the 'nutrients' issue that is restricting development in more than a quarter of England's local authority areas

92% of SMEs are unhappy with the Government's current approach to housing

Major Challenges According to SME Housebuilders
(Proportion of Survey Respondents)



- 2.12.4 Bellway agrees with the CMA that it is relevant to explore the role of SME builders to understand the significance of any barriers to entry/expansion and what this means for consumers. For example, Bellway does not agree with submissions made to the CMA that smaller developers are more likely to produce well-designed homes. The HBF National New Home Customer Satisfaction Survey published in March 2023 does not indicate that SME housebuilders were routinely ranked higher than larger housebuilders. Indeed, 9 of the 10 participating larger (measured against the list provided at footnote 62 of the Update Report) all achieved a five star ranking (with the other participant being ranked four star). Of the participating SME housebuilders, 2 achieved the lowest given ranking (3 stars), ten were ranked four star and the remainder as 5 star);
- 2.12.5 Bellway places quality at the very heart of its offering to consumers, recognising its central importance to consumers. To the extent that it would be helpful to the CMA, Bellway would be happy to provide further information about its approach to quality. On a related aspect, the Update Report notes that the CMA is commissioning its own qualitative market research in relation to quality. Bellway notes that it is essential that any survey is well-structured, well-designed and properly representative if it is to be reliable or have any probative value. Bellway further notes that the 8 week and 9 month surveys, which are commissioned and monitored by the NHBC, are independent surveys with no selection bias as they are sent to all proprietors of new build houses (totalling over 100,000 surveys each year with a response rate of over 75%). Bellway would therefore encourage the CMA to refer to the results of these surveys (which provides robust and independent data on an unrivalled scale) as part of any ongoing assessment;
- 2.12.6 Bellway notes that the Update Report rightly recognises investments in innovation by housebuilders, and agrees that this demonstrates competition to build homes efficiently and sustainably; and
- 2.12.7 The Update Report refers to submissions it has received that land agents may hold closed bidding processes that limit SME housebuilders' access to land (which it intends to assess further). However, in exploring this, it will be of relevance for the CMA to also consider and take into account: (i) whether the rationale for holding a

closed bidding process relates to the limited number of likely participants who might be able to navigate the planning process successfully and purchase a given site (Bellway's experience is that closed bids tend to be on schemes which are of a size that would preclude an SME bidding in any event) and closed bids are therefore the efficient way to market such sites; (ii) there may be increased costs in opening a bidding process up to a significant number of participants; (iii) the lack of suggestion in the evidence available to the CMA that intermediaries are prejudiced towards the larger housebuilders; and (iv) the CMA's current analysis that Land Agents are an important source of land for housebuilders, particularly smaller housebuilders.

Local assessments

- 2.13 Bellway notes the CMA's intention to conduct a number of local assessments in the next part of the Market Study to inform its further analysis, including in relation to price, quality and build out rates.
- 2.14 To the extent that the CMA intends to base these assessments on a selection of sample local markets, it will be crucial that these are representative of local markets across Great Britain if any broader conclusions are to be drawn from these assessments. Stakeholder input on the proposed local markets to be assessed is likely to play a vital role here.
- 2.15 It will also be critical to fully understand, on a case by case basis, the relevant local market context, including importantly the role and impact of existing housing stock and the relevant local catchment area (which maybe complex given the subjective nature of consumer preferences regarding location), to ensure that the right conclusions are being drawn from the assessment. Again, input from relevant local stakeholders, including housebuilders, would likely help inform the CMA.

Profitability

- 2.16 The Update Report indicates that the CMA has commenced analysis based on financial information from 11 housebuilders, including Bellway.
- 2.17 At this stage, Bellway would welcome further clarity from the CMA on when its analysis will be completed and what opportunities Bellway will be given to comment on or feed into this prior to the end of the Market Study.

3. RESPONSE TO CONSULTATION ON POTENTIAL MIR

- 3.1 Bellway considers that an MIR in relation to either land or estate management is unwarranted. It is striking that none of the responses to the CMA's scoping paper called for an MIR to be made in relation to these aspects.
- 3.2 Further, even if the CMA were to consider that the statutory test for an MIR were met in either of these areas, it would be far more effective and expedient – to the benefit of consumers – for the CMA to exercise its discretion not to make an MIR, and to address any concerns by way of recommendations to Government.

Land banking

CMA preliminary concerns

- 3.3 Bellway notes that the CMA intends to continue to explore in the next part of the Market Study whether land banking could impact on market outcomes (particularly in areas where control of land is concentrated) or on barriers to entry or expansion for SMEs.
- 3.4 Bellway does not consider that land banks are a feature that restrict competition or lead to perverse market outcomes.
- 3.5 In considering these issues further, it will be important for the CMA to bear in mind the

following factors:

- 3.5.1 That there is sufficient land available for development in the round in all parts of England, as recognised in the CMA's Update Report;
 - 3.5.2 A number of the issues that the CMA is considering in relation to SMEs' access to land and transparency are not necessarily related to the practice of building a land bank, but rather to underlying issues relating to the planning system;
 - 3.5.3 Land banks have been considered in detail on a number of previous occasions, including in the 2018 Letwin report and by the OFT in 2008, neither of which concluded that they led to adverse market outcomes. Bellway does not consider that the position is materially different now;
 - 3.5.4 Although the CMA's current analysis shows that the size of land banks has been increasing over the last ten years, it is important to view this in its relevant context, i.e.: (i) over this same period, the planning system and regulatory requirements have become more complex and difficult to navigate, which will have impacted on the necessity for larger housebuilders such as Bellway to build their land banks, and at the same time will have made it more difficult for them to actually bring this land to development; (ii) as volume output from the larger housebuilders has increased over this period to the benefit of consumers, this has necessitated an increase in land bank size to support this growth, (iii) the CMA's analysis is backwards looking and does not necessarily reflect current market practices in light of the present economic outlook, e.g. Bellway has cancelled a number of contracts on land that it no longer intends to buy and develop in light of current market conditions; and (iv) the CMA's analysis of the number of years included in land bank (which is the more pertinent metric of changes in land banks) suggests a mixed picture as between the approach of different national housebuilders;
 - 3.5.5 Contrary to the suggestion that land banks could lead to a lack of transparency as to the control of land via options agreements which could hinder SMEs, it is standard conveyancing practice for a title restriction and notice to be placed on the legal title of any property which is subject to an options agreement. It is therefore readily apparent from a search of the public records at the Land Registry (which are held electronically and available in most cases immediately online for a modest fee of £4.00) whether any particular land parcel is subject to an options agreement and the beneficiary of that agreement; and
 - 3.5.6 On the basis that Bellway tends to purchase land for larger sites to support its output as a volume housebuilder, SME housebuilders are often unlikely to be competing for access to the same land as Bellway.
- 3.6 Bellway does not perceive land banks as a means to exercise a housebuilder's market position, e.g. to reinforce concentration at a local level so as to control the supply of housing and maintain prices, or as a way to exclude other housebuilders, as the CMA is concerned may be the case. Nor does Bellway understand how this might be beneficial: (i) this does not take into account competition from existing housing stock; and (ii) it is expensive to hold land without developing it as a housebuilder will not make a return on the working capital which has been committed until plots on the development are sold. Rather, there is an objective rationale for land banks, which to a significant extent is impacted by the current difficulties in the planning system:
- 3.6.1 The Update Report rightly acknowledges that there are a number of legitimate reasons for land banks, e.g. planning permission requirements; local market conditions; and labour requirements;
 - 3.6.2 Further, housebuilders can find that they are unable to develop land as quickly as they would wish due to factors outside of their control, e.g. delays in the planning

permission process, and the regulatory environment;

- 3.6.3 Having a land bank is a necessary "hedge" against the inherent difficulties in the planning system which can contribute to delays or rejections of planning permission on sites;
- 3.6.4 In respect of Bellway, its land bank primarily comprises land which is not yet capable of being built on, e.g. land for which there is no existing planning permission in place and the path to development (and a suitable planning permission) is very uncertain. Bellway is actively developing all its sites that have an implementable and viable detailed planning permission; and
- 3.6.5 As the CMA notes in the Update Report, securing a land supply pipeline is essential to volume housebuilders – who deliver a significant proportion of houses – being able to efficiently and effectively manage and plan their builds to ensure continuity of operations. Without a land bank or with a reduced land bank, it is likely that Bellway would not be able to deliver the same volume of sites as quickly and effectively (which could impact on the overall housing volumes supplied/raise costs) or that over time investment would be disincentivised, which would not be to the benefit of consumers.

MIR consultation

- 3.7 CMA itself recognises that an MIR may not be the most appropriate way forward and that recommendations to Government may in some instances be a more appropriate tool.
- 3.8 Land banking is not the root cause of any barriers to SMEs and any impediments primarily sit with the planning regime, and other aspects of the legal and regulatory framework and policy matters. As such, to the extent the CMA has concerns in this regard at the end of its Market Study, recommendations to Government would be the most effective and meaningful way to address these issues.
- 3.9 Amendments to the planning regime which reduce the complexity and length of time to obtain planning permission would ease some of the issues and need for land banks.

Estate management

CMA preliminary concerns

- 3.10 Bellway acknowledges the seriousness of the concerns for consumers and that it is right that the CMA considers these issues in depth.
- 3.11 [X].
- 3.12 Across the sector more generally, Bellway notes that the Consumer Code for Housebuilding (introduced in 2010) and more recently the NHQB – which includes mandatory codes of conduct for its subscribed members around transparency and the early provision of information about estate management costs – are examples of wider initiatives applying to housebuilders which seek to ensure that consumers' interests are protected in this area. Bellway was an early adopter of the NHQB requirements and note that the NHQB now has 179 subscribing members with 301 pending applications.⁴
- 3.13 The preliminary concerns highlighted by the CMA in the Update Report appear to be significantly driven by local authorities (including their current approach to adopting roads and amenities). Bellway agrees with this assessment. Bellway notes that local authorities already have a range of existing powers in relation to the adoption of roads and other amenities and would encourage the CMA in the next part of the Market Study to examine in

⁴ Number of members and pending applications taken from HBF website as at 14 September 2023.

detail the extent to which local authorities make use of these existing statutory powers. In addition, Bellway notes that:

- 3.13.1 Adoption of water and drainage tends to work more efficiently than the adoption of roads. This is in part due to the relevant statutory framework, but also because there is a greater commonality of approach as to the standards of construction which streamlines the adoption process, for example as it leads to swifter decision making and approvals, and hence better results for consumers. This is another example of issues arising due to the current legal, regulatory and policy framework; and
 - 3.13.2 There are some differences in relation to the relevant legal framework for management companies within the UK. In Scotland, the Factor Regime includes a code of conduct that property and land managers operating in Scotland must abide by, and they are also required to be registered to operate. The Code sets out minimum standards of practice for registered property and land managers, encouraging transparency in the way that they conduct their business in connection with the management of common property or the maintenance of land as detailed in the homeowner's title deeds. There is no equivalent to this in the other nations.
- 3.14 Insofar as any concerns are addressed at the actions of housebuilders, Bellway notes that:
- 3.14.1 The CMA has indicated that housebuilders may have some financial incentives not to seek the adoption of roads. However, as Bellway has made clear, its standard approach is to seek adoption of roads where possible (and to the extent that this is not possible, its general practice is to appoint an RMC to give residents control over their management);
 - 3.14.2 There are examples of developments where housebuilders and customers agree not to seek adoption of amenities by local authorities, e.g. for very high end developments which are intended to be managed to a particularly high standard; and
 - 3.14.3 As regards transparency for consumers, Bellway has already provided details to the CMA regarding how it ensures that the costs/implications of purchasing on a management estate are transparent to customers. In particular, Bellway follows what it considers is best practice and transparently makes clear information about the ongoing management of the estate and charges going forward as part of the reservation process. Bellway is happy to engage further with the CMA to address any remaining questions on these aspects.

MIR consultation

- 3.15 CMA acknowledges that a recommendation to Government may be a more appropriate solution to any issues: Bellway agrees with this approach.
- 3.16 The CMA has recognised that key drivers for the concerns raised by consumers are: (i) the legislative framework; and (ii) the resources, incentives and approach of local authorities. These are matters that are best addressed, and indeed need to be addressed, via recommendations to Government for legislative reform. Given the CMA's acknowledgement that the role of estate management companies is here to stay in light of new environmental regulations coming into force in England in Autumn 2023, it seems most appropriate that any issues are addressed at Government level.
- 3.17 In the circumstances, there would be little benefit to consumers (and indeed it would not be proportionate) for the CMA to pursue an MIR, which would only delay outcomes and impose a significant burden on all market participants, where the most likely remedy (i.e.

recommendations to Government) is available to the CMA already as an outcome of the Market Study.

- 3.18 To the extent that there are any residual concerns about the role of housebuilders, it would not be proportionate to launch a market investigation to deal with these points alone, and in any event, such matters can also be addressed through recommendations to Government.
