

20 September 2023

Response to the CMA's update report on the Housebuilding market study

1 Introduction and overview

- (1) The Home Builders Federation (“**HBF**”) is the representative body of housebuilders in England and Wales, and its members comprise a wide spectrum of housebuilders, including large, regional and local developers, with the majority of the membership categorised as small or medium-sized housebuilders. HBF has been pleased to assist the CMA’s market study over the past seven months and looks forward to continuing to work with and assist the CMA in its examination of the UK housebuilding market and secure the best possible outcome for consumers and stakeholders.
- (2) On 25 August 2023, the CMA published its update report and consultation on a market investigation reference (the “**Report**”) and invited interested parties to respond by 18 September 2023.
- (3) This document sets out HBF’s response to the CMA’s consultation questions.

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

2.1 Private management of public amenities

- (4) We welcome the depth of the CMA’s analysis in relation to private management of public amenities, and the recognition of the consumer harm that arises from this trend. The Report highlights several issues that the CMA will consider before deciding whether to make a market investigation reference. We welcome an in-depth investigation into these, particularly those around shortcomings of the legal framework and process issues.
- (5) HBF has long considered the non-adoption of roads to be a significant cause of concern. It impacts all developers, and functions as a particularly significant barrier for SME housebuilders. This was considered in a 2017 report published by HBF on reversing the decline of SME housebuilders (the “**2017 Report**”).¹ As acknowledged by the CMA in the Report, the issue has become even more pressing with the introduction of certain policies and regulation such as Biodiversity Net Gain (BNG) or the mandated

¹ https://www.hbf.co.uk/documents/6879/HBF_SME_Report_2017_Web.pdf



use of sustainable drainage systems for new developments.² Along with the ever-greater emphasis on placemaking and design, such policies seek to increase the proportion of open spaces, amenities and infrastructure within developments whilst failing to consider the lack of appetite from local authorities to adopt or maintain them. The result will be extended development timescales and additional costs and responsibilities for estate residents to maintain assets in the long-term.

- (6) In HBF's experience, developers' preferred option is almost always the adoption of roads and public amenities by local authorities. The Report refers to housing development plans that the CMA has seen which show that significant roads are sometimes not put forward for adoption.³ This is at odds with what HBF has heard from its members: very few developers are equipped to maintain long-term interest in new developments, blocks or sales, and are wary of arrangements outside the scope of local authorities, which may result in long-term reputational consequences.⁴
- (7) As the CMA recognises, there appears to be a decline in local authorities' desire to adopt public amenities. HBF has used Freedom of Information Act requests to obtain local level data on the costs and timescales associated with the adoption of new public highways and has found substantial disparity across local authorities. In 2021, for example, the average total time taken from technical submission to formal adoption of a Section 38 agreement ranged from three months to over five years.⁵ Such delays impede the completion of developments and can carry further financial implications for housebuilders (e.g., housebuilders' bonds are required to be in place for longer thus increasing capital lock up and costs).
- (8) The considerable inconsistencies across highways authorities with respect to fees and average timescales for securing adoption agreements could be mitigated by the creation of a single national standard for: (i) the calculation of inspection fees; and (ii) statutory timescales.⁶ This would grant housebuilders certainty on timing and budget for the adoption of public amenities by local authorities.
- (9) The legislative framework contains provisions to protect authorities from exposure to undue commercial risks e.g., by requiring bonds as a guarantee, or the payment of commuted sums as a condition of adoption (i.e., compensation for taking on future maintenance responsibility). While HBF acknowledges that local authorities face financial constraints, it has concerns with how these protections are applied in practice:
 - (i) Authorities require housebuilders to provide a bond or cash surety, for 100% of the estimated costs of highway works. HBF's SME members tend to be most affected by this, with many finding it prohibitively expensive. HBF notes that there are alternative measures in other sectors e.g., sewerage undertakers require bonds equal to 10% of the completed works.
 - (ii) Commuted sums demanded by authorities have increased significantly over the years and are now often exceeding the cost of building the road. This has also resulted in a commensurate increase in inspection fees which are calculated as

² Report, page 38.

³ Report, para 2.66.

⁴ HBF Statement of Scope Response, question 18.

⁵ HBF Statement of Scope Response, question 18.

⁶ HBF Response to s174 Notice, question 9.

a percentage of the commuted sums (although there is no consistent approach in how these are calculated, leading to variance across local authorities). The CMA has recognised the lack of predictability as to the appropriate amount of commuted sums, and the lack of guidance on how they should be calculated for open spaces.⁷

2.2 Are there any reasons why a market investigation reference may not be the most appropriate outcome of the market study?

(10) HBF does not believe that a market investigation reference will result in remedies to address these concerns. Rather, recommendations for legislative change will offer a more appropriate means to update the decades old legislation for housing delivery in 2023. HBF has previously engaged with the government to propose changes to legislation and policy. In addition to its 2009 position statement on commuted sums and the 2017 Report, HBF has:

- (i) conducted multiple research exercises, using the Freedom of Information Act, to build an understanding of the inconsistencies in approach being deployed across the country and shared the outputs with developers and highways authorities to provide a backdrop and forum for discussion on this subject;
- (ii) engaged with the Department for Transport via letters outlining our position on commuted sum payments;⁸
- (iii) corresponded with Members of Parliament, including the chairs of the House of Commons Transport Select Committee and the Levelling Up, Housing and Communities Committee, proposing inquiries into the issues surrounding unadopted roads on new housing developments;⁹ and
- (iv) produced a briefing for Parliament regarding unadopted road and potential remedies in this regard.¹⁰

(11) We remain at the CMA's disposal to provide any further detail.

3 Land Banks

(12) The CMA intends to seek further evidence in relation to large land banks and explore whether their size and composition has a negative effect on market outcomes. We understand that the CMA is collecting data and intends to analyse whether there are particular local areas of concern, and the extent to which land-banking creates poor outcomes.

(13) HBF has previously made submissions on land banks in response to the CMA's Statement of Scope, including outlining the factors that influence the size of land banks

⁷ Report, page 36.

⁸ See Annexes HBF_Q8g_001, HBF_Q8g_003, HBF_Q8g_004, HBF_Q8g_005 and HBF_Q8g_006 as submitted in response to the CMA's s.174 notice dated 1 August 2023.

⁹ See Annexes HBF_RF11_Q2_004 and HBF_RF11_Q2_005 as submitted in response to the CMA's RFI dated 22 August 2023.

¹⁰ See Annex HBF_RF11_Q2_002 as submitted in response to the CMA's RFI dated 22 August 2023.

held by developers.¹¹ We do not have any additional evidence to offer at this stage beyond some general observations.

- (14) The planning framework is based on: (i) a five-year cycle for land identification through local plans; and (ii) requirements on councils to maintain land supplies sufficient for five-years.¹² The latter measures specifically, introduced by the government prior to 2015, led to local planning authorities allocating larger sites, with respect to the number of dwellings, for development. Between 2006 and 2022, the average permissioned site increased in dwelling numbers by 47%.¹³
- (15) The consequence of the planning regime, as outlined above, are twofold. First, as acknowledged in the Report, the size of the largest developers' land banks is at least partly due to the risks and costs associated with the planning regime.¹⁴ In order to address the five-year basis upon which the planning regime is based, larger developers inevitably seek a degree of security over near-term land prospects via the use of land banks.
- (16) Second, the regime impacts the size and diversity of land banks held by larger housebuilders (who are better equipped to handle a larger density of sites within a land bank) and those held by SMEs. This is a very important factor in determining a builder's overall prospects for success: one of the disadvantages that SMEs have faced has been the inability to spread the cost, complexity and risk (including with respect to development finance) associated with the planning system and its processes across multiple sites and locations. The disadvantage arising from a lack of diversity can be further exacerbated by policy changes (e.g., the Nutrient Neutrality measures, regulations relating to medium-rise and high-rise development, government deterrence of greenfield developments and so on) which affects overall appetite for the development of certain types of schemes resulting in those housebuilders who are specialised in such fields, typically SMEs, to be disproportionately affected. Both of these issues would be best addressed with regulatory upheaval of the planning regime so as to better cater for current market dynamics.
- (17) In seeking evidence on this matter, the CMA's focus appears to be on regional markets, and HBF is not well placed to comment on this. We understand that the CMA intends to publish a working paper in the autumn with its updated conclusions and will provide any further evidence at this stage.

The HBF looks forward to engaging with the CMA as it progresses its study.

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¹¹ HBF Statement of Scope Response, questions 20-21.

¹² Although note that such requirements are effectively being diluted by recent government reforms.

¹³ HBF Housing Pipeline, September 2023 (data provided by Glenigan).

¹⁴ Report, page 27.