

Housebuilding market study

Supporting evidence document

26 February 2024



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1. Introduction

- 1.1 The CMA launched its housebuilding market study on 28 February 2023, at which point it also issued a Statement of Scope for consultation. The document identified the purpose and proposed themes to be explored in the market study and outlined the CMA's intended approach to evidence-gathering. Submissions were also invited on the topics raised.
- 1.2 Since then, we have gathered information from various sources, met with stakeholders, and released several interim publications, including:
- (a) An interim update report and decision on whether to consult on making a market investigation reference in August 2023.
 - (b) Working papers covering the private management of public amenities on housing estates; land banks, and planning in November 2023.
- 1.3 Our overall findings and conclusions on the market study, and our final decision on whether to make a market investigation in relation to the market are set out in our final report. This supporting evidence document contains in-depth information in support of our findings and conclusions and is published alongside the final report. Appendices A - K cover technical areas.
- 1.4 The supporting evidence document is structured in discrete sections, as follows:
- Section 2: Supply and affordability
 - Section 3: Quality
 - Section 4: Innovation and sustainability
 - Section 5: Private management of public amenities on housing estates
 - Section 6: The planning systems
 - Section 7: The land market
 - Section 8: Land banks
 - Section 9: Drivers of price and build out
 - Section 10: Barriers to entry and expansion for SME housebuilders
 - Section 11: The role of competition and other drivers of housing outcomes.

2. Supply and affordability

Introduction to Supply analysis

- 2.1 Fundamental to whether the housebuilding market is delivering good outcomes for consumers is whether it is producing adequate quantities of housing. The amount of housing that is supplied to the market depends on a range of factors, including decisions made by housebuilders; government policy (such as housebuilding targets or government housebuilding programmes); broader macroeconomic conditions; the planning system and how well it functions; how effectively the markets for the supply of land and housing are working; and natural constraints such as the quantum of developable land in places where people want to live. While observations as to how far sufficient new build housing is being delivered may not directly tell us how well the market, and competition within it, is working, nevertheless it is an important step in understanding whether we should be concerned about how the market is delivering for consumers.
- 2.2 In many markets, the adequacy of supply would reflect how far it was able to respond to changes in demand and prevent prices from rising above competitive levels. However, this may not be the best approach to judging adequacy of supply in relation to housebuilding.
- 2.3 Housing has specific characteristics which make demand an imperfect measure against which to judge supply. This is due to the rapidity of changes in demand, and the wider social implications of housing supply.
- 2.4 Housing demand is determined by the number of people or organisations willing and financially able to buy a property, either as a home, second home, or investment property. Demand for residential property is determined by a range of factors including aspiring buyers' ability to sell their existing home, their access to housing equity or a deposit, their access to credit and the price of that credit, their current income and future expectations, as well as the financial and tax implications of property ownership, expectations of future returns, and market sentiment.¹ People will often choose to purchase more housing when incomes allow, for example, taking on properties with spare rooms or buying holiday homes. Because these factors are constantly changing and are strongly linked to general macroeconomic performance, housing demand will fluctuate, which makes it difficult to measure. In addition, buying, selling, and even moving house are all time-consuming and difficult endeavours which mean people may not adjust their individual demand for housing immediately as their circumstances change.

¹ [Savills \(2015\) How do you measure housing demand?](#)

- 2.5 On the other hand, adequate housing is recognised internationally as a human right.² Housing availability and conditions can influence socially important factors such as health outcomes,³ educational attainment,⁴ and productivity.⁵ As such, ensuring there is sufficient housing to meet the needs of the population is an important government priority. However, housing need differs from housing demand: housing need reflects the amount of housing required for all households to live in accommodation that meets a certain normative standard. This involves judgements about the conditions in which someone can be considered as ‘in need’, which are inherently based on assumed ‘acceptable standards’ and rely on decisions about which people with what problems have priority in what circumstances.^{6,7}
- 2.6 As such, housing need is likely to diverge from housing demand. Housing need is likely to be relatively stable in the short term but fluctuate over the long term according to changes in household numbers and accepted standards, while housing demand will fluctuate to a greater extent with changes in macroeconomic outlook. While private housebuilder incentives are likely to follow changes in demand, how well the housebuilding sector is delivering for consumers and wider society is likely to be better captured by how far it is delivering against housing need. We have therefore focused on assessing delivery against housing need in our analysis of supply.
- 2.7 Our assessment of supply is set out as follows:
- (a) First, we set out different measures of housing need.
 - (b) Second, we set out how the different nations of GB are delivering against this assessed need.
 - (c) Third, we set out our assessment of other indicators as to whether housebuilding is generating an adequate supply of housing.

² [Equality and Human Rights Commission \(2018\) Following Grenfell: The right to adequate and safe housing.](#)

³ [House of Commons Library \(2022\) Housing and health: a reading list.](#)

⁴ [Shelter \(2018\) The impact of homelessness and bad housing on children's education: A view from the classroom;](#) [Lanus, R.M. \(2009\) Do poor housing conditions affect educational attainment?: an analysis of the impact of poor housing conditions on educational achievement, a study based in Buenos Aires, Argentina](#)

⁵ [Economics Observatory \(2023\) How does the housing market affect UK productivity?](#)

⁶ [Bramley et al \(2010\) Estimating Housing Need. Research Report, Communities and Local Government, page 7.](#)

⁷ There may also be unmet housing demand where households could afford better accommodation but cannot find it. Where this demand was for accommodation above the normative standard used in needs assessments, this would represent further unmet demand in addition to unmet need. However, given the difficulty of measuring housing demand in general, we have not attempted to incorporate this into our assessment.

Measures of housing need

- 2.8 One of the primary ways in which housing need is assessed is through setting government targets. As set out in more detail below, the different nations of GB have different approaches to estimating housing need.
- (a) In England, there is a government commitment to deliver 300,000 new houses per year by the middle of the decade. Alongside this, Local Planning Authorities (LPAs) must conduct a local housing need assessment through the Standard Method (SM). The current version of the SM introduced changes to help ensure that it ‘delivers a number nationally that is consistent with the commitment to plan for the delivery of 300,000 new homes a year’.⁸
 - (b) In Scotland, LPAs must set out their Local Housing Land Requirement for the area they cover. This is expected to exceed the 10-year Minimum All Tenure Housing Land Requirement (MATHLR). The sum of the MATHLR targets set out in Annex E of NPF4 equates to land for 20,000 homes per year.
 - (c) In Wales, LPAs must explain how they will ensure that their housing requirement and associated land supply will be delivered in their local development plan. While there is no officially set target, work published by the Welsh Government in August 2020 provided a central estimate of annual all-tenure housing need of 7,400.⁹

Potential issues with target setting

- 2.9 We do not intend to provide a rigorous assessment of the targets set by governments or test their validity. However, we note that assessing the level of housing need is very challenging, requiring a variety of assumptions around factors such as population growth and current levels of suppressed demand. As such any method is likely to have weaknesses.
- 2.10 Each nation of GB has its own national methodology for assessing local housing need, which acts as a starting point for local land and housing targets. The approaches used in setting these targets vary significantly between the nations. Below, we briefly set out an overview of the different methods used across GB and some of the key issues which have been highlighted with these approaches.

⁸ Proposed changes to the standard method for assessing local housing need: [Government response to the local housing need proposals in “Changes to the current planning system” - GOV.UK \(www.gov.uk\)](#).

⁹ [Welsh Government \(2020\) Estimates of housing need: 2019-based](#). As another estimate, in September 2015 the Welsh Government commissioned the Welsh Centre for Public Policy (WCPP) to estimate housing need. The resulting report’s central estimate was that between 2011 and 2031 the annual all-tenure housing need would be 8,700. See [WCPP \(2015\) Future Need and Demand for Housing in Wales](#).

- 2.11 In England, the centralised SM is intended to be a baseline for LPA housing targets.¹⁰ The SM is the baseline for LPA housing targets and is an assessment of local housing population growth which is then adjusted for affordability and, in some cases, there is an ‘urban uplift’.
- 2.12 However, the current version of the SM has been subject to criticism.¹¹ Two aspects which have garnered such criticism are the continued reliance on 2014 household projections, rather than using the more recent 2018-based projections,¹² and the introduction of the urban uplift.
- (a) The 2014 household projections were used ‘in the interests of stability for local planning and for local communities’.¹³ Using more recent household projections would likely produce significantly lower estimates of housing need at the national level and also large changes in need estimates for a number of LPAs.¹⁴ Some of the LPAs we spoke to noted that using household projections from 2014 might lead to less accurate housing targets in their areas.
- (b) The current SM relies heavily on the urban uplift to ensure that local targets sum to close to the national housing target of 300,000 new homes per year. The intention behind the uplift is to ‘make the most of previously developed brownfield land over and above that in the existing standard method’.¹⁵ However, there is concern, by LPAs in particular,¹⁶ that applying this adjustment to some urban areas in this way ignores the specific constraints on development that local areas face. In many of these areas, there may be insufficient brownfield (or indeed other) land to meet the additional housing requirement, especially given some had struggled to meet their housing targets even prior to the introduction of the urban uplift.
- (c) For most of the 20 cities where the uplift is applied, the change in the SM resulted in a housing requirement that was significantly in excess of the previous levels of housing delivery. This was especially the case for London: average annual delivery in the period 2017-20 in London had been 36,686 dwellings per year, whereas the standard method with the urban uplift would

¹⁰ See [National Planning Policy Framework \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), paragraph 61.

¹¹ See, for example: [The future of the planning system in England - Housing, Communities and Local Government Committee - House of Commons \(parliament.uk\)](https://www.parliament.uk); [Mangling the mutant: change to the standard method for local housing need \(lichfields.uk\)](https://www.lichfields.uk).

¹² We note that a further update to household projections has recently been released: [National population projections Statistical bulletins - Office for National Statistics](https://www.ons.gov.uk). We note that this forecasts lower population growth than the 2014-based projections but faster than the 2018-based projections; however, the effect this would have on the figures produced by the SM has not yet been calculated at time of writing.

¹³ See: [Government response to the local housing need proposals in “Changes to the current planning system” - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

¹⁴ See: [Savills \(2020\) Housing need and the Standard Method May2020](https://www.savills.com).

¹⁵ See: [Government response to the local housing need proposals in “Changes to the current planning system” - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

¹⁶ See: [Inside Housing \(2021\) Councils hit out at government’s ‘unrealistic’ new planning formula](https://www.insidehousing.co.uk).

require 93,579 dwellings per year.¹⁷ Two of the LPAs that we spoke to where the urban uplift already applied - or may soon be applied - said that its application produces unrealistic or impossible housing targets in their areas. The RTPI has also expressed scepticism about the urban uplift as 'the calculation of housing targets is already intended to take account of how relatively populous places are [before the application of the uplift]'.¹⁸ Given the urban uplift is applied in many areas that struggled to meet their assessed housing need prior to its application and the very substantial increase in housing requirements associated with the uplift, it is doubtful that the requirements are realistic in all cases.

- 2.13 Whilst the SM is a baseline for local housing need when preparing a local plan, the NPPF allows for an LPA to deviate from the SM if 'exceptional circumstances justify an alternative approach'.¹⁹ Whilst these exceptional circumstances are not defined, during plan examination generally the Planning Inspectorate takes into account circumstances such as limited land availability due to the presence of significant amounts of Footnote 7 land. As a result, the housing requirements set out in LPAs' local plans are often significantly below the level that would be required by the SM. Our analysis, based on HDT data, suggests that the sum of local housing targets used in the HDT in 2021²⁰ was approximately 225,000 – significantly below the national annual target of 300,000.
- 2.14 Some similar points were raised in response to our Planning Working Paper.²¹ Some respondents considered the SM had been a positive development compared to previous systems. However, several highlighted that it does not properly account for expected population growth, for example, due to using out of date population projections and not taking into account net migration. A number of respondents wanted to see the SM reformed. Challenges highlighted included artificially capped affordability adjustments and an urban uplift adjustment that appears to be based on an arbitrary figure.
- 2.15 In Scotland, as noted above, the MATHLR for each LPA in Scotland adds up to sufficient land supply for approximately 200,000 homes over a 10-year period (or 20,000 per annum). The initial default estimate for each LPA's MATHLR is based on the Scottish Government's housing needs and demand assessment (HNDA)

¹⁷ See Table 1: [The future of the planning system in England - Housing, Communities and Local Government Committee - House of Commons \(parliament.uk\)](#).

¹⁸ See [RTPI response to consultation 'Levelling-up and Regeneration Bill: reforms to national planning policy'](#), response to question 13.

¹⁹ [National Planning Policy Framework \(publishing.service.gov.uk\)](#), paragraph 61.

²⁰ HDT targets cover a three-year period, but specific values are calculated for each year, and the annual need values should be based on the lower of the need as set out in an up-to-date local plan and the need estimated using the standard method, or just the standard method where the local plan is not up-to-date. Note in 2021 only 8 months of the annual target was applied in the HDT due to the coronavirus (COVID-19) pandemic, and we have adjusted the underlying numbers accordingly to get a 12-month value.

²¹ Available at [Planning working paper - GOV.UK \(www.gov.uk\)](#).

methodology²² which requires the input of a variety of data regarding local demographic, affordability, and wider economic trends to produce an estimate of local housing need.²³ LPAs are able to adjust the initial default estimates to arrive at a locally adjusted figure. However, they are required to explain the case for change and to submit this to the Scottish Government for assessment.²⁴

- 2.16 In our discussions with one of the largest housebuilders operating in Scotland they stated that they thought that the MATHLR values were unambitious, as did some other respondents to the NPF4 consultation. However, some respondents to the consultation thought the values were too high and did not reflect recent population decline.²⁵ In their response to the CMA update paper on the housebuilding market, Homes for Scotland, which has argued in the past for higher housing targets,²⁶ strongly criticised the HDNA tool for relying on secondary data and leading to targets that are ‘way below the true need and demand for new homes.’²⁷ In response to our Planning Working Paper, several respondents argued that housing need had been under-reported through the HND process.
- 2.17 In Wales, LPAs are instructed to set out their housing requirement and land supply in their local plan. Such requirements must be based on evidence and clearly express the number of market and affordable homes the LPA considers will be required in their area over the plan period to meet the differing needs of their communities. A key part of this evidence is the recently introduced Local Housing Market Assessment (LHMA) tool.²⁸ This tool takes into account evidence on a wide range of local factors such as housing stock data, household projections, data on unmet housing need, and income.
- 2.18 Whilst the estimates of local housing need produced by the LHMA will inform the local plan, it is unlikely to equate directly to a housing requirement or the affordable housing target in a local plan. Our understanding is that LPAs, via an up-to-date Local Plan, set evidence-based housing targets to deliver on the current housing issues an LPA is facing, as well as its future aspirations. The final targets adopted in local plans will reflect local factors not taken into account within

²² See: [npf4-housing-land-figures-method-paper.pdf \(transformingplanning.scot\)](#); [Housing Need and Demand Assessment \(HND\): practitioner's guide 2020 - gov.scot \(www.gov.scot\)](#).

²³ See: [Housing Need and Demand Assessment \(HND\): practitioner's guide 2020 - gov.scot \(www.gov.scot\)](#).

²⁴ See: [NPF4 Minimum All-Tenure Housing Land Requirement Guidance](#).

²⁵ See: [7. Conclusion: Policy Changes - Scottish Planning Policy - finalised amendments: December 2020 - gov.scot \(www.gov.scot\)](#).

²⁶ Their view is that nationally the aim should be to consistently build 25,000 homes per annum, see: [HFS Manifesto 2021_printable FINAL.pdf \(taqt.co.uk\)](#)

²⁷ See Homes for Scotland’s follow-up response to the CMA update report on the Housebuilding Market Study September 2023: [HFS response CMA Housebuilding Update Report September 2023.pdf \(sharepoint.com\)](#).

²⁸ See: [Welsh Government \(2022\) Undertaking Local Housing Market Assessments](#).

the LHMA such as the ability of the local construction industry to deliver housing and financial viability factors.

- 2.19 The discussion above highlights that a variety of different approaches are used to estimate local housing need and set local housing and land supply targets within the three nations of GB. Like all methodologies of this kind, they can be, and have been, criticised for the approaches they take to the evidence that is used and the outputs that they produce.

Other assessments of housing need

- 2.20 Given the difficulty of assessing housing need and the issues with any given metric used for this purpose, we have also considered other assessments for the level of housebuilding which is needed.
- 2.21 There have been several assessments of the level of housing provision which is needed that have been produced by different commentators using different methodologies. These include the following:
- (a) Research for Crisis and the National Housing Federation (NHF) in 2019²⁹ used three separate methodologies to estimate the level of housebuilding needed: two based on a traditional demographic framework enhanced to reflect affordability, and the other based on a dynamic sub-regional housing market model. The research found that around 340,000 new homes need to be supplied in England each year, of which 145,000 should be affordable.³⁰ The wider requirement for housebuilding in GB is suggested by the authors to be 380,000.
 - (b) In 2021, the NHF produced a housing needs assessment report which builds on the housing supply requirements report described above. The report considered affordability, suitability (size and condition), and ability of people to find accommodation as a framework for thinking about housing need. The report finds 3.6 million households are experiencing some of form of unmet housing need. The report states that these estimates do not translate directly to the number of homes that need to be built because this would require a detailed dynamic analysis of the operation of housing markets.³¹ It also does not give an indication of how long it would take to make up this shortfall or what future supply is needed to keep pace with this plus future needs.

²⁹ Bramley, G 2019, Housing supply requirements across Great Britain for low-income households and homeless people: Research for Crisis and the National Housing Federation; Main Technical Report. Heriot Watt University, Edinburgh. Available at [Housing supply requirements across Great Britain for low-income households, Heriot Watt](#).

³⁰ [Housing supply requirements across Great Britain for low-income households, Heriot Watt](#)

³¹ National Housing Federation (2021) People in housing need: The scale and shape of housing need in England December 2021. Pg, 11

However, it does indicate that there is a significant backlog of need to be met, which is not fully captured in targets.

- (c) Research by Centre for Cities in 2023 measures the difference between the number of homes per person that the UK would have if Britain had built at the rate of European countries compared with what has actually happened. It controls for the difference in the size of initial stock of homes per person and different population growth rates.³² The focus of the research is on rates of housebuilding and the impact of housing policies over time. It concludes that Britain's housing shortage began at the beginning of the post-war period after the introduction of the Town and Country Planning Act in 1947. The paper suggests that to make up the shortfall in England alone, 442,000 homes per year would need to be built over the next 25 years.
- (d) Conversely, a study by the UK Collaborative Centre for Housing Research in 2019 argues that housing supply has outstripped household formation for decades. It suggests house price increases are a function of the main components of the cost of capital: mortgage interest rates, taxes, and expectations of future price growth.³³ Overall, it argues the housebuilding target of 300,000 would only result in a 10% decrease in the affordability ratio over 20 years and will not solve problems of high house prices or low home ownership. Instead, greater supply is likely to result in further growth in the number of unoccupied houses, which may not be an efficient use of scarce investment capital. Alternative policy solutions suggested by the paper include more social housing or more generous housing benefit, as these policies will help affordability-constrained young people. A tighter labour market and stronger economic growth might also benefit the pay of younger people relative to others and ease the affordability problems in the housing market.³⁴

2.22 We note that each of these assessments follows different methodologies, all of which have strengths and weaknesses. We therefore do not endorse the specific figures or findings produced by any of these papers. However, we note that most find that there is a shortfall in current levels of housing provision, and that the findings of those papers imply the target levels of housebuilding set by government may be a lower bound for what is needed.

³² Centre for Cities (2023) The housebuilding crisis: The UK's 4 million missing homes. Methodology and Counterfactuals, February 2023

³³ Mulheim, I (2019) Tackling the UK housing crisis: is supply the answer? UK Collaborative Centre for Housing Research, August 2019

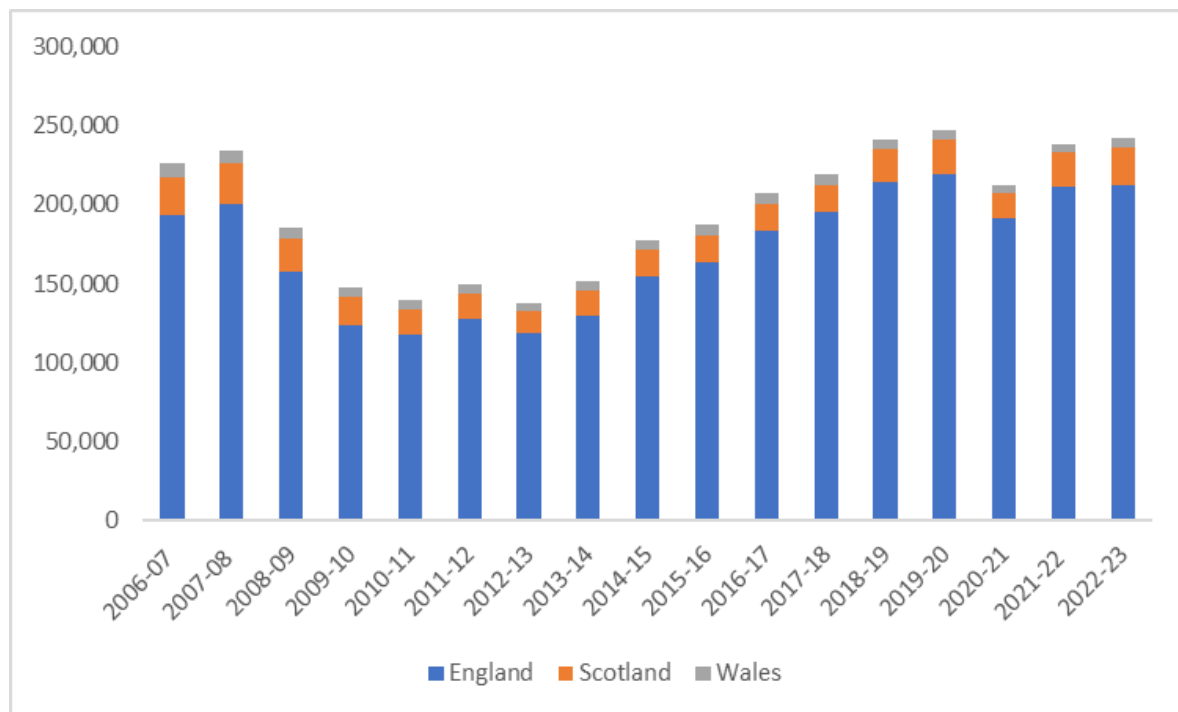
³⁴ Mulheim, I (2019) Tackling the UK housing crisis: is supply the answer? UK Collaborative Centre for Housing Research, August 2019

Actual housebuilding delivery

Housebuilding at national level

2.23 We set out above different measures for how many houses may need to be built to keep pace with housing need. Figure 2.1 sets out what levels of housebuilding have actually been produced since 2006-07.

Figure 2.1: New homes built in England, Scotland, and Wales 2006-7 to 2022-23



Sources: England: live tables on net supply of housing; Scotland: Housing statistics quarterly update: new housebuilding and affordable housing supply; Wales: New dwellings completed by period and tenure

2.24 We note that the targets described in paragraph 2.8 have not been in place through all of this period: for example, the MATHLR figures were introduced in NPF4 which was adopted in February 2023, while in England the commitment is to deliver 300,000 houses per year by the middle of the decade.³⁵ However, it is informative to consider how delivery in the past has compared with these targets to understand the prospects for the housebuilding sector to deliver housing at these levels. This is particularly the case given that the past decade has been relatively buoyant for housebuilding, supported by low interest rates and specific policies to support housebuilding (as discussed in relation to our profitability analysis in Section 3 of the Final Report).

2.25 As Figure 2.1 shows, housebuilding over this period has been significantly below 300,000 homes per year. In England, the volume of housing delivered has

³⁵ Paragraph 6 - Levelling-up and Regeneration Bill: reforms to national planning policy (21 September 2023)

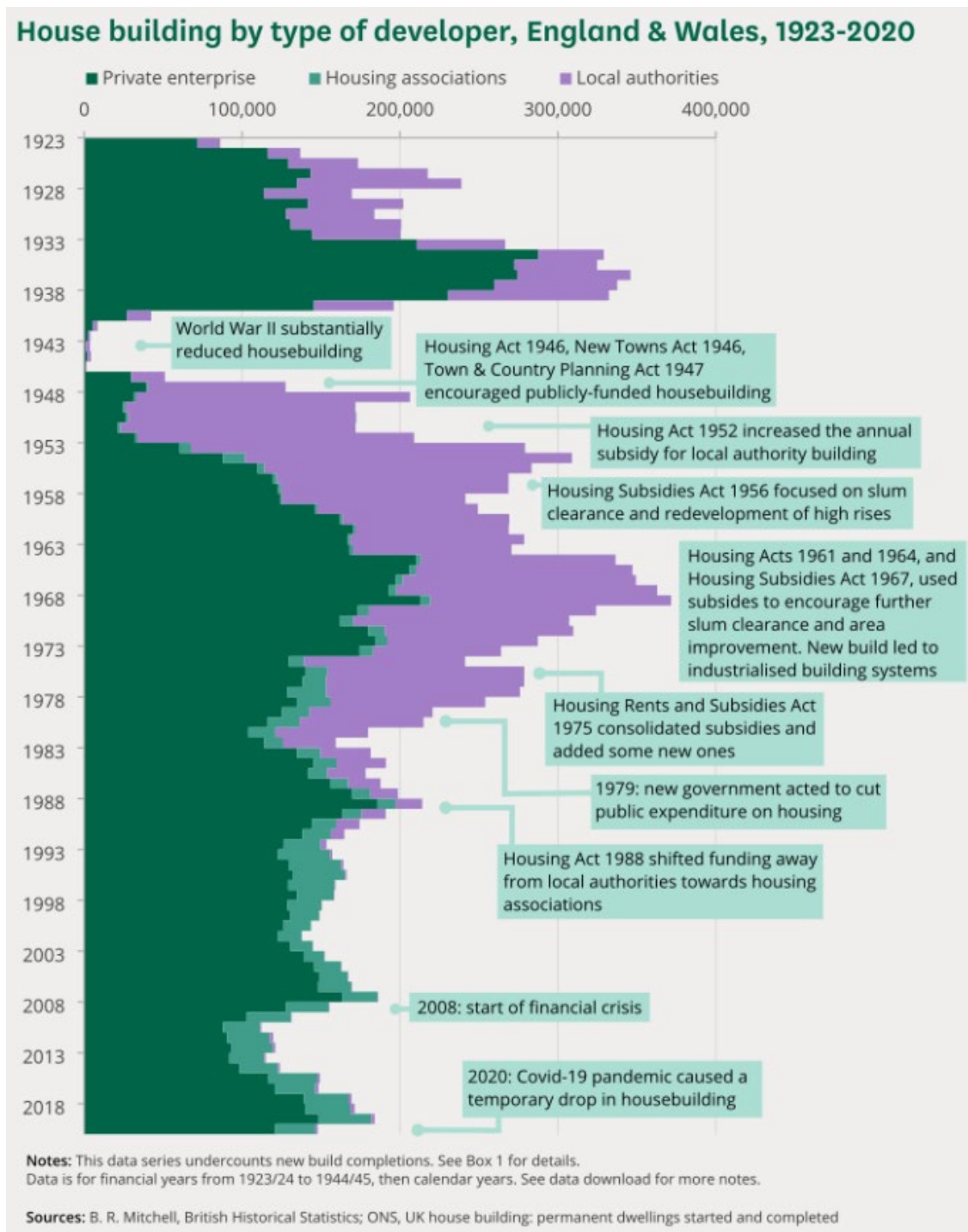
increased significantly since the Global Financial Crisis (GFC) but has not exceeded 250,000 at any point during this period. In Scotland, it has taken some time for the level of new build completions to return close to pre-2008 levels (which exceeded 25,000) and are still somewhat short of this at 21,000 in 2021-22. While in some recent years levels of completions have been just above 20,000, over a 10-year period (2012-13 to 2021-22) completions were below this, averaging approximately 17,800. Finally, in Wales, the number of new build homes completed remains well below its pre-2008 level of around 9,000 and in 2021-22 was fewer than 6,000. This is also below the level of need estimated by the Welsh Government as described in paragraph 2.8(c).

2.26 It is worth noting that these recent levels of housebuilding are not out of line with what the market has produced over time. A research briefing by the House of Commons Library set out the level of housebuilding across England and Wales from 1923 to 2020 broken down by different types of developer and mapped against major social and political events.³⁶ This is reproduced at Figure 2.2.³⁷ This shows that the only years in which housebuilding in England and Wales approached or exceeded 300,000 homes per year were during periods with significant levels of local authority housebuilding. Since the Second World War, private developer output has fluctuated between roughly 150,000 and 200,000 per annum according to this data. There is some underestimation of new build supply in this dataset, which means we cannot be definitive; nevertheless, looking over a longer time period shows that private housebuilding alone has rarely, if ever, in the past century delivered close to the amount of housing expected under the current targets.

³⁶ [House of Commons Library \(2023\) Tackling the under-supply of housing in England: Research briefing, May 2023, p.27.](#)

³⁷ We note that this uses a quarterly data series which produces figures which are generally lower than the new build figures given in the annual net supply series as used in Figure 2.1. DLUHC publishes two separate time series on housing: a quarterly publication covering new builds only, and an annual series covering overall net supply of housing. The annual net supply series is more comprehensive, including conversions, change of use, demolitions, and other stock changes in addition to new builds. The quarterly series covers new builds, but its figures are generally lower than the new build figures given in the annual net supply series. Since 2012-13, the number of new builds in the quarterly series has been 10% to 27% lower than the number in the annual series. While the quarterly series is less accurate, it covers a longer historical period, and identifies supply from private developers, local authorities and housing associations separately. See Box 1 of [House of Commons Library \(2023\) Tackling the under-supply of housing in England: Research briefing, May 2023](#) for full details. We therefore consider the quarterly data to be useful to understand how housebuilding has developed over time, albeit being mindful of its limitations.

Figure 2.2: Housebuilding by type of developer, England and Wales, 1923-2020



Source: House of Commons Library (2023) Tackling the under-supply of housing in England: Research briefing, May 2023, p.27.

Housebuilding at sub-national level

2.27 However, there are also important local dynamics at play in housing delivery. The same level of housing (and so housebuilding activity) is not required uniformly across the nations and regions of Great Britain. There are some areas that need less housebuilding compared with others, as well as some areas that are better meeting their need for new housing.

- 2.28 At the local level in England, LPA HDT targets are based on assessments of local housing need, the starting point for which are local plan targets or the SM depending on whether the LPA has an up-to-date local plan.³⁸ Our analysis of HDT data shows that the majority of LPAs in England meet or exceed their HDT targets: 214 (or 70%) of LPAs achieved more than 95% of their housing need. Significant underperformance of housing delivery against targets is limited to a relatively small number of LPAs, and these are relatively highly concentrated in certain areas of the country. For example, the 2021 HDT test data shows that 51 out of 306 LPAs assessed³⁹ had built less than 75% of the new homes they were targeting⁴⁰ and (of these) 37 were located in the South East, East of England, or London regions. This analysis is indicative of wide variation across LPAs in England in meeting housing need and a significant geographic concentration of the areas which perform worst against HDT targets. The LPAs in these regions also account for a large proportion of the population of England. The South East, East of England, and London accounted for 43% of the population⁴¹ and 41% of the dwellings in England in 2021.⁴²
- 2.29 For Scotland, analysis of the ratio of housing completions to the NPF4 MATHLR across LPAs in Scotland shows that over the last 5 years, in 7 out of 33 LPAs (21%) housing completions were equivalent to 75% or less of their NPF4 MATHLR, whilst in 18 (55%) housing completions were in excess of 100% of this. The LPAs scoring below 75% included the most densely populated conurbations in Scotland – Edinburgh and Glasgow.⁴³
- 2.30 For Wales, analysis of the ratio of housing completions to the latest housing requirement shows that over the last 5 years, 13 out of 21 LPAs (62%) achieved housing completions equivalent to 50% or less of their local plan housing requirement whilst none achieved housing completions in excess of 100% of this. The high number of LPAs missing their local plan requirements means that they are spread across Wales but amongst the areas with the lowest ratios are the most densely populated areas – Cardiff and Swansea.⁴⁴

Summary of actual housing delivery

- 2.31 The analysis above shows that housebuilding has fallen short of stated targets for a significant period of time. However, the extent to which this is the case varies by

³⁸ See: [Housing Delivery Test measurement rule book - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90424/housing-delivery-test-measurement-rule-book.pdf).

³⁹ We removed a small number of LPAs included in the HDT data where the housing targets for them was negative or implausibly low.

⁴⁰ CMA analysis of HDT data for 2021 (source: [Housing Delivery Test: 2021 measurement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90424/housing-delivery-test-2021-measurement.pdf)).

⁴¹ CMA analysis of: [Estimates of the population for the UK, England, Wales, Scotland and Northern Ireland - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-population/migration-and-immigration/population).

⁴² CMA analysis of: [Live tables on dwelling stock \(including vacants\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90424/live-tables-on-dwelling-stock-including-vacants.pdf).

⁴³ CMA analysis of data provided by the Scottish Government.

⁴⁴ CMA analysis of data provided by the Welsh Government.

nation, with Scotland coming closer to their target levels than England and Wales in particular years. There is also variation by region, with particular regions of England accounting for the majority of the areas where there has been significant under-delivery against assessed need, and some local authorities in Wales and Scotland also delivering less than their assessed level of need.

Other indicators

- 2.32 Given the limitations with targets and assessments of need we have described, we have also considered whether there are other indicators that can shed light on the degree to which housebuilding is or is not meeting the needs of society. We set this out in the next section.
- 2.33 We have considered two main forms of indicator: affordability, and how many are in acute need.

Affordability

- 2.34 We have considered what we can infer from metrics of housing affordability. Affordability is the level of housing outgoings (for rent, mortgage, etc.) which a household can (and will) meet from its recurrent income without significant risk of material hardship or financial stress, including the risk of being pushed into poverty.⁴⁵
- 2.35 As in any market, prices are influenced by demand and supply. Demand for housing is likely to be influenced by a range of factors, many of them closely related to income (such as terms on which credit is available), as well as household size and composition, and population growth. If supply of housing fails to keep pace with changes in demand, we might expect house prices to increase faster than earnings, and so affordability may worsen. In addition, large differences in affordability between areas may indicate the market is not able to fully respond to price signals (which could involve consumers moving to areas with greater supply and so lower prices, and/or housebuilders expanding supply in areas with greater shortages).
- 2.36 One of the common measures of housing affordability is the house price to income multiple. While different measures are used, several define affordability to be house prices of around four times or five times incomes:

⁴⁵ Bramley, G 2019, Housing supply requirements across Great Britain for low-income households and homeless people: Research for Crisis and the National Housing Federation; Main Technical Report. Heriot Watt University, Edinburgh. Available at [Housing supply requirements across Great Britain for low-income households, Heriot Watt](#). See 3.2 The Affordability Norm or Standard for a wider discussion on affordability.

- (a) The ONS uses a threshold of five years of income as a broad indicator of affordability.⁴⁶
- (b) When buying a home with a mortgage, lenders will generally lend around 4.5x an annual salary as they consider this to be the limit of affordability. This ratio is decreased when there are dependants or high childcare costs.
- (c) The SM includes an adjustment for affordability where the ratio of house price to earnings is greater than 4.⁴⁷

2.37 Figure 2.3 shows housing affordability trends across England, Scotland, and Wales. In 2022, full-time employees in England could expect to spend around 8.4 years of income buying a home. This compares with average house price to income ratios of 6.4 in Wales, and 5.3 in Scotland.^{48,49} This shows a changing picture over time:

- (a) Housing affordability ratios generally worsened from the start of the series up to 2007 or 2008 in all three nations;
- (b) Following the GFC and up to around 2013, affordability ratios improved modestly;
- (c) From 2013 to 2019, affordability ratios in each country were either broadly stable, or worsened slightly;
- (d) Since 2019, affordability ratios have worsened in all three nations, although to varying degrees.

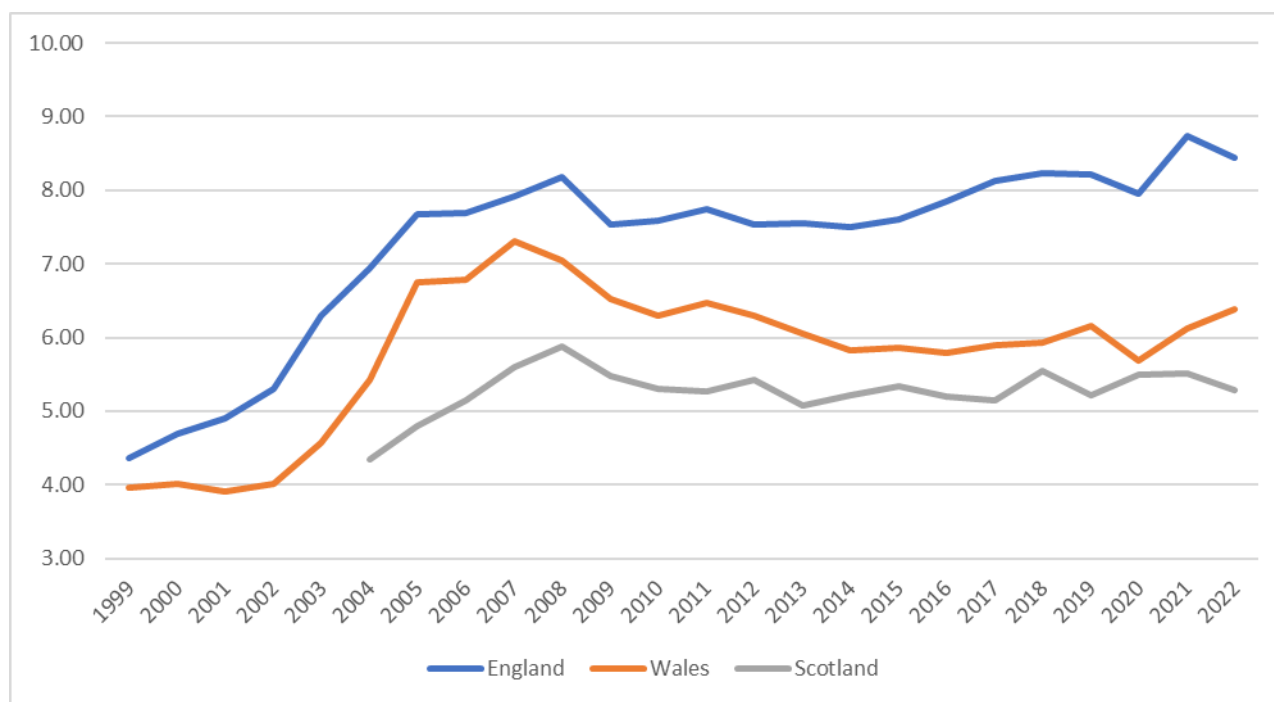
⁴⁶ [ONS Housing purchase affordability, Section 5: Quality characteristics of the additional housing affordability estimates.](#)

⁴⁷ For each 1% that the ratio is above four, the baseline figure is increased by 0.25%. This adjustment increases the housing need figure for areas where house prices are less affordable to people who work there. For example, if median house prices in an area are eight times higher than median earnings, then the baseline figure will be increased by 25%. [House of Commons Library \(2021\) Calculating housing need in the planning system \(England\), August 2021](#), page 15

⁴⁸ [ONS \(2022\) Housing Purchase Affordability, UK](#)

⁴⁹ In the financial year 2021-2022, estimates of the median (average) household income and median house price for each country were as follows: in England, £275,000 for an average-price home and £33,000 for average income (a ratio of 8.4); in Wales, £185,000 for an average-price home and £29,000 for average income (a ratio of 6.4); and in Scotland, £170,000 for an average-price home and £32,200 for average income (a ratio of 5.3).

Figure 2.3: Housing Affordability: ratio of average house prices to average earnings, by country, 1999 to 2022

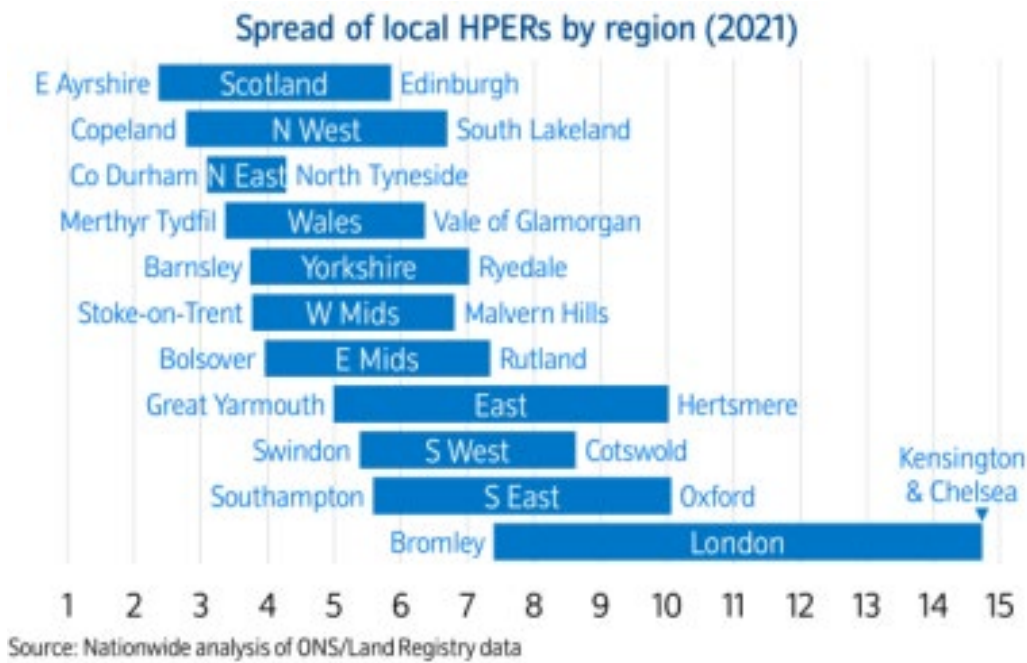


Source: Figure 1, [Housing Purchase Affordability, UK: 2022, ONS](#)

2.38 However, housing affordability differs across different parts of England, Scotland, and Wales. Figure 2.4 shows the spread of house price to earnings ratios calculated by Nationwide from Land Registry and ONS data in different local authorities in 2021, to identify the most and least affordable LA areas in each region. This shows almost all regions had some areas where affordability ratios were above the level which would be considered affordable, and in the East of England, South East, South West, and London, all LAs had an affordability ratio of five or higher. Data from ONS for England and Wales shows a similar pattern,⁵⁰ and the ONS also noted that over the 25 years for which the series is available, affordability has worsened in every LA area. Equivalent data is not available for Scotland.

⁵⁰ [Housing affordability in England and Wales - Office for National Statistics \(ons.gov.uk\)](#), figure 5.

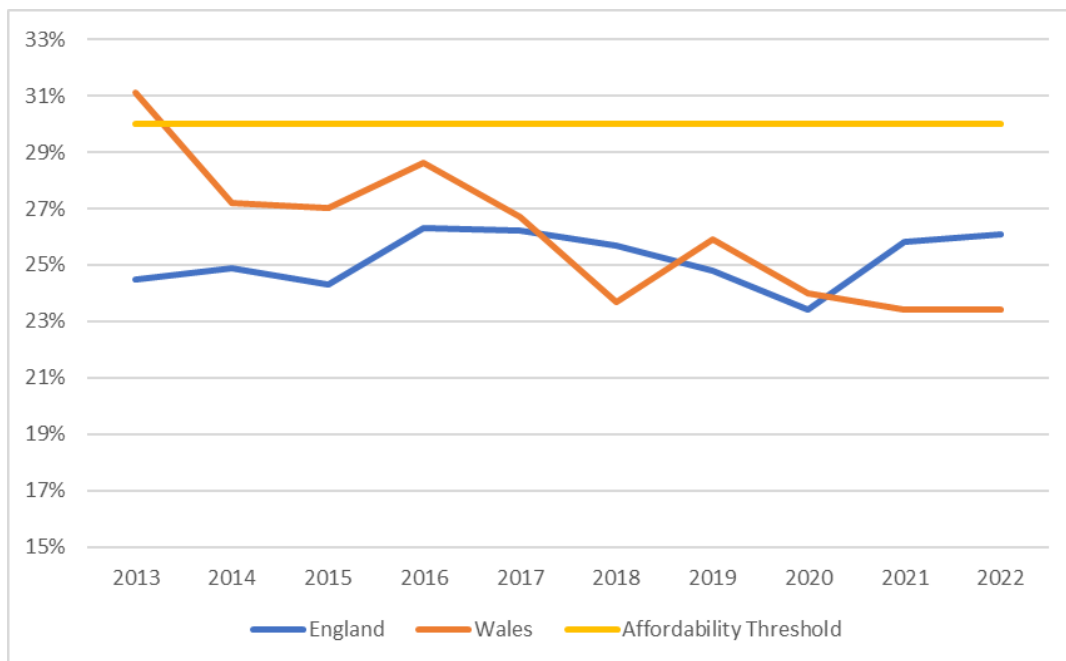
Figure 2.4: Spread of local house price to earnings ratios by region, 2021



Source: Nationwide (2022) Local Affordability Report: Britain's most and least affordable areas to live

2.39 Rental affordability has seen somewhat different trends. Since 2014, the rental affordability ratio for both England and Wales has been below the affordability threshold used by ONS of 30% of income.

Figure 2.5: Percentage of median private renting household income equivalent to median rent, England and Wales, financial years 2013 to 2022



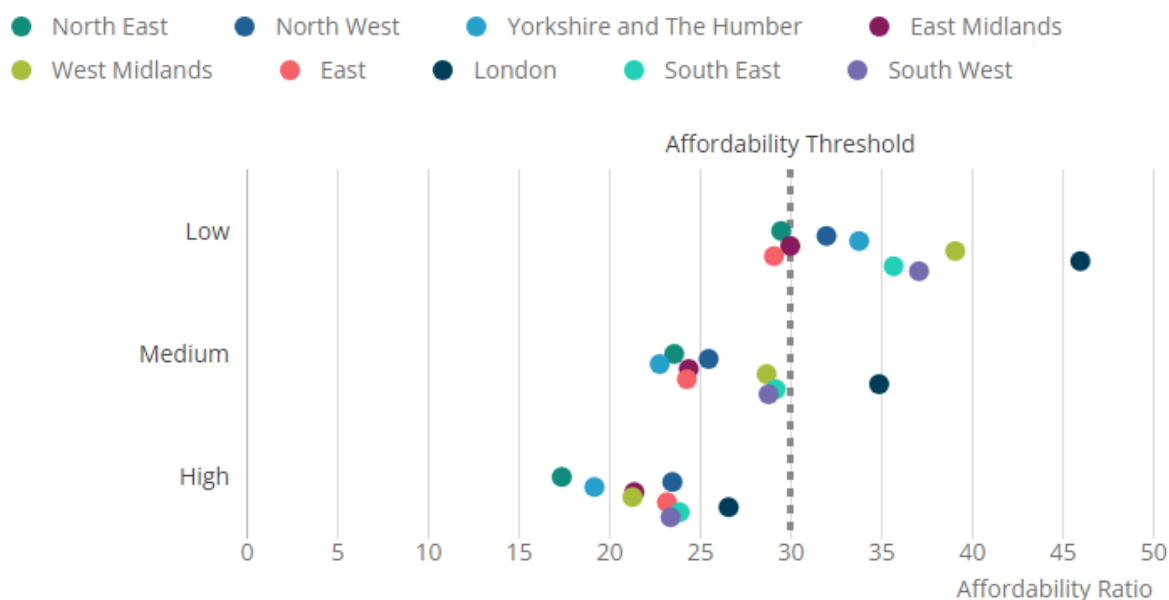
Source: Private rental affordability, England, Wales and Northern Ireland - Office for National Statistics (ons.gov.uk), figure 1

2.40 However, ONS also compared the lower quartile income (the income that 25% of households are at or below) with the lower quartile rent (the rent that 25% of rental properties are at or below). Using ‘30% of income’ as an affordability threshold, the ONS found that at a country level in England and Wales, high, average, and low rents were:

- (a) all above the ONS’s affordability threshold and thus unaffordable for lower income households;
- (b) all affordable for average-income households in Wales, while in England only average and low rents were affordable for average-income households;
- (c) all affordable for high-income households.⁵¹

2.41 This is also illustrated in Figure 2.6 which sets out ratios of low, median, and high rents to low, median, and high private rental incomes, by English region. This shows that a low-priced rent was above the affordability threshold for a low-income household in most English regions in 2022, and only slightly below the threshold in the North East and East of England.

Figure 2.6: Ratios of low, median, and high rents to low, median, and high private rental incomes, by English region, financial year 2022



Source: Private rental affordability, England, Wales and Northern Ireland - Office for National Statistics (ons.gov.uk), figure 6

2.42 Clearly, housebuilding is only one factor which will affect affordability. As noted earlier, some studies have indicated that other factors, such as interest rates,

⁵¹ Private rental affordability, England, Wales and Northern Ireland - Office for National Statistics (ons.gov.uk).

taxes, and levels of housing benefit play an important role.⁵² We therefore cannot attribute changes in affordability solely to the level of housebuilding. In addition, we note that there are limitations with the data used to calculate affordability ratios.⁵³ However, worsening affordability, particularly in those parts of the country where housebuilding has been more constrained, is indicative of a market which is not working particularly well.

Measures of extreme housing need

- 2.43 We have also sought to understand the indicators of the number of people who are experiencing housing issues and are in acute need of adequate housing.
- 2.44 Statutory homelessness statistics for 2021-22 show a total of 278,110 households were either being threatened with homelessness or already homeless in England.⁵⁴ In Scotland, 32,240 households were assessed as being homeless or threatened with homelessness.⁵⁵ Across Wales, 1,567 people presented as homeless and were placed into temporary accommodation.⁵⁶ Whilst these households were undoubtedly in need of housing, homelessness statistics are not a good indicator of the sufficiency of general housing supply because homelessness is often correlated with other complex needs such as drug and alcohol dependency or suffering domestic abuse.
- 2.45 Social housing waiting lists offer a better view of the number of people in housing need. There were 1.21 million households on English local authority waiting lists on 31 March 2022, an increase of 2% from 1.19 million in 2020-21.⁵⁷ However, these numbers are not a direct proxy for housing need as there are strict requirements to be able to enter a social housing waiting list.⁵⁸
- 2.46 Households might be placed in temporary accommodation by LAs until suitable secure accommodation becomes available. The number of households in temporary accommodation therefore gives an indicator of those in greatest need of social housing and may be used to imply the current shortfall of available social

⁵² [Mulheim, I \(2019\) Tackling the UK housing crisis: is supply the answer? UK Collaborative Centre for Housing Research, August 2019.](#)

⁵³ ONS notes the following limitations: the approach of comparing average purchase prices to income does not take account of upfront costs such as fees and surveys, or deposits, nor does it take into account any impacts on housing cost affordability resulting from changes to mortgage interest rates and payments; these statistics are an indicator of changes in housing purchase affordability on average, over time, and for a whole country or region but we are unable to match individual household incomes and house prices; house prices are not adjusted to represent a typical mix of what is available in an average period; and incomes are estimated through sample surveys, with statistical uncertainty and additional uncertainty from the effects of the coronavirus (COVID-19) pandemic. See [Housing Purchase Affordability, UK - Office for National Statistics \(ons.gov.uk\)](#) section 10.

⁵⁴ [Statutory homelessness in England: financial year 2021-22 \(publishing.service.gov.uk\)](#)

⁵⁵ [Homelessness in Scotland - Shelter Scotland](#)

⁵⁶ [Alarm at rise in the number of homeless children in Wales \(nation.cymru\)](#)

⁵⁷ [Social housing lettings in England, tenants: April 2021 to March 2022 - GOV.UK \(www.gov.uk\)](#)

⁵⁸ See [Council housing: Apply for a council home - GOV.UK \(www.gov.uk\)](#)

tenancies. At the end of June 2022, there were 94,870 households in temporary accommodation in England.⁵⁹

- 2.47 Overall, homelessness statistics along with statistics on the number of people in temporary accommodation or waiting for social housing do not fully describe housing need as they only represent a small section of the population, do not fully capture the extent of ‘concealed’ households and the way affordability affects household formation in the way that the other assessments of housing need do. However, they do suggest that a significant number of people are experiencing acute housing need.

Conclusions on supply outcomes

- 2.48 Our analysis indicates that the housebuilding sector is not delivering the number of homes that governments and a number of other sources have assessed are needed. At the same time, the affordability of buying a house is increasingly challenging, particularly in highly populated areas. While rents remain more affordable for most of the population, they are more challenging for those on low incomes or in London. In addition, a significant number of people remain in acute need of adequate housing, as demonstrated by the numbers who are homeless, in temporary accommodation, or awaiting social housing.
- 2.49 However, it is important to reiterate that this reflects performance against need rather than demand. For some people, they will not be able to afford the level of accommodation that normative judgements indicate they need (for example, those on low incomes living in overcrowded accommodation); others will be able to demand well above the level of need (such as those who can afford a second home). Private sector housebuilders are likely to be far more focused on building homes to meet demand rather than need, as demand will determine what and how much they can sell. Demand for housebuilding is strongly influenced by general economic conditions such as interest rates and incomes, and so fluctuates throughout the economic cycle. This is important context for understanding how the market functions, and particularly the incentives on housebuilders to build at different points in time.

⁵⁹ House of Commons Library (2023) Households in temporary accommodation (England). Research briefing, January 2023.

3. Quality

- 3.1 There are many different dimensions to the quality of a new home: it can cover a range of parameters including, but not limited to, construction defects and levels of snagging, aesthetic value, and/or sustainability. It can also encompass innovation, for example, in relation to sustainable design and construction, and other aspects of the move towards net zero housing.
- 3.2 We have defined new build housing quality in terms of the reasonable expectations a consumer might have of their new build home. We consider that this includes the structural integrity of the property, and the ability to use it and its features as reasonably intended. We have not sought to interrogate whether requirements for building standards are adequate, as reforms are being implemented in response to building safety concerns across the UK.⁶⁰ Instead, we have focused on indicators of the quality of new homes overall, consumer satisfaction, the experience of buying a new home, and ease of getting issues resolved.
- 3.3 We have also not considered aesthetic value, but we do consider the quality of the estates on which new build homes are located as part of Section 5 on the private management of public amenities on housing estates. In Section 4, we cover innovation in construction methods and sustainability.
- 3.4 Quality provides an indication of how well a market is working. Our analysis shows that most consumers are happy with their new homes but where they experience a greater number of snags or faults, it can be more difficult to resolve them. In addition, we see a small but not insignificant minority experiencing the most serious defects. In reaching that conclusion, we set out our assessment of quality as follows:
- (a) First, we set out the sources of information on quality that we have used in our assessment of quality outcomes. We present our analysis on the data we have gathered across the consumer purchasing journey. This covers quality of the process pre-sale and during the sales process, as well as post-sale experience of the quality of the property, and after-sale service. We also set out evidence which considers quality in the round.
 - (b) Second, we assess how effectively housebuilders compete on quality. In doing so, we consider how far consumers take information on quality into account in their new build home purchase decisions, how far such information is actually available, and what effect that has on housebuilders' commercial decisions.

⁶⁰ House of Commons (2023). [Research Briefing: Building regulations and safety](#), pp40-42, pp51-55

- (c) Third, we outline the timeline of attempts to improve consumer redress in this market and the current framework available to consumers if something goes wrong when buying a new home.

Summary of information available on quality

- 3.5 As quality can encompass different parameters, there is no single measure for the quality of new build housing. However, there are several sources of evidence that can be used to infer quality of build or to explore and understand particular aspects of quality. The key quantitative dataset is the National New Homes Consumer Satisfaction Survey (CSS), together with the House Builders' Federation (HBF) Star Rating Scheme which draws on some of the CSS findings. We have also analysed quantitative survey data submitted to the CMA by research company In-house Research.
- 3.6 We have undertaken our own qualitative consumer research, comprising 50 in-depth interviews with new build homeowners about the quality of their properties.
- 3.7 In addition, we received several complaints submitted directly by consumers in regard to the quality of their homes. Complaint subjects included misrepresentations during the sales process, and poor aftercare provided by the housebuilder.
- 3.8 We have also benefitted from insights through engagement with industry participants, including housebuilders, warranty providers, the Consumer Code for Home Builders (CCHB), the Consumer Code for New Homes, the New Homes Quality Board (NHQB), and the HBF.

Consumer Satisfaction Survey (CSS)

- 3.9 The National New Homes Consumer Satisfaction Survey (CSS) is an annual survey launched in 2005 in response to recommendations from the 2004 Barker Review of Housing.⁶¹ The survey is conducted by warranty providers on behalf of the HBF. In each survey year,⁶² an invitation to complete an online or postal self-completion questionnaire is sent to the owners/occupiers of all newly built properties and new conversions at two timepoints – 8 weeks and 9 months after legal completion – to measure satisfaction with the housebuilder and the quality of the new home. A selection of the findings from the 8-week survey, with reporting at industry level, is then published annually. Findings from the 9-month CSS are not placed in the public domain.

⁶¹ [National New Homes Customer Satisfaction Survey \(CSS\): Background information](#)

⁶² The survey year runs October 1 to September 30. Annual findings from the 8-week CSS are then published in the following March.

- 3.10 For the 8-week CSS in 2021-22, a total of 100,806 questionnaires were sent out, from which 60,934 were completed (giving a 60% response rate). A similar number of questionnaires were sent out for the 9-month survey, with a 40% response rate.^{63,64}
- 3.11 The HBF Star Rating Scheme uses responses to one yes/no question on the 8-week CSS – ‘Would you recommend your builder to a friend?’ – to calculate and award a star rating out of five to individual members of the HBF who participate in the voluntary scheme.⁶⁵ Each developer’s star rating for the year is published annually alongside the industry-level 8-week CSS findings. Since 2019, the HBF has also published quarterly, rolling ‘recommend’ data to provide consumers with more up-to-date information from the CSS.⁶⁶ In the section on drivers of quality outcomes (paragraph 3.58 onwards), we explore further what information from the CSS is made available to consumers.
- 3.12 We have reviewed and conducted our own analysis with the full datasets for the 8-week and 9-month surveys from 2018-19 to 2021-22. These surveys do not cover all the information that we consider would provide a full picture of customers experiences of buying a new build home. In particular, there is no question related to the customer’s view of the seriousness of any problems they have experienced with their home. This means that there is no way to differentiate between minor aesthetic problems, and something that might have a major impact on the structural integrity of the home or the health and wellbeing of customers. Nevertheless, the CSS data is a useful source to understand customers’ experiences over time and in relation to different aspects of quality.
- 3.13 Respondents can leave a free text answer at Question 19 of the 9-month CSS questionnaire. In addition to our analysis of the 8-week and 9-month quantitative survey data, we have conducted a qualitative analysis of a random (fixed interval) sample of 1,200 Question 19 answers for the 2021/22 survey year (**Q19 verbatim analysis**), with each response categorised into one or more broad themes or topics.⁶⁷

⁶³ See: [National new home customer satisfaction survey \(March 2023\)](#)

⁶⁴ The CMA’s analysis is based on *all* questionnaires completed in the survey year. We note that the 8-week survey findings reported by the HBF for 2021-2022 give totals of 99,726 questionnaires sent out and 60,655 completed (giving a 61% response rate). This is because the HBF’s analysis is based on *all valid* (eligible) questionnaires completed, that is, those returned within the permitted deadline.

⁶⁵ HBF, [12 month rolling customer satisfaction ‘recommend’ data](#)

⁶⁶ The survey year is divided into four reporting periods, with scores published approximately 4 weeks after each reporting period closes. Questionnaires are sent 8 weeks after customers legally complete the purchase of their new home and they then have 12 weeks to complete and return the survey. Therefore, each reporting period closes 20 (8+12) weeks after the end of the quarter to which it relates, with publication dates as follows: Q1 (completions Oct-Dec) - June; Q2 (completions Jan-Mar) - September; Q3 (completions Apr-Jun) - December; Q4 (completions Jul-Sep) - March.

⁶⁷ We recognise that those who were dissatisfied in some respect with their new build home (or the wider estate) may have specific incentive to complete the 9-month CSS, and to write something at Q19 of the

In-house Research survey

- 3.14 In-house Research, a market research agency, carries out a monthly survey of the customers of 80 housebuilders, with interviews conducted at a point between 3 and 12 weeks of the customer's move-in date. The survey is carried out by telephone, with around 3,000 customers contacted each month.
- 3.15 The agency has shared abridged, aggregated results from this research for the period 2013 to 2022 with the CMA. The survey covers topics across customers' experiences of finding, purchasing, and occupying the home.

Consumer Research

- 3.16 We commissioned Jigsaw Research to carry out qualitative research with homeowners to explore their satisfaction with the quality of the new build properties they have purchased and the estates they live on, as well as estate management charges (**CMA consumer research**).⁶⁸ Jigsaw carried out 100 in-depth interviews of up to 60 minutes in length with new build homeowners, in their homes or online if this was not feasible. Half the interviews primarily focused on quality, the other on estate management charges. Participants were randomly sampled and recruited from a starting sample of new build addresses in England, Scotland, and Wales with a legal purchase completion date in the previous 5 years. The starting sample itself was also randomly drawn, sourced from new build address lists provided to the CMA by five new build warranty providers.
- 3.17 For the purposes of assessing quality outcomes, we focus on the findings from the 50 in-depth interviews related to the quality of new build housing.
- 3.18 We recognise that our consumer research is qualitative rather than quantitative, and as such cannot be used to identify proportions of populations holding stated views or who have had particular experiences. In addition, much of the information is based on research participants' recall and interpretation, and these are not always precise. However, it does allow us to gain a rich understanding of the experiences of the consumers interviewed and the circumstances surrounding them, which allows us to understand the significance of any issues raised in greater detail. In addition, it is drawn from a relatively large number of interviews from a randomly selected population of eligible consumers, which increases its robustness as an evidence source. Overall, we consider this an important part of our evidence base.

questionnaire in particular. We also note that comments represent the subjective perspective of respondents on what they describe; housebuilders' own perspectives on the same issues may differ (in part or in whole).

⁶⁸ [CMA consumer research](#)

Analysis of evidence on quality across the purchasing process

Pre-sale

- 3.19 For the most part, customers appear to be happy with the pre-sale process. From the 8-week CSS, there is high overall satisfaction, with 89% of customers in 2021-22 saying they would recommend their builder, 83% saying that they were very or fairly satisfied with the pre-completion services (and only 8% saying they were dissatisfied), and 87% saying that they were very or fairly satisfied with the overall quality of their builder.
- 3.20 Similarly, the CMA consumer research found that most homeowners were satisfied with their purchase journey, reporting a positive experience with pre-sales communication. The majority of the sample purchased their home off-plan and had the opportunity to view a show home. Show homes were regarded as useful in getting a sense of the property, although a small number of participants considered the show home did not give an accurate impression of the floor space or the finishing included in the price they were paying.
- 3.21 Some participants in our consumer research felt that the housebuilders had a tendency to misrepresent aspects of quality around the property and estate, with several voicing frustration and annoyance about specific sales practices. For example, one outlined that they were sold a 'double garage' which turned out to be too small to park two average-sized cars. Another was shown a kitchen with a large cooker hood that turned out to be entirely decorative. Some felt that show homes gave a misleading impression of the floor space in the property, or the level of finishing included in the price they were paying. In addition, many buyers cited challenges arising from a perceived lack of transparency regarding future development plans or misrepresented estate maps; in some instances, homeowners indicated they would have preferred to purchase a different plot had they been aware of these plans, although others accepted it as a risk they would have to take in any new build estate.
- 3.22 In addition, misrepresentation around the property and estate was also mentioned within the verbatim answers at Q19 of the 9-month CSS. A number of respondents described differences between the plan for their home and what was delivered, including entirely missing features, layout errors such as windows, doors, or stairs in the wrong place, and under- or over-sized rooms. Others detailed unfinished or undelivered communal amenities, with several also flagging poor or no communication on progress in completing work on the estate, for example:
- '... several external features "promised" on the plans we saw prior to purchase have since failed to materialise - the "pond" is nothing more than a muddy swamp, and no bird boxes or bat boxes have been installed anywhere.'

'The access road to our cul-de-sac is still not tarmacked 9 months after we moved in, it has raised ironworks and gravel causing problems with our cars. We were told spring 2023, this has now changed to autumn 2023 with no explanation or apology.'

'The estate has not been finished, e.g., road surfaces, play area, kerbs, landscaping, although we were told this would be complete in June (it is now September).'

Process of purchasing

- 3.23 The CSS presents a generally positive picture about the process of completing on and moving into a new build home. At 8 weeks after completion, 71% of respondents were very or fairly happy with the timely delivery of their property, with 13% being very or fairly dissatisfied, and the remainder neutral or not answering this question. In addition, 86% were very or fairly satisfied with information provision (with 6% dissatisfied) and 86% were very or fairly satisfied with the handover process (7% dissatisfied).
- 3.24 Data from In-house Research also indicates that most respondents to its survey were satisfied with the information they received. In-house Research asked respondents how they rated the way in which they were kept updated between reservation and taking possession of their new home. Between Q1 2023 and Q3 2023, on average over 80% said they were satisfied or very satisfied, with less than 10% expressing dissatisfaction. Respondents were also asked to rate the demonstration meeting where they were shown how to operate and look after their home. Again, between Q1 2023 and Q3 2023 over 80% said that they were satisfied or very satisfied with this meeting.
- 3.25 In the CMA consumer research, many participants reported a marked decline in responsiveness and overall quality of communication from the developer after they paid their deposit and again after completion. The first perceived drop-off in service quality was reported when participants expressed feelings of pressure exerted by sales representatives, typically when buyers encountered delays or challenges in selling their own properties, which then hindered their purchase of the new build. Additionally, some were asked to pay a reservation fee before receiving more detailed information about the properties. We discuss the second drop-off in service quality in greater detail where we explore post-sale processes from paragraph 3.31 onwards. However, we note that our consumer research also included numerous participants who were satisfied with the service they received from the developer at all stages.
- 3.26 These sentiments are consistent with the findings from the Q19 verbatim analysis, where a small proportion of respondents explicitly and unfavourably contrasted the level and standard of customer care they had received pre- and post-sale.

Moreover, instances of new homeowners subject to financial detriment were found where completions were substantially delayed by the developer. For example:

‘We were told that the move in date was 31 July 21. We were promised all along that everything was still on track. A week before 31 July when it was still a pile of rubble <redacted> simply stopped taking our calls. We had enrolled the kids at a new school and had to commute approx 40 miles each day until we eventually moved in on 19 Oct 21. My wife had to be signed off work sick due to stress.’

‘We were very disappointed with the builders changing the completion dates leading to us staying in a Premier Inn for 5.5 months. Which cost us a lot of money and stress.’

‘[Delays] were introduced to the build completion entirely at the behest of and arbitrarily by the builder. The net result of this was, having agreed a sale completion date on our previous home – which we were not going to renege upon as we had given our word – was that we were without a home for 2 months & needing to find accommodation for our 3 children.’

Customisation

- 3.27 One of the drivers for purchasing a new build reported by buyers is their ability to customise the design of their new home to align with their personal style preferences.⁶⁹ Where possible, consumers can choose the type, colour, and specifications of fittings and fixtures in their new home, as well as purchasing extras or upgrades.
- 3.28 In our consumer research, almost all participants reported going through a customisation process during their property purchase. During this process, a range of issues surfaced which left a considerable number of buyers dissatisfied. Concerns centred around ‘hidden costs’ (specifically, the lack of clarity around what features, fixtures and fittings were (not) included as standard), the perceived limited, overpriced, or low quality of customisation options, and the timing for payment of requested upgrades.

⁶⁹ For example, Zoopla reports ([Consumer insights for housebuilders 2022: A survey of buyers active in the new homes and resales markets](#)) that property customisations were a key consideration for 11% of homebuyers it surveyed (n=2,615 who had bought a new home in the previous 18 months or intended to buy one in the next 18 months). Of all n=2,615 respondents, 46% were “new homes” buyers: respondents who had either bought (20%) or intended to buy (26%) a new build property. As published, the report does not provide a corresponding figure for the proportion of the “new homes” sub-group who said that property customisations were a key consideration for them, nor is it possible to gauge the representativeness of Zoopla’s achieved sample in comparison with the sample universe (all homebuyers). Therefore, we have interpreted the findings from this survey entirely at face value, considering them in the round with a range of other evidence where they appear to be indicatively informative.

3.29 This finding is also supported by a proportion of the Q19 verbatim answers where respondents drew an unfavourable contrast between the specification for their home, including paid-for upgrades, and what they actually received. For example:

‘Additional extras far too expensive, and not aligned to market prices, hence a monopoly when purchaser has committed to the purchase.’

‘Paid £5k extra for premium kitchen and have a £39.00 stainless steel sink like you would find in a caravan.’

‘Told patio was to be larger than it has turned out to be ... Initial plans of site showed a reasonable space at one side of my house. The sales lady pointed this out as a bonus. What happened to that??? The walk ways at sides of house far too narrow.’

‘We were told at the virtual meet the builder meeting ... that we had a bathroom window, only to find we didn’t when we moved in ... The tiling colour in the bathroom and en-suite resembles nothing like the one I chose.’

‘... when we put our deposit down on the house we were told there was a door into the garden from the garage. When we moved in the door was not there and we were informed they had stopped providing the door half way through the development.’

3.30 We recognise that our assessment of these issues is based on an analysis of qualitative evidence and so we cannot gauge the prevalence of such occurrences or the scale of associated detriment, although we note that customisation is a common part of purchasing a new build. However, we consider that a principle of a well-functioning market is that consumers know what they are buying and for what price, and can be sure they will receive the product or service they expect. We are therefore concerned by any suggestion that this is not what is happening in practice.

Post-sale

3.31 Various sources of evidence present a less positive picture of post-sale processes than of pre-completion experiences. In particular, we consider how many customers have problems with their new build home and their experiences of getting these problems fixed and the difficulties they encounter in doing so.

3.32 Snagging was the predominant theme identified through the Q19 verbatim analysis. In total, 487 out of 1,200 respondents in the sample referred negatively to snagging. A further 73 did not mention snagging but referred negatively to the standard of after-sale customer care they received from the housebuilder. The issues across the sample included:

- (a) The high volume of snags – both the absolute number and compared with customers’ expectations.
- (b) Difficulties in making contact with the post-handover customer care team to report snags and other issues.
- (c) Homeowners needing to repeatedly report the same snags, chase progress, and escalate.
- (d) The time taken by housebuilders to remedy the snags (weeks, months, and in a small number of cases years).
- (e) Housebuilders ignoring or failing to respond to reports of snags or pushing back on reports.
- (f) Homeowners being left to deal directly with the housebuilder’s third-party contractors or suppliers.
- (g) Poor communication between the housebuilder’s customer care team and:
 - (i) The customer (eg, on scheduling appointments, with the site team or third-party contractors/suppliers arriving without any notice, or not turning up as arranged); and/or
 - (ii) The site team or third-party contractors or suppliers (eg, arriving at the customer’s home to do a job different from the one needed, or without the right materials/parts/tools).
- (h) The standard of remediation work where multiple, unsuccessful attempts are made to fix the snag, the ‘remediation’ making the snag worse, and new snags created during the work.

3.33 Some respondents indicated that they had given up on getting their housebuilders to address snags, preferring to instead leave the work incomplete or arranging for it to be rectified at their own expense. Others referred to staff turnover in customer care teams which caused continuity issues when attempting to get snags addressed.

3.34 Our consumer research found that most participants were content with their new homes. However, getting to a state of satisfaction had often involved a relatively long and unsatisfactory remediation process for many as their housebuilder addressed – from homeowners’ perspectives – an unexpectedly and unacceptably high number of problems.

3.35 On a positive note, homeowners reported that where an issue flagged at the handover stage was minor or obvious, they were satisfied with how the housebuilder responded. Unfortunately, satisfaction tended to decrease when they

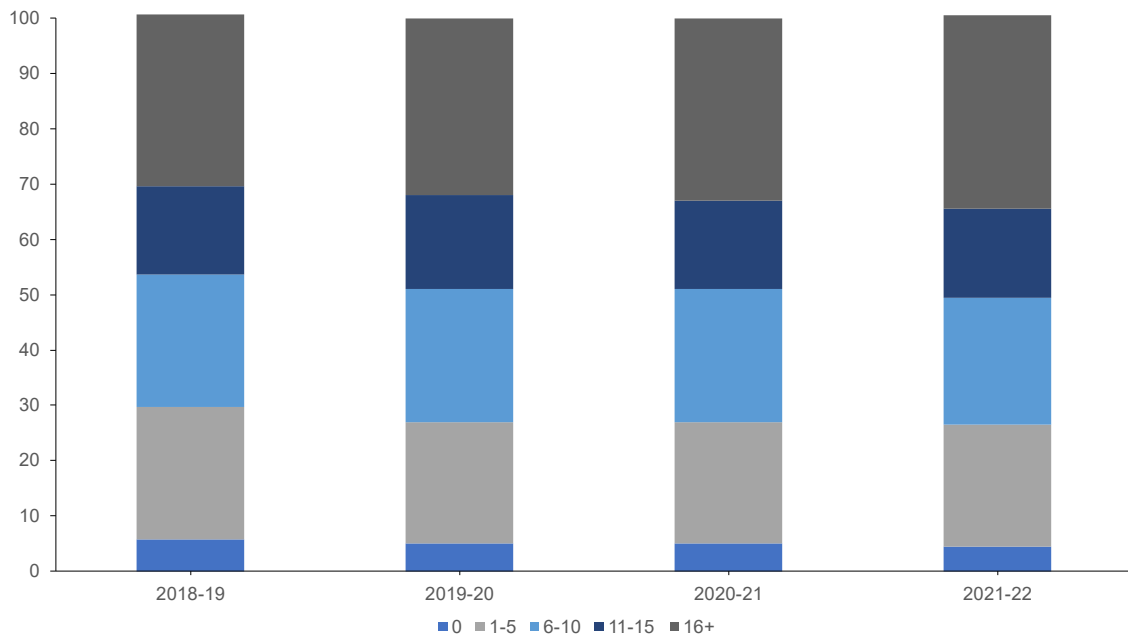
had submitted a long or more complex snagging list, with some feeling that the housebuilder was less cooperative the more issues that were raised.

3.36 We now explore evidence on the overall number of snags that customers experience, the severity of the issues identified, and the extent to which customers face difficulties in getting issues rectified in more detail.

Number of snags

3.37 There is some evidence of a rise in the number of problems that customers are experiencing in their homes. In the CSS dataset, there is a statistically significant increase over time in the number of customers reporting at least 16 problems with their home to their builder, and a decrease in the number of customers reporting fewer problems (the number of customers reporting no problems to their builder is very small year-on-year). Analysis by In-House Research (see Figure 3.2) also suggests an increase over time in the average number of problems that customers report.

Figure 3.1: Number of problems reported to the housebuilder

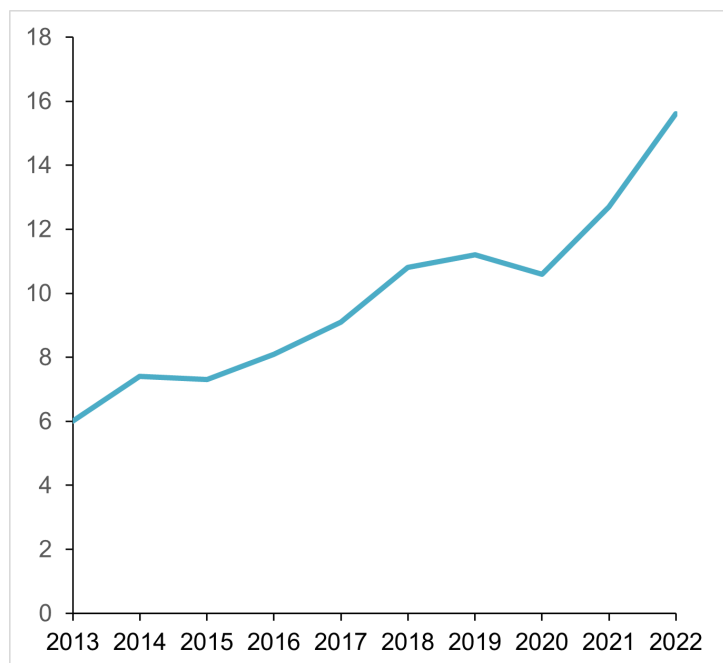


Source: CMA analysis of 9-month CSS Q8: Have you reported any problems with your home (i.e. snags, defects) to your builder since you moved in? and Q8a: Approximately how many problems (i.e. snags/defects) have you reported to your builder in total since moving in?

Base: All who reported no problems with their homes at Q8 and all who reported problems with their homes at Q8 and stated the number of problems at Q8a; 2018-19: n=47,131, 2019-20: n=34,643, 2020-21: n=42,057, 2021-22: n=41,539

Note: In each year of the survey, a small number of respondents do not answer Q8 or answer Q8 but do not answer Q8a. These respondents (2018-19: n=388, 2019-20: n=253, 2020-21: n=292, 2021-22: n=293) have been excluded from the CMA's analysis.

Figure 3.2: Average number of snags per plot



Source: In-house Research Q8

Note: Indicative finding only - the CMA has not tested the underlying data for statistical significance.

3.38 We treat this evidence of snagging increases with a degree of caution, as there has been growing awareness amongst consumers of the need to report snags to their housebuilders, and an increase in specialist providers who (at the homeowner’s expense) can be engaged to independently inspect new build properties at handover, listing snags for resolution.⁷⁰ In our stakeholder engagement, we were told that ‘snagging companies’ can be paid by the number of snags they identify, and therefore have an incentive to report what a housebuilder might consider to be minor snags, or report more snags (eg each paint splash separately). Thus, this increase may in part be due to increased reporting, rather than an increased number of problems.

3.39 However, given that the vast majority of respondents to the CSS and In-house Research survey, as well as participants in our consumer research, experienced some issues, it is clear that snagging is a common occurrence.

Severity of snags

3.40 We are not able to report on the severity of the problems that customers who responded to the CSS or In-house Research survey faced, as neither questionnaire asks respondents to describe the seriousness (in their view) of the defects concerned. Therefore, these defects are likely to range from the purely aesthetic or minor to much more serious problems. However, our consumer

⁷⁰ The ability for buyers to instruct a company to survey the house for snags on their behalf has recently been added into iterations of new consumer codes.

research and the Q19 verbatim analysis both indicate that snags can include issues that consumers consider to be serious defects which can severely affect the liveability or structural integrity of their property.⁷¹

3.41 Our analysis of the Q19 verbatim answers provides clear insight into the *prevalence* of particular quality issues and concerns for new homeowners, but robustly gauging the *seriousness* of the issues described is more challenging.⁷² In spite of this, we have undertaken an objective review of the responses, a proportion of which indicate apparent risks to the health and safety of new homeowners, impacts on their emotional, mental, and physical well-being, and/or financial detriment. Some examples of these instances are:

‘An atrocious smell outside on a daily basis which I am reporting to environmental health; [water company] have confirmed it is hydrogen sulphide. This is harmful to humans’.

‘Boiler flue was not connected in loft space on moving in, how this was ever signed off by <redacted> and the [warranty provider] is beyond comprehension.’

‘A fixture to the outside of my boiler has been fitted incorrectly, so when it rains, water pours into my house. After 3 visits from <redacted> and one missed appointment by <redacted> it is not fixed. This has been going on for nearly 2 months and water is still entering my house. There is damage to the wall and water is being allowed to enter my house daily. It is not being treated urgently, it is causing me huge anxiety and <redacted> are now ignoring my emails.’

‘After moving in, my attic hatch fell completely out of the ceiling of its own, because the joiner had only used three screws to fix it instead of sixteen plus.’

‘The stairs collapsed while walking up [them] with my son.’

‘There are still at least 50 snags outstanding, many of the fixes are left in a worse condition than when first reported. I’ve started to fix snags myself/paid external companies to fix as I am fed up of waiting for <redacted>.’

3.42 Participants in our consumer research expressed mixed feelings concerning snagging issues within their new build properties. While a degree of snagging was expected and tolerable, many buyers perceived the finishing of their homes as a

⁷¹ This is also consistent with the small number of consumer submissions we received in the course of the market study relating to quality issues.

⁷² The nature of respondents’ comments provides different challenges in terms of the level of detail provided within the 1,000-character limit, their natural subjectivity, and the fact that (in many cases) they are non-expert assessments of the issues being flagged.

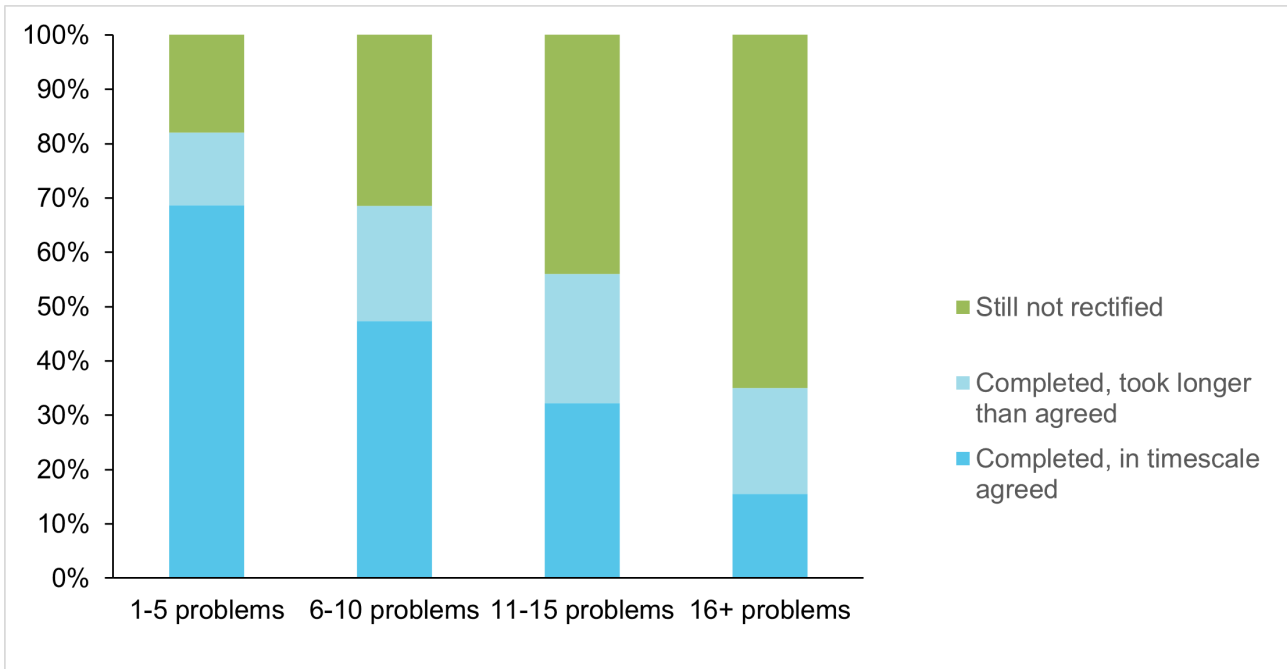
'rush job' with insufficient attention to detail, given the sheer amount of snagging work required (much of it avoidable, in their view). Some participants also reported issues with the design and layout of the property (such as the arrangement of fixtures and fittings) which added to the perception of a lack of attention to detail. There was also a general perception amongst the research participants that new builds are overall of a more 'flimsy' standard compared with older properties.

- 3.43 However, in some cases more substantial faults were reported, which participants found more distressing. For example, many participants in our consumer research had experienced some form of problem with the plumbing in their home, which varied in severity and inconvenience, but included some issues that could pose a risk to health and safety. There was also widespread dissatisfaction with the quality of gardens (including those that homeowners had paid to 'upgrade'), and of parking spaces/driveways and garages. The combination of the fact that in many cases certain aspects of the new build property did not meet what participants considered to be an acceptable quality standard, and the difficulty some said they experienced in getting developers to admit responsibility and rectify the issues concerned, had led to widespread frustration with, and a lack of confidence in, the industry for many of the homeowners interviewed. We discuss experiences with resolving issues in the following section.

Experiences of resolving snags

- 3.44 Multiple sources highlight the concerning difficulties that consumers can face in attempting to get problems in their new build homes resolved.
- 3.45 Our consumer research found that the majority of participants saw snagging as a standard part of the process of buying a new build, with developers usually demonstrating prompt issue resolution for the more minor and obvious defects. However, there was not always a consistent level of responsiveness between housebuilders, or by individual housebuilders over time. In addition, some participants said they faced greater difficulties when trying to address relatively long snagging lists and/or more substantial issues, such as plumbing and drainage problems, problems with doors and windows, roofing issues, and garden problems. Many felt that housebuilders only responded to these more costly issues after facing substantial pressure, and in some cases were said to only take action after multiple residents reported the same problems.
- 3.46 The CSS dataset illustrates that as the number of problems increase, customers report increasing difficulty in getting them fixed, and lower satisfaction with the quality of the repair.

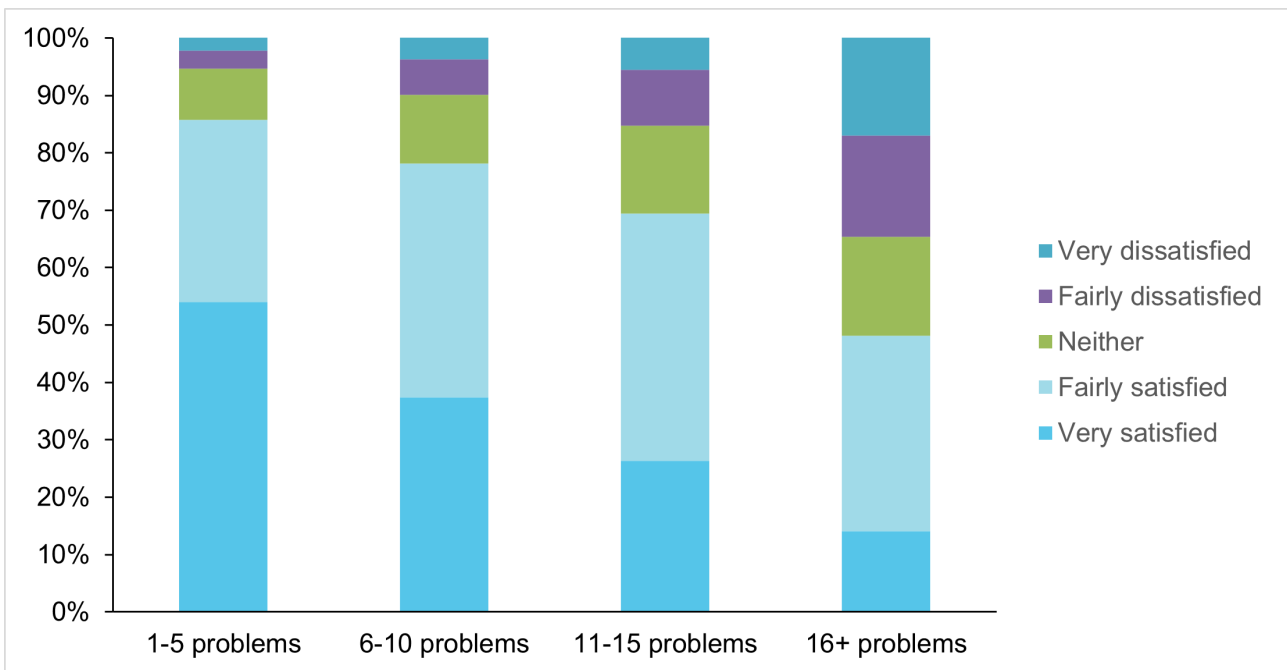
Figure 3.3: Time taken to repair snags by the number of snags reported



Source: CMA analysis of 2021-22 9-month CSS Q8c: Has the repair work been ...?

Base: All who reported problems with their home to their builder and answered Q8c (n=38,870); 1-5 problems: n=8,720, 6-10 problems: n=9,420, 11-15 problems: n=6,369, 16+ problems: n=14,361

Figure 3.4: Satisfaction with repair of snags by the number of snags reported



Source: CMA analysis of 2021-22 9-month CSS Q8d: How satisfied or dissatisfied were you ... with the standard of any repair work carried out by your builder?

Base: All who reported problems with their home to their builder and answered Q8d (n=31,503); 1-5 problems: n=8,191, 6-10 problems: n=8,497, 11-15 problems: n=5,410, 16+ problems: n=9,405

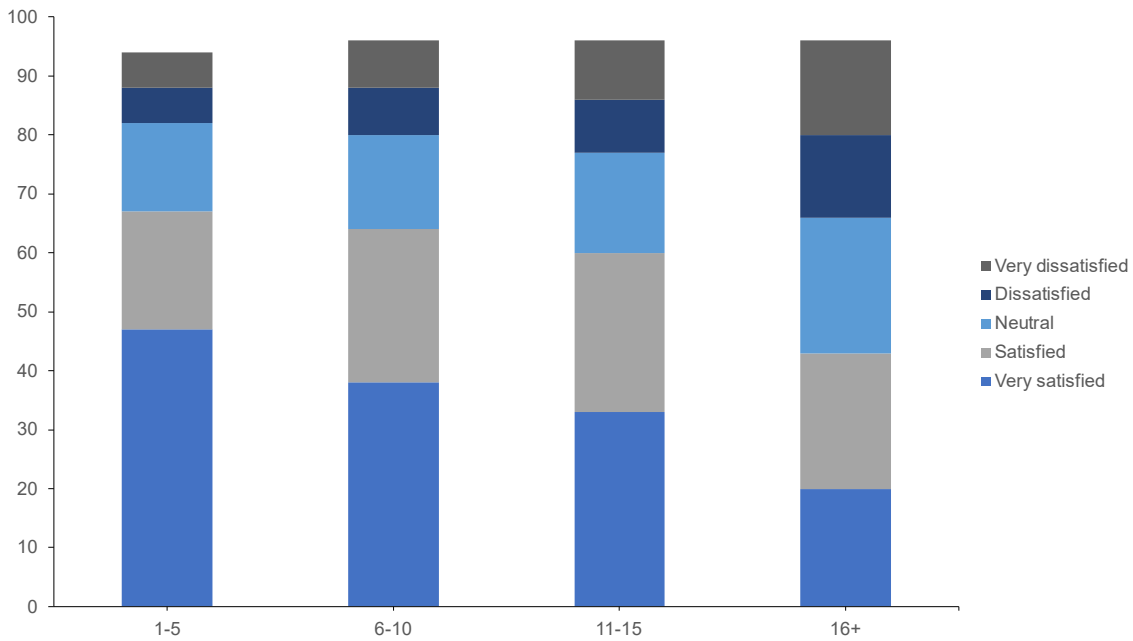
3.47 A similar picture is indicated by the In-house Research data, as shown in Figure 3.5. Customers who had reported more problems to their builder were less likely to be satisfied with the builder’s ability to deal with customer defects. The trend in the

findings from this survey is less pronounced, however, with a reduction in satisfaction but not a large increase in dissatisfaction. This may be because the In-house Research survey is conducted closer to handover – between 3 and 12 weeks after the customer has moved in – compared with 9 months later for the CSS, and so customers may not have been waiting as long for issues to be fixed by the time of the research, or issues may have not yet had time to emerge.

- 3.48 In addition, our Q19 verbatim analysis suggests that a marked proportion of homeowners are dissatisfied with their builder making repeated commitments to address a defect but not doing so successfully (and sometimes making things worse). For example:

‘After moving in in November we are still waiting for works to be carried out. A lot of issues we have had solved have then caused more problems. We have been passed between many different staff ... We spend hours a week chasing up emails and phone calls. We had to move out of the property for a fortnight for all works to be finished and there are still works to be completed. The whole situation has been very stressful and ruined our experience as first-time buyers. After best part of a year of living here we are so disappointed, and it has even taken a toll on our relationship too. Our belongings were taken into storage whilst we moved out, some of which were broken or misplaced during this time. We have had careless tradespeople leaving mud on carpets, paint on furniture & even blood on our door handles.’

Figure 3.5: Satisfaction with the way defects were dealt with by number of defects reported



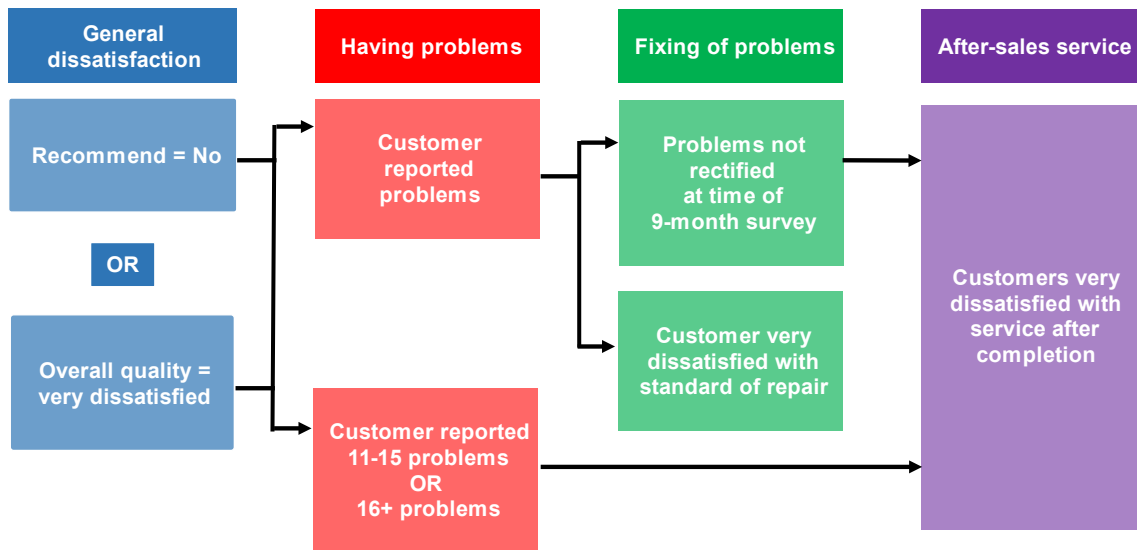
Source: In-house Research Q10

Base: All legal completions in 2022

Note: Indicative finding only - the CMA has not tested the underlying data for statistical significance.

3.49 In addition to these single indicators from the CSS and In-house Research data, we have developed a composite indicator using the CSS dataset to identify customers who are overall expressing dissatisfaction with problems in their home, and the fixing of these problems. We started from customers who reported they would not recommend their builder or who were very dissatisfied with the overall build quality of their home, and included those who were either very dissatisfied with the standard of repair or had reported problems that had not been rectified and were very dissatisfied with the service provided by the builder after completion, or who had reported more than 10 problems and were very dissatisfied with the service provided by the builder after completion.

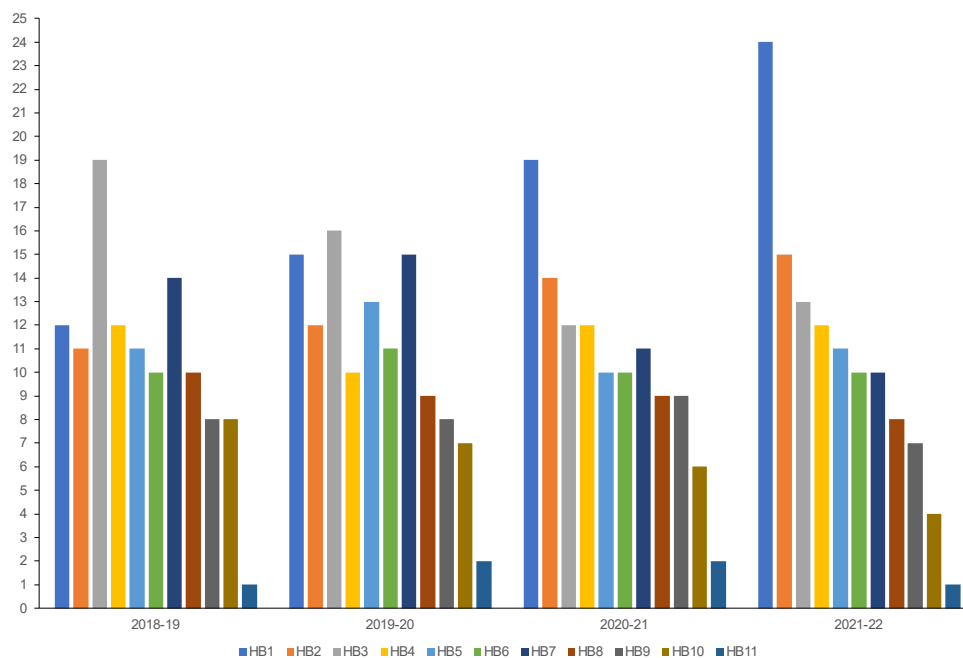
Figure 3.6: Composite indicator of customer dissatisfaction



Source: CMA analysis of 2020-2021 9-month CSS Q1/Q3/Q8/Q8a/Q8c/Q8d/Q9

- 3.50 We consider that any customer who meets these criteria has experienced poor after-sales care. Across the whole dataset, around one in eight customers in each survey year have had these poor customer experiences (12% in 2018-19 and 2019-20, 11% in 2020-21, 12% in 2021-22). In 2021-22, this is equivalent to nearly 5,000 customers who meet the criteria for experiencing dissatisfaction with their homes and how they are addressed.
- 3.51 This varied substantially across housebuilders – for example, among the top 11 in 2021-22 it ranged from 1% of their customers to 24%. Outside of the top 11 there is still more variation. The larger companies outside of the top 11 have a higher proportion of customers experiencing these problems (18% of their customers, compared with 11% overall for the top 11). The Medium and Small builders sit between these on average, at 12% and 14% of customers, respectively.

Figure 3.7: Composite percentage of customers who are very dissatisfied with overall service (top 11 housebuilders)



Source: CMA analysis of 9-month CSS

Information available on overall satisfaction with quality

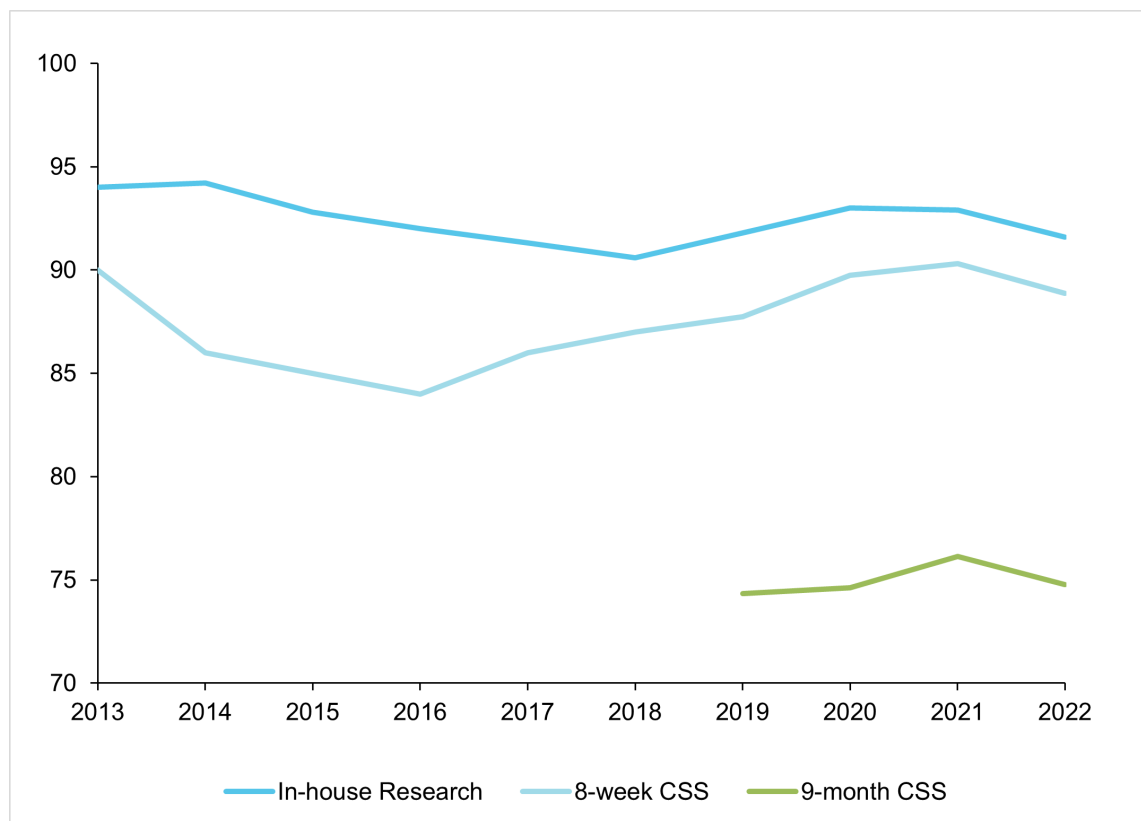
- 3.52 Above, we have considered evidence on consumers’ experiences and how quality manifests at different stages of the new build purchase process. The following section considers evidence as to consumer satisfaction with the overall quality of their property and the service they receive from their housebuilder. In order to do this, we have considered high level indicators such as the HBF Star Rating Scheme results and research considering overall satisfaction rates.
- 3.53 The HBF Star Rating is based on responses to a single question in the 8-week CSS: ‘Would you recommend your builder to a friend’ (Q1). Such questions cut across different aspects of consumers’ experiences and so can act as a general indicator of satisfaction.
- 3.54 This question is also repeated in the 9-month CSS. By the 9-month CSS, the proportion of customers who respond positively at Q1 falls substantially. The overall response rate to the survey also falls (for example, from 60% at 8 weeks to 40% at 9 months in 2021-22), and those who are more dissatisfied may be more motivated to respond to the later survey than customers as a whole. Nevertheless, we consider it is important to highlight that the reported indicator of 90% at 8 weeks in 2021-22 fell to (an unreported) 75% at 9 months in the same reporting year. It also ranges widely for the top 11 housebuilders at 9 months, from 55% to 87% of customers who would recommend the builder to a friend.

- 3.55 In our Q19 verbatim analysis, we found that 157 out of 1,200 respondents were critical of the general quality of their home, pointing to their perception of bad workmanship which they felt had created otherwise avoidable snagging work, and poor attention to detail or insufficient quality control in the run-up to handover. A number considered that their home was a “rush job” and corners were cut in getting it ready to sell.
- 3.56 We have found some evidence of changes over time in relation to overall satisfaction with the quality of new build housing. From In-house Research, we have findings relating to each year of its survey since 2013. For the CSS, we have full datasets from both the 8-week and 9-month CSS since 2018-19, but the HBF has also provided some information on trends over the longer term, and summaries of findings from each year of the survey since it began in 2005 are in the public domain.⁷³
- 3.57 Taken together, both the In-house Research data and the 8-week CCS indicate similar trends in whether customers would recommend their builder to a friend. The proportion of In-house Research respondents who answered this question positively significantly between 2013 and 2018, improved over the next two years, and then began to drop again.⁷⁴ The proportion of 8-week CSS respondents who answered this question positively declined significantly from 2012-13 until 2015-16, then improved significantly over the next five survey years, before declining again in 2021-22. The In-house Research data suggests similar trends in a range of other metrics (Overall Satisfaction, Net Promoter Score, Satisfaction with condition of the home at completion).

⁷³ See: HBF [previous year results](#). Methodological and other changes mean that findings for the surveys published March 2006 (“1st Survey”) to March 2013 (“8th Survey”) are not comparable with each other or with anything published subsequently. However, between the 9th Survey (October 2012-September 2013, published March 2014) and the 18th Survey (October 2021-September 2022, published March 2023), the HBF has reported 8-week CSS “would recommend” scores of 90, 86, 85, 84 [12th Survey (October 2015-September 2016, published March 2017)], 86, 87, 89, 91, 91, 90. We note that the HBF has stated that the ‘Recommend’ rate remained above 90% for the last three years. In our analysis, it is below 90% in 2021-22, as we have included all respondents in the base: in 2021-22 89% said ‘yes’, 10% said ‘no’ and 1% of respondents did not answer this question.

⁷⁴ Indicative finding only - the CMA has not tested the underlying data for statistical significance

Figure 3.8: Proportion of respondents who would recommend a housebuilder to a friend



Source: In-house Research Q16; HBF 8-week CSS publications, 2012-13 to 2017-2018; CMA analysis of 8-week CSS Q1: Would you recommend your builder to a friend?, 2018-19 to 2021-22; CMA analysis of 9-month CSS Q1: Would you recommend your builder to a friend?, 2018-19 to 2021-22

Note 1: In-House Research findings – indicative only; the CMA has not tested the underlying data for statistical significance.

Note 2: The 8-week CSS percentages for 2013-2018 are taken from summaries of findings published by the HBF and are based on all valid (eligible) questionnaires completed. We did not have access to the underlying datasets for these years of the survey; therefore, we have used the published findings as a proxy. The 8-week CSS percentages for 2019-2022 have been calculated by the CMA from the underlying datasets and (in line with the analysis in this chapter) are based on all questionnaires completed.

Drivers of quality outcomes: consumer and housebuilder decision-making

3.58 In a well-functioning market, when quality is observable by customers, suppliers can be expected to provide a range of price/quality combinations and good value for money for customers. Quality differentiation between suppliers is consistent with this if customers are aware of the quality provided and accept a lower (or higher) price as a result. However, where quality is not observable by customers, suppliers' incentives to invest in quality may be significantly dampened; in particular, if quality is costly to provide, suppliers may reduce the investment in quality to reduce costs. Imperfect information about quality can be a particularly severe problem for infrequently purchased products or products the quality of which cannot be verified even after purchase – so-called 'credence' goods.⁷⁵ This may result in weak competitive incentives and poor-quality provision.

⁷⁵ Market investigations guidelines: CC3, paragraph 312.

3.59 In the following sections, we consider how far consumers take information on quality into account in their new build home purchase decisions, how far such information is actually available, and what effect that has on housebuilders' commercial decisions.

Quality is just one aspect of consumer decision-making.

3.60 Our consumer research examined how consumers made decisions when they bought a new build property. This revealed that consumers may not fully seek out and take on board all relevant information about the property they are thinking about buying, for a number of reasons:

- (a) The decision can be time-pressured due to their personal circumstances, and/or due to pressure from housebuilders, for example, if there are few available properties left on the site, or constraints imposed on the time within which exchange and completion must happen. For some participants, time pressure meant that when they found a property that looked right, their priority was to move as quickly as possible with the purchase; fact-checking (to varying degrees) tended to come later.
- (b) For many participants, buying a property involved a high degree of emotional investment. Many reported the experience of finding somewhere that 'felt right'. Many became set on getting the property they had chosen, as changing course could involve both emotional disappointment and tangible impacts, such as loss of deposits or time without solving their living situation.

3.61 Further, there is some indication that quality, in terms of the construction or finish of the property, are not at the forefront of consumer decisions. Our consumer research found that for many participants, the main decision factor for buying a property tends to be the location,⁷⁶ the extent to which the property is the right size and price, and its availability. The quality of the property is mostly considered to be a 'hygiene factor', i.e. because they were buying a new build property, most of the homeowners we interviewed simply assumed that quality would not be an issue. This does not mean that quality is not important to consumers, but there are many

⁷⁶ Zoopla also reports ([Consumer insights for housebuilders 2022: A survey of buyers active in the new homes and resales markets](#)) that location was the most frequently cited buying consideration for the homebuyers it surveyed, mentioned by 51% (n=2,615 who had bought a new home in the previous 18 months or intended to buy one in the next 18 months). Quantitative research conducted by Savanta with n=487 customers of one of the top 11 housebuilders found that 99% described the property's location as very or slightly important. We note that this research was not submitted in evidence to the case and, as a result, we have not assessed its evidential weight. Moreover, the evidence relates to a specific sub-group of new build customers and is unlikely to be generalisable to all new build customers. Therefore, we have interpreted the findings entirely at face value, considering them in the round with a range of other evidence where they appear to be indicatively informative.

dimensions to 'quality' assessments, of which the construction and finish of the property itself is only one.

Only limited information on the quality of the property is readily available when consumers are making purchase decisions

3.62 In addition, consumers need to have information on quality in order for it to feed into their decision-making. In housebuilding, the amount of information available to consumers on the quality of the property they are purchasing varies depending on the aspect of quality being considered.

- (a) Consumers may purchase their new home before it has been completed, or even before construction has begun. In such cases, they rely on floorplans and show homes to understand the layout and appearance of the property.
- (b) Consumers may also purchase the property before the estate has been fully completed, particularly on large estates that are being delivered in several stages. As such, they may have only imperfect information about the overall size and layout of the estate from plans, and the final configuration of the estate may not be directly observable until several years after their purchase.
- (c) Consumers may opt for particular changes to the standard fixtures and fittings (such as upgraded kitchen and bathroom options) but will not see how they look or whether they have been provided as planned until very close to (or even after) the point where the purchase is complete.
- (d) Many issues relating to workmanship and construction quality only become apparent once a property has been lived in for a period of time. For example, it may only be once a homeowner has lived in the property that they notice some difficulties with the design of their home (such as how cupboards are configured and how effective heating systems are), or that construction flaws come to light (for example, doors and windows that are poorly fitted or damaged, or plumbing and drainage that does not work effectively). In some cases, it may be many years before the issues, or their severity, become apparent.

3.63 This indicates that many aspects of the quality of a specific home are only observable after purchase.

Mechanisms through which quality can be inferred are likely to be imperfect.

3.64 It may still be possible for competition on quality to work effectively if:

- (a) There are effective mechanisms through which consumers can obtain specificity on what they can expect, and then hold housebuilders to account for delivering on those expectations. In such cases, consumers could

compare the quality they are told they will receive from different housebuilders with some confidence that this is what will be provided.

- (b) There is sufficient information available as to the quality of homes built by different housebuilders (and now lived in) more generally, which can act as a proxy for the likely quality the consumer will receive for their specific property. In other words, if reliable information on previous customers' experiences and/or the quality of previous builds is available, consumers may be able to base their decisions on this.

3.65 With regard to the first mechanism, there are limitations to how far consumers are currently able to hold housebuilders to account for the quality they receive. We have seen contracts which give the housebuilder a significant degree of scope to change what they provide compared with what is discussed with the consumer in pre-sale meetings,⁷⁷ and in our Q19 verbatim analysis, we observed some homeowners reporting that some customisation options were not provided as agreed.

3.66 With regard to assessing the general quality of the housebuilder as a proxy for the quality of the individual home, there are currently two key barriers to this being an effective lever in this market: customer disengagement from doing active research on quality; and the limited nature of the quality information available.

Lack of customer engagement

3.67 There are limitations to how far consumers engage with information on quality or seek it out. Our consumer research found that the specific developer was rarely a driver for or barrier against a purchase decision. The homeowners in the sample more commonly prioritised factors such as the location of the property and the extent to which the property itself matched their expectations.⁷⁸ As such, our consumer research suggests that consumers appear to tailor their choice of housebuilder to who is building in their preferred location rather than the other way round.

3.68 The lack of customer engagement prior to purchase will be a limit on the degree to which information on housebuilder quality will impact upon purchasing decisions, thus feeding back into improvements in quality.

⁷⁷ Where a consumer is unhappy with a major change, they are able to cancel their agreement within a specified amount of time.

⁷⁸ This is supported by internal documents from two housebuilders. One noted 'We know from research that brand is a secondary consideration within the decision-making process with location, price, number of beds and even aspect of the property sometimes considered to be more important.' The other noted that location, price, and product are key influencers in customer decision-making, with brand used to make sure they targeted the right customer segments in each location.

3.69 However, while the lack of information available in the public domain on the quality of housebuilders may be impeding the ability and motivation of customers to engage with information, it may also provide false reassurance. Therefore, it is possible that improvements in the information available could lead to some improvements in the quantity and quality of customer engagement.

Lack of information available to enable customers to make an informed decision

3.70 Our consumer research found that consumers often decided to buy a new build based on what they could easily learn from the sales team, show home, and marketing brochures, sometimes supplemented with information from people they know or a cursory look at developer reviews online. Even where more systematic information gathered through online review platforms is used, evidence from previous CMA work indicates these can be open to manipulation.⁷⁹

3.71 The main information available on builder quality in the public domain at individual builder level is the HBF's Star Rating Scheme. This is published by the HBF on its website, but is also promoted by some builders, so is a visible source of information for consumers. In our consumer research, most of the small number of participants who knew about the Star Rating Scheme found it to be a source of reassurance about the housebuilder they were buying from. A few, however, doubted the credibility of the ratings, specifically pointing to what they perceived to be a suspiciously large number of 5* developers.

3.72 We note that in board papers from 2021, one of the top 11 housebuilders comments that it no longer considers the Star Rating Scheme to properly differentiate between housebuilders on quality: "This is supported by our brand attributes, which currently focuses on quality for both brands. This message is likely to be eroded as more housebuilders achieve 5 Star status, so further differentiation between our brands and our competitors is required." Similarly, Ipsos MORI's 2021 review of the HBF Star Rating Scheme revealed concerns about a lack of differentiation raised by housebuilders, third-party stakeholders, and homebuyers. However, it also found that while the Star Rating was not a driver of purchase decisions for homebuyers, it did in some cases provide reassurance.

3.73 Alongside the star ratings, the HBF also publishes a general report about the industry as a whole, based on the 8-week CSS findings. It presents a very positive picture which, as shown by the CMA's analysis described above, is not fully representative of the range of data collected through the survey. If any customers were to review this information, it would be generally reassuring about the quality

⁷⁹ [Fake online reviews research: executive summary](#)

of the industry, although we consider it unlikely that customers look at the reported industry-level findings in detail.

- 3.74 Looking at the HBF Star Rating Scheme, we have serious reservations about whether the information it includes enables customers to make an informed decision about their purchase, and therefore to generate competitive pressures on housebuilders. Our concerns arise from the following issues:
- (a) Housebuilders opt in to publishing information on the HBF website and promoting their star ratings. Therefore, virtually all information available publicly is for 4* or 5* builders.⁸⁰ This is not representative of the wider dataset.⁸¹
 - (b) The star ratings are based on only one question from the 8-week survey – ‘Would you recommend your builder to a friend’ (Q1). While the resulting indicator is easy to understand, it represents a very partial picture of the wider dataset. We have reviewed it against other questions in the 8-week and 9-month surveys and found that the datasets as a whole present a much more diverse picture of the quality of housebuilders who participate in the HBF Star Rating Scheme.
 - (c) There is some evidence of housebuilders manipulating answers to the CSS, for example, by offering inducements to customers. Following a review by Ipsos MORI of the CSS process in 2017,⁸² the HBF issued instructions to its members not to offer incentives for completing the survey: ‘We have agreed that, effective immediately, the removal of discretion for builders to offer any incentives including charitable donations is necessary for the legitimacy of the survey. We do appreciate that some respondents are concerned about what impact this will have on charitable giving and note that builders are still able to make charitable donations without these being linked with the completion of individual surveys’. However, in a report arising from its 2021 review of the HBF Star Rating Scheme, Ipsos MORI noted observations (by both housebuilders and homebuyers) about ongoing bad practices, such as housebuilders “‘buying” a yes response’ from their customers through providing additional services such as extra patio slabs and free sheds. Ipsos MORI noted that there is a greater risk of such manipulation where decisions are based on a single key performance indicator. In the Q19 verbatim analysis, a number of respondents to the 9-month CSS also allege that

⁸⁰ There was a single housebuilder in 2021-22 with a 3* rating in the public domain.

⁸¹ We have analysed the data for all housebuilders that we classify as Large or Medium, who had at least 20 survey responses in 2021-22 and who were not included in the published HBF star rating (given that n=21 is the smallest achieved sample size from which a star rating was calculated and published by the HBF). Of these (n=50), eight would have scored 3 stars, three would have scored 2 stars, and six would have scored 1 star. The star rating calculation does not permit a rating of zero stars, but one company scored below the threshold to get 1 star.

⁸² Further information on this review is provided in paragraph 3.89.

homeowners are incentivised or pressured by housebuilders to secure favourable 8-week survey submissions, for example:

'[Housebuilder] turfed garden when I moved. They said they would only do this if I gave them a 5* rating and recommended them on my previous NHBC survey. I feel they are effectively buying their star rating and it doesn't reflect their standards and service.'

'I felt bullied by the site team when completing my first survey. I felt that I had to give a good report as I feared my "snagging list/faults" wouldn't be completed.'

'The Site Manager ... offered us free paving slabs in exchange of a better survey score in our first survey, and did not deliver on this – disgusted.'

'We were encouraged to complete original survey before snagging work was done. Told certain snags would only be rectified for a "10 out of 10" survey score - in hindsight, bribery.'

'We were told by a manager ... that if we gave them a good NHBC survey they would extend our patio, so we gave positive feedback when it should have been negative ... once the survey was completed they have never been to extend our patio.'

'When I completed your survey back in Dec/Jan the builder attempted to use this as a bargaining chip, ie I respond to your survey favorably [sic] and they will resolve all the issues in my new home as well as give me new kitchen cabinets.'

Housebuilders monitor quality to some extent but largely based on partial information.

3.75 We have reviewed a selection of board papers from the top 11 housebuilders, to understand how they review and monitor quality at the highest levels in their business. Based on this review, we observe the following:

- (a) In these documents, many of the housebuilders reference their success in achieving a 5* rating on the CSS, as well as reporting on further breakdowns from the CSS surveys in some instances.
- (b) In some cases, housebuilders also referenced wider metrics from warranty providers, such as construction quality reviews.
- (c) Some housebuilders referred to information from other sources, such as In-house Research and Trustpilot.

- (d) In some instances, CSS findings are included in metrics to award construction bonuses.
- (e) We found a small number of cases where a quality concern or complaint was escalated to board level.
- (f) Overall, based on our review, we found that quality is discussed with less frequency and/or depth at board level than other issues such as land acquisition and financial performance.

3.76 We have compared how the range and depth of discussion on quality in board papers from the top 11 housebuilders compares with their performance in the CSS. Given we have not attempted a comprehensive review of all board documents where quality is discussed, this is necessarily tentative. Nevertheless, there is some indication that the housebuilders for whom we found more engagement with quality were those that had higher performance across a range of metrics that we analysed in the CSS, or where there had been improvement. In addition, that some of the housebuilders look at broader metrics than their performance in the HBF Star Rating Scheme indicates that the rating in and of itself is not a sufficiently informative measure of the quality they are achieving. This would suggest that consumers also need more information in order to gauge quality.

3.77 We also asked the top 11 housebuilders to describe their processes for ensuring the quality of the homes being delivered. They tended to name a range of metrics to assess quality, most commonly referencing NHBC requirements. All had processes in place for monitoring quality, although they varied in the degree to which they referenced external checks (such as by warranty providers) compared with also having internal checks and balances, how responsibility for ensuring quality was delegated within the organisation, and how proactive they are with engaging with customers at and following completion. Most of the housebuilders indicated that signing up to the NHQC had required a number of changes to their quality control processes, with some indicating these were relatively minor. Such changes included:

- (a) allowing customer appointed inspection of new homes,
- (b) providing a Schedule of Incomplete Works, and
- (c) increased focus on supporting vulnerable customers.

3.78 However, in a strategy paper one housebuilder noted that the move to a principles-based approach to assessing customer complaints following the introduction of the NHQB was 'a departure from purely complying with building regulations or technical standards, which is currently the industry standard, [which] will challenge the industry as a whole'.

Conclusion on quality

3.79 In summary, consumers are not able to observe the quality of a home prior to purchase and, even if they could, factors such as location and availability tend to be higher priorities than quality in consumers' decision-making (with quality taken as a given). This means housebuilders are not necessarily incentivised to compete on quality as much as we would expect in a well-functioning market. Thus, housebuilders' appetite to improve and maintain quality may be driven more by regulation of the minimum standards required in housing and maintenance of more easily observed metrics such as their published star rating (where they choose to publish this).

Drivers of quality outcomes: redress

- 3.80 Buying a property is commonly the largest purchase a person will make within their lifetime.⁸³ It can be an emotional decision, and consumers may not have much experience of the process, given that many buy a house only infrequently. These features can create an imbalance in power between the buyer and the housebuilder.⁸⁴ Therefore, ensuring adequate consumer protection for those purchasing a property and seeking redress should things go wrong is paramount.
- 3.81 Building a house to a high quality, with minimal snags and no structural defects, is likely to take longer and involve higher upfront costs than building quickly and cheaply. However, it is also less likely to require further work in the future to rectify any faults that later come to light. Housebuilders therefore face a trade-off in their decisions about the level of quality to build to: build to a lower standard and run the risk of needing to make costly repairs later *or* invest more time and money upfront and reduce this risk. This trade-off will be influenced by a number of factors, including the cashflow benefits of selling quickly, and the likely relative cost of initial build work vs remediation work.⁸⁵ It will also be heavily influenced by the extent to which housebuilders expect to be held accountable for any remediation necessary: the more housebuilders expect to be able to avoid having to pay for repairs arising from poor build work (for example, by delaying undertaking work until consumers give up or fix it themselves, or passing on responsibility to other parties), the lower the incentive to avoid repair work becoming necessary. The ability for consumers to seek redress effectively is therefore important in incentivising housebuilders to construct homes to a high standard.

⁸³ Department for Levelling Up, Housing and Communities (2019). [How to buy a home](#)

⁸⁴ Ali, S. (2019). [Building a Better Market: Making the housebuilding market work for consumers](#), p17

⁸⁵ In many markets, the potential reputational effects of producing a poor quality product would also increase the cost of producing to a low initial standard. However, as discussed in paragraphs 3.67 to 3.74, there are limits to the effect of reputation in this market.

- 3.82 We examine below the changes in the redress process over time and the current framework to understand how far consumers have been, and are currently able to seek redress.

History of consumer redress measures

2000s

- 3.83 Since the early 2000s, there have been calls to improve the consumer experience of buying a new build property. The 2004 Barker Review included a recommendation for industry to improve levels of customer satisfaction. Specifically, it recommended that the HBF should develop a code of conduct by the end of the year. Barker stated that, if progress was unsatisfactory, then the Office for Fair Trading (**OFT**) should undertake a review of the market.⁸⁶
- 3.84 The absence of a code of conduct was one of the drivers for the OFT's 2008 Housebuilding Market Study. Among other recommendations to improve the balance of power between housebuilders and consumers, the OFT re-stated the earlier recommendation for the development of a code of conduct, outlining milestones for making it fully operational by 2010. It provided a further recommendation that if any of these milestones were missed, government should seek to introduce a statutory redress scheme funded by a levy on industry.⁸⁷

2010s-2020

- 3.85 As a result of the OFT study, the Consumer Code for Homebuilders (CCHB) was set up in 2010 by a number of warranty providers and the Council of Mortgage Lenders, placing new requirements on the marketing, sales, and aftercare provided by housebuilders.⁸⁸ We were told that other warranty providers were deemed ineligible to join the CCHB, so those concerned set up and sought Chartered Trading Standards Institute (CTSI) approval for their own codes.⁸⁹ This led to other codes launching such as the Consumer Code for New Homes.⁹⁰
- 3.86 Warranty providers sponsor or operate codes, and although housebuilders are not required to provide a new build home warranty, the majority of mortgage lenders make provision of one a requirement for lending.⁹¹ In turn, this has the effect of necessitating housebuilders to register with a code to enable warranty provision.

⁸⁶ Barker, K. (2004). [Review of Housing Supply](#), p140 - Recommendation 32

⁸⁷ Office for Fair Trading (2008). [Homebuilding in the UK](#), p9 - para 1.18

⁸⁸ CCHB, [What is the code?](#)

⁸⁹ APPG For Excellence in the Built Environment (2018). [Better Redress for Homebuyers](#), p17

⁹⁰ House of Commons (2022). [Research briefing: New-build housing: Construction defects](#), p31

⁹¹ A Professional Consultants Certification may be accepted if the individual has indemnity insurance. [UK Finance Lenders Handbook Scotland](#) – para 6.7; [UK Finance Lenders Handbook England and Wales](#) – para

- 3.87 The approved codes must provide an independent dispute resolution service which can be utilised where an issue arises in a new home that has not been resolved between the buyer and the housebuilder.⁹² The outcome of adjudication can vary from an apology to financial compensation; different codes have had different compensation limits which mainly range between £15,000 and £50,000.⁹³ We have heard that some Alternative Dispute Resolution (ADR) can be limited to warranty providers' technical requirements, creating confusion between the protection provided by codes and by the ADR process.⁹⁴
- 3.88 In the latter half of the 2010s, there was a drop in customer satisfaction scores, alongside high-profile reports in the media on the poor quality and customer service offered by housebuilders.⁹⁵ The All Party Parliamentary Group for Excellence in the Built Environment (APPG) conducted inquiries into new housing quality in 2016 and 2018. The inquiries set out numerous recommendations to industry and government,⁹⁶ centred around:
- (a) Government setting up a statutory New Homes Ombudsman and an industry wide single code of practice;
 - (b) a review of new build warranties coverage;
 - (c) minimum standards for compliance inspections by government; and
 - (d) independent annual customer satisfaction surveys.
- 3.89 In 2017, the HBF commissioned Ipsos MORI to review the CSS and the Star Rating Scheme. The review concluded that the survey process was fit for purpose and provided some key recommendations and suggestions alongside to enhance it going forward. The recommendations included improvements to the operational processes, development and testing of alternative measures for the Star Rating Scheme, and removing discretion for builders to offer incentives for completion of the survey. After consultation, the HBF took forward changes to the survey and issued guidance that removed the discretion for builders to offer any incentives, including charitable donations, for completion of the survey (as noted in paragraph 3.74(c)).

6.7. The Building Safety Act 2022 Part 5 has provisions to make it mandatory for housebuilders to provide a warranty to the purchaser, with the minimum period of coverage as 15 years.

⁹² CTSI, [Consumer code approvals scheme: I am a consumer](#)

⁹³ The CCHB maximum compensation limit for homes reserved before 1 January 2024 is £15,000. Any homes reserved after will have an increased limit of £50,000 which is what the CCNH offers.

⁹⁴ APPG For Excellence in the Built Environment (2018). [Better Redress for Homebuyers](#), p17

⁹⁵ HBF (2023), [Response to the CMA's Statement of Scope in relation to the Housebuilding market study](#), p99; House of Commons (2022). [Research briefing: New-build housing: Construction defects](#), p31

⁹⁶ APPG For Excellence in the Built Environment (2016). [More Homes, Fewer Complaints](#); APPG For Excellence in the Built Environment (2018). [Better Redress for Homebuyers](#)

- 3.90 After a drop in customer satisfaction, and public examples of poor-quality homes in 2019, the HBF led the formation of working groups and commissioned a gap analysis on the protections for consumers in the new homes market. The key observations were:
- (a) The proliferation of codes is confusing for consumers;
 - (b) independent redress via an ombudsman should be considered;
 - (c) the previous code(s) drove improvement in the sales process but had a limited remit post-sale; and
 - (d) robust protections for issues post-occupation needed to be introduced.⁹⁷
- 3.91 The output of this work led to the appointment of a New Homes Quality Champion in 2019 which then resulted in the development and launch of the New Homes Quality Board (NHQB).⁹⁸
- 3.92 In parallel, consultations were also undertaken by government on better access to redress for purchases of new homes.⁹⁹

Recent developments

- 3.93 Since the APPG recommendation in 2018, the Government has been committed to setting up a UK-wide statutory new homes ombudsman to “champion homebuyers, protect their interests and hold developers to account”.¹⁰⁰ Measures to create a statutory New Homes Ombudsman Service (NHOS) are contained in Part 5 of the Building Safety Act 2022. The Act is also reforming building regulation and management in England and takes forward the Government’s plan to implement the Independent Review Building Regulations and Fire Safety (the Hackitt Review) findings, as well as other building-related measures.¹⁰¹
- 3.94 Meanwhile, the NHQB has worked with the industry to create a new code of practice, which was consulted on and finalised in 2021.¹⁰² The code is principles-based to encourage a comprehensive approach to customer service. The principles are fairness, safety, quality, service, responsiveness, transparency,

⁹⁷ HBF (2023), [Response to the CMA’s Statement of Scope in relation to the Housebuilding market study](#), p99

⁹⁸ HBF (2023), [Response to the CMA’s Statement of Scope in relation to the Housebuilding market study](#), p99

⁹⁹ MHCLG (2018), [Strengthening consumer redress in the housing market: a consultation](#)

¹⁰⁰ MHCLG (2018), [Government announces new housing measures](#)

¹⁰¹ MHCLG (2018), [Independent Review of Building Regulation and Fire safety: Hackitt review](#)

¹⁰² New Homes Quality Board, [New Homes Quality Code published](#)

independence, inclusivity, security, and compliance. The NHQB has committed to reviewing this code on a regular basis.¹⁰³

- 3.95 Ahead of a statutory ombudsman service, the NHQB collaborated with the Dispute Service to launch a voluntary New Homes Ombudsman Service (NHOS) which has been approved by the Ombudsman Association. The voluntary NHOS is paid for by industry through an annual registration then renewal fee based on turnover and homes delivered.¹⁰⁴
- 3.96 DLUHC had committed to working with the industry and consumer groups as they establish a voluntary ombudsman scheme. A statutory scheme is still under development, with the government considering choices around its design and procurement.
- 3.97 Ipsos MORI was commissioned by the HBF to undertake another review of the CSS and Star Rating Scheme in 2022 with the aim of exploring how best to support a focus on consumers' experiences post-occupation and to align the survey with developments undertaken by the New Homes Quality Code. The main recommendations were on making the star rating based on quality and service questions from the 8-week and 9-month CSS and making more information available to the customer. Prior to this, work had been undertaken to develop options for what data the star rating should be based on and how this could be introduced. These options included gradually introducing different weightings between the 8-week and 9-month surveys or gradually changing the award rate so that housebuilders would have the opportunity to improve their 9-month survey ratings and retain their current 5 star ratings. The driver for these approaches stemmed from the issue of the satisfaction score being considerably lower for the 9-month survey.
- 3.98 The HBF and NHBC told us that work had begun on moving to a composite indicator, with some housebuilders being given the ability to monitor these in trial dashboards. The HBF also told us that implementing these changes had been gradual due to the voluntary nature of membership and participation.

Current framework

- 3.99 Below we set out the options a consumer has for seeking redress when issues arise with the purchase of a new home.
- 3.100 Figure 3.9 shows an example of the process a consumer may embark on when trying to resolve issues. If a buyer has an issue with their home in the first two years, they should seek resolution directly from the housebuilder. If a housebuilder

¹⁰³ New Homes Quality Board, [FAQs](#)

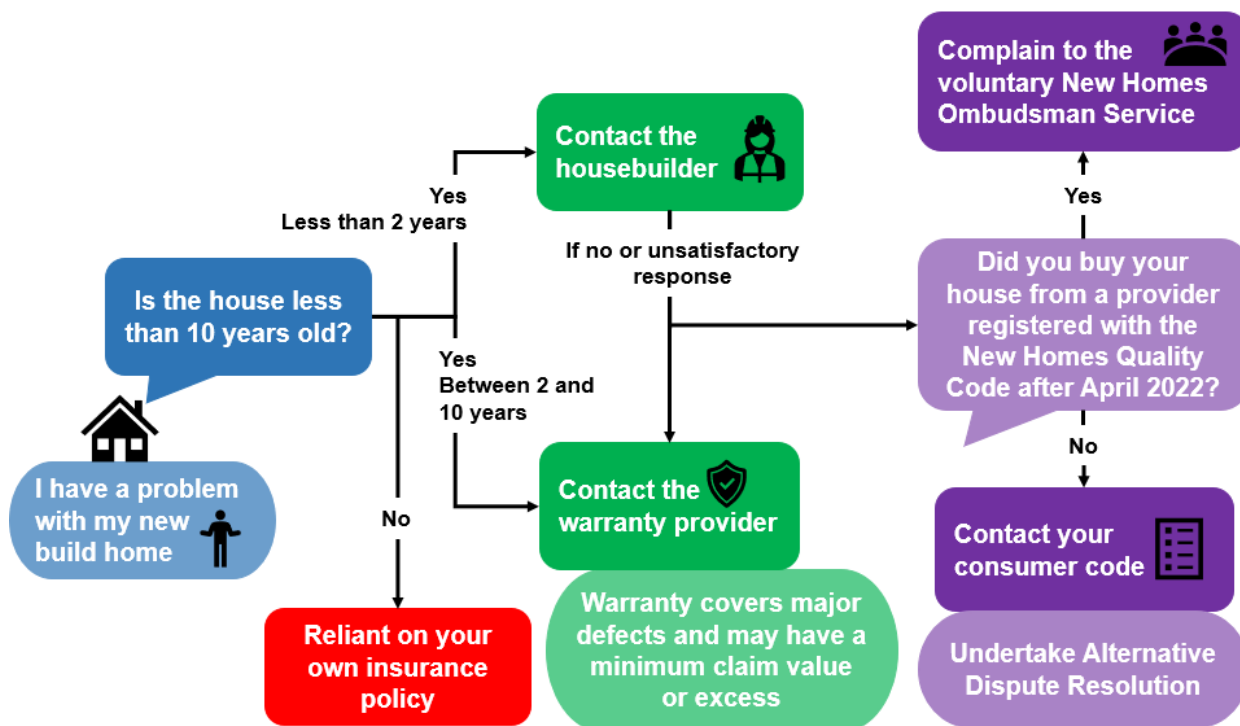
¹⁰⁴ New Homes Quality Board, [Fee Table](#)

does not provide a satisfactory resolution, the homebuyer has options on their next steps. These options can be dependent on when the home was bought and from which housebuilder. For example, consumers who bought their home after April 2022 with a housebuilder registered with the New Homes Quality Code can seek resolution through the voluntary New Homes Ombudsman Service after they have exhausted the housebuilders' internal complaints system. This provides them with access to an independent ombudsman to adjudicate their complaint with the ability to provide financial compensation of up to £50,000.

- 3.101 If the buyer's housebuilder is not registered with the New Homes Quality Code, then they can seek independent dispute resolution from the provider of the code with which the housebuilder has registered. This provides them with access to independent adjudication. Similarly, the outcome of this can range from apologies to financial compensation, the limit for which varies between codes and time of purchase. Warranty providers can also provide support during the first two years on sufficiently complex issues related to the structure of the home or if a housebuilder has gone into insolvency.
- 3.102 When a buyer is in years 2 to 10 of their warranty, they can seek recourse for major structural defects. The terms of a valid claim depend on the warranty provider: some charge an excess fee, while others have a minimum claim value. If a warranty provider's resolution is unsatisfactory, consumers are able to take a claim to the Financial Ombudsman Service. Outside of 10 years, consumers are reliant on their own insurance policies.
- 3.103 A buyer could also pursue a court claim against a housebuilder, though this is often costly and any independent dispute resolution that has already been undertaken will be considered as part of the case. Some options are mutually exclusive, for example, if a consumer takes their claim to the Financial Ombudsman Service this negates their ability to pursue a court claim.
- 3.104 Seeking redress is a complex multiparty process which is most acute for those that have multiple defects or have undertaken work on their property which could invalidate coverage.¹⁰⁵

¹⁰⁵ Examples of where a housebuilder has refused to remedy a snag because the consumer has undertaken work on that area were found in our consumer research.

Figure 3.9: Example of consumer redress process



Source: CMA graphic based on multiple sources

Understanding of consumer protections

- 3.105 In our consumer research, there appeared to be a general lack of clarity around what the new build warranty covered, and who was responsible for what. This sentiment was also reported in the APPG inquiries.¹⁰⁶ The Government’s consultation response also outlined that consumers’ awareness of their routes of redress was confusing and piecemeal.¹⁰⁷
- 3.106 We have been told that the lack of clarity on who will run the statutory NHOS and whether a single code will become mandatory has been confusing for both those in the industry and consumers. Moreover, the Independent Review on behalf of the CCHB, which occurs every three years, was delayed in anticipation of government introducing a single statutory code. When it became clear that this was not going to happen, the CCHB continued with its review.¹⁰⁸ The CCHB’s annual report outlined that it had to take steps to counter misleading information being shared across the industry about changes in the new homes codes

¹⁰⁶ APPG For Excellence in the Built Environment (2016), [More Homes, Fewer Complaints](#); APPG For Excellence in the Built Environment (2018), [Better Redress for Homebuyers](#)

¹⁰⁷ MHCLG (2019), [Strengthening Consumer Redress in the Housing Market: Summary of responses to the consultation and the Government’s response](#)

¹⁰⁸ Bridgeman, J (2023), [Independent review on behalf of the Consumer Code for Home Builders](#), p2

marketplace, including that a mandatory code had been put in place or that housebuilders would be forced to change code provider.¹⁰⁹

Conclusion on redress

3.107 Despite some improvements to the redress system since the OFT's market study, the redress journey that consumers have to navigate if something goes wrong remains complex. In addition, it has taken a long time to reach the current state of play, with the first calls for reform coming nearly 20 years ago. We are concerned that the piecemeal nature of coverage, with many different parties having responsibility in different situations, means that consumers are not effectively protected in practice.

¹⁰⁹ CCHB (2023), [The Consumer Code Annual Report 2022/23](#), p12

4. Innovation and sustainability

- 4.1 Similar to quality, innovation is another indicator that can support the assessment of how well a market is working. In a well-functioning market, we would expect firms to be incentivised, through adequate competitive pressure, to invest in innovation to adopt efficient production methods or improve their products. Hence, a lack of innovation may suggest that firms are not subject to sufficient competitive pressure and therefore have reduced incentives to innovate, or that there are barriers to innovation present in the market.
- 4.2 Innovation is defined as the successful development and application of new knowledge.¹¹⁰ Within housebuilding there has been a range of advancements that can be categorised as Modern Methods of Construction (MMC). Other forms of innovation could include advances in technology across the features and fixtures of the home, or innovations to make homes more energy efficient such as heat pumps or solar panels. For the purpose of this market study, we have focused on the uptake of MMC and approaches to sustainability.

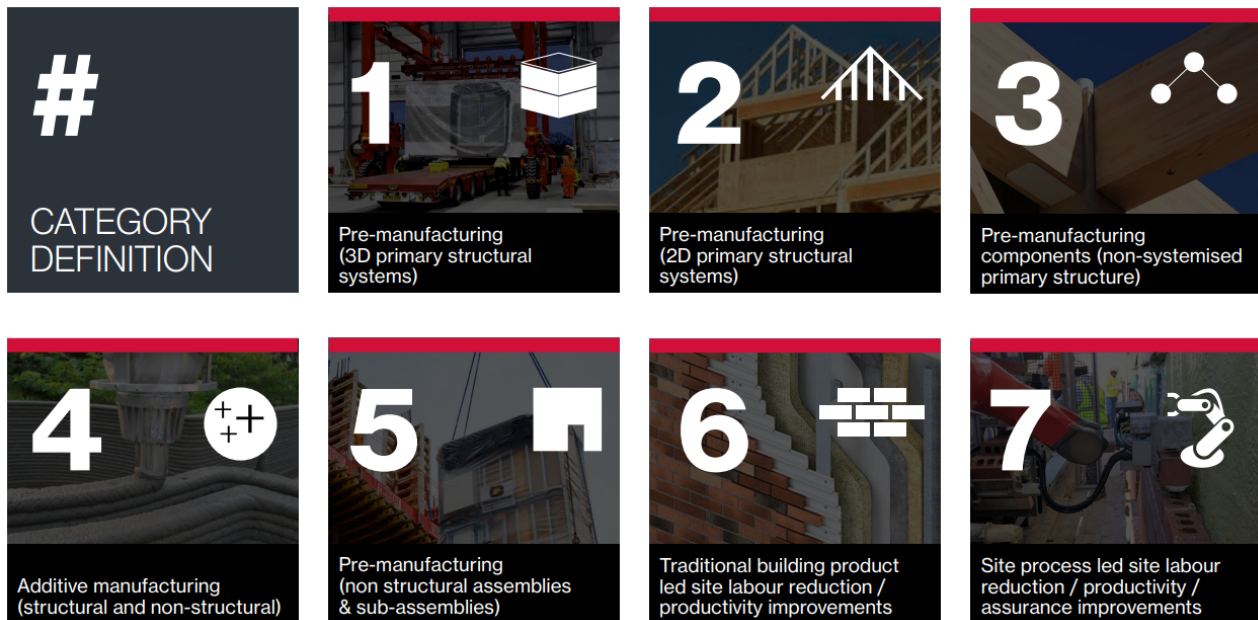
Modern Methods of Construction (MMC)

- 4.3 Modern methods of construction (MMC) refer to innovations in the techniques used in both on-site and off-site processes and manufacturing of housing. As published in March 2019, the Ministry of Housing, Communities & Local Government (MHCLG), now DLUHC, and a cross-industry working group developed a definition framework which splits different types of MMC into categories based on the levels of pre-manufacture,¹¹¹ as at Figure 4.1.

¹¹⁰ OECD, [Competition and Innovation: A theoretical perspective](#), p7

¹¹¹ MMC cross industry working group, [Modern Methods of Construction working group: developing a definition framework](#)

Figure 4.1: MMC definition framework picture



Source: MMC cross industry working group: *Introducing the MMC definition framework*

4.4 Off-site manufacturing (also known in some cases as near site manufacturing) refers to manufacturing of products in a factory or site that is separate to the final construction site of the home. These are categories 1 to 5 in Figure 4.1 above. Examples of the categories are as follows:

- (a) An example of category 1 would be a room or set of rooms that are built off-site that contain structural components. These rooms include insulation, plumbing, and electrical wiring and are often referred to as modular.
- (b) Some category 5 examples can also be considered modular, but these are non-structural components and need to be fitted into an existing building (like the internal furniture of a kitchen or bathroom). These are often known as “pods” or “3D pods”.
- (c) An example of category 2 would be a pre-manufactured wall, sometimes including insulation, plumbing, and wiring, and is known as a “panel” or “panelised system”.¹¹²

4.5 On-site manufacturing refers to any modern technology or methods used to improve the efficiency or process of construction on the final construction site of the home. In the definition framework, this relates to categories 6 and 7.

¹¹² Scottish Government (2022), [Modern methods of construction: guidance for building standards verification](#)

MMC in housing

- 4.6 MMC is not modern: some of the first applications of off-site manufacturing could be seen in the 1940s, after the Second World War, where a severe housing shortage meant homes needed to be built quickly.¹¹³ Unfortunately, the focus on quantity over quality meant that issues with the design and construction of these homes only came to light decades later. The failings gave rise to a government statutory scheme of assistance for people who had purchased a defective home.¹¹⁴ As a result, these construction methods have experienced a lingering negative stigma amongst consumers, builders, investors, and insurers which limited its further development and uptake.¹¹⁵
- 4.7 Conversely, in non-residential settings the commercial MMC market is mature; market observers believe this is due to producers' ability to build a consistent pipeline across the public and private sectors.¹¹⁶ In recent years, the housing sector has witnessed a notable uptick in the adoption of modern methods of construction.¹¹⁷ This shift reflects a growing recognition of the need for more efficient, sustainable, and cost-effective approaches to meet the increasing demand for housing. These methods allow for greater precision, reduced construction timelines, and minimised on-site waste, addressing some of the longstanding challenges faced by the traditional construction industry.¹¹⁸
- 4.8 Despite this, there have been several occasions where category 1 MMC manufacturers have exited the market. In particular, the last 18 months have seen several high-profile market exits.¹¹⁹ We explore the risks and challenges below at paragraph 4.21 onwards.

Data on MMC use in housing

- 4.9 Data on the use and number of homes delivered using types of MMC is not readily available across England, Scotland, and Wales. Moreover, due to the difference in definitions and categorisation of MMC, estimates of the extent to which these methods are used vary.¹²⁰ In its absence, we are reliant on information we have

¹¹³ NHBC (2016), [Modern methods of construction: Views from the industry](#), p3; RICS (2021), [Modern methods of construction: where are we now?](#)

¹¹⁴ House of Commons Library (2011), [Housing: construction defects](#), p2

¹¹⁵ Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#), p2

¹¹⁶ Homes England (2023), [Built Environment Committee Corrected oral evidence: Modern methods of construction—what's gone wrong?](#), p8; Modular and Portable Building Association (2023), [Built Environment Committee Written Evidence: Modern methods of construction—what's gone wrong?](#), p1-2

¹¹⁷ NHBC (2018), [Modern methods of construction: who's doing what?](#), p1

¹¹⁸ Zhang, Wei., Lee, Ming Wai., Jaillon, Lara., & Poon, Chi-Sun. (2018) The hindrance to using prefabrication in Hong Kong's building industry, *Journal of Cleaner Production*, 204, pp. 70-81

¹¹⁹ The most recent example of this was in early January 2024, where [modular housebuilder Modulous filed a notice of intention to appoint administrators](#). HM Government (2023), [Built Environment Committee Written Evidence: Modern methods of construction—what's gone wrong?](#), p5-6. Other examples are Ilke Homes, house by Urban Splash and Legal and General's closure of their modular arm.

¹²⁰ Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#), p8

gathered from the housebuilders as part of the market study and research undertaken by others. We use this information to provide an indication of housebuilders' utilisation of MMC and, specifically, off-site manufacturing.

- 4.10 Analysis undertaken by Savills using CITB data estimated that between 6 and 10% of homes built in 2020 used MMC.¹²¹ However, different housebuilders appear to utilise MMC methods to different extents. In 2018, 25 of 36 'active MMC developers' (developers that were either actively involved in MMC or actively considering its use) said they were delivering housing using 'advanced MMC', category 1 and 2.¹²²
- 4.11 Our analysis of information gathered from the top 11 housebuilders has found that the majority of them have either invested in, acquired, or developed their own category 1 and 2 MMC providers. Table 4.1 shows that investment in pre-manufactured timber frame construction (category 2) is the most popular, with many housebuilders having acquired or developed their own timber frame manufacturers. For volumetric systems (category 1), some housebuilders (such as Persimmon) have invested in volumetric manufacturers, while others have established their own factories.¹²³ Other housebuilders, while utilising MMC within their portfolio of housing, have not invested in the integration of MMC to their own supply chains and have instead partnered with organisations like Homes England in projects, often to build affordable homes.¹²⁴

Table 4.1: Table of top 11 housebuilders investment in category 1 and 2 MMC providers

<i>Housebuilders</i>	<i>Investment?</i>	<i>Description</i>
Redrow	✗ ¹²⁵	n/a
Bloor	✗ ¹²⁶	n/a
Crest Nicholson	✗ ¹²⁷	n/a
Persimmons	✓	In 2005, Space4 acquired a timber frame, highly insulated wall panels and roof cassettes manufacturing plant ¹²⁸
Berkley	✓	In 2023, TopHat acquired a modular homes production company ¹²⁹ In 2016, Berkeley created a new company called Berkeley Modular. ¹³⁰
Barratt	✓	In 2019, Barratt acquired Oregon Timber Frame Factory. ¹³¹

¹²¹ Savills (2020), [Modern Methods of Construction](#); Savills (2020), [A modern approach to construction](#)

¹²² NHBC (2018), [Modern methods of construction: who's doing what?](#), p5. We note that this research was not submitted in evidence to the case and, as a result, we have not assessed its evidential weight. Therefore, we have interpreted the findings entirely at face value, considering them in the round with a range of other evidence where they appear to be indicatively informative.

¹²³ Persimmon (2023), [Persimmon invests in industry-leading modular house builder TopHat](#); Berkeley (2023), [Modernised Production](#)

¹²⁴ [Bellway press notice Homes England project](#)

¹²⁵ Redrow have not made any acquisitions or investments.

¹²⁶ Bloor uses timber frame elements in the construction process but has not made any acquisitions or investments in this area.

¹²⁷ Crest Nicholson uses timber frames in their construction but has not made any acquisitions or investments in any manufacturing company in this area.

¹²⁸ [Persimmons website](#)

¹²⁹ [Persimmons news release](#)

¹³⁰ Berkeley created a new company called Berkeley Modular so did not acquire a business.

¹³¹ [Barratt press release](#)

Miller Homes	✓	In 2021, Miller Homes acquired Walker Timber a timber kit manufacturer. ¹³²
Bellway	✓	In 2022, Bellway partnered with MMC firms through a Homes England project however, they have not made any acquisitions. ¹³³
Vistry	✓	In 2022, Vistry acquired Countryside, in turn gaining use of Countryside's two existing timber frame factories and their one modular panel factory.
CALA	✓	In 2023, CALA acquired Taylor Lane a timber frame production company. ¹³⁴
Taylor Wimpey	✓	In 2023, Taylor Wimpey started construction on a fully automated timber frame factory. ¹³⁵

4.12 The rationale for these investments consistently centred around sustainability, quality, safety, and cost. Conversely, where we have seen examples of housebuilders deciding against investing, the key reason has been the high upfront costs of these methods. In its board papers, one housebuilder detailed that due to the high cost of MMC in comparison to traditional build it 'would only work where a landowner is prepared to take a lower land value to subsidise construction'. We will explore the cost aspect in the benefits, challenges and risks section from paragraph 4.18.

Nations

4.13 Research undertaken by NHBC in 2015 outlined that the use of MMC varied across the nations. In Scotland, category 2 MMC accounted for 75% of the NHBC-registered new build homes. This was attributed to timber frame being the conventional approach in Scotland. By contrast, the same research found that in Wales timber frame accounted for just over 30% share, and in England its share was below 10%.¹³⁶

4.14 England, Scotland, and Wales have all encouraged the use of MMC to aid the delivery of affordable or social housing. The Welsh Government produced a strategy for the use of MMC in affordable housing provision and made MMC a major component of the revised housing quality specifications for affordable homes.¹³⁷ Welsh Government support of the sector has been welcomed by those in the industry.¹³⁸

4.15 Scotland's Affordable Housing Supply Programme supports the delivery of homes using off-site manufacturing methods. The Scottish Government is also undertaking work on how MMC can support a new net-zero new homes strategy.¹³⁹

¹³² [Miller Board Changes and Trading Update](#)

¹³³ [Bellway press notice](#) on timber frame firm; [Bellway press notice Homes England](#) project

¹³⁴ [Cala news release](#)

¹³⁵ [Taylor Wimpey news release](#)

¹³⁶ NHBC (2016), [Modern methods of construction: Views from the industry](#), p10

¹³⁷ Welsh Government, [Social house building strategy](#) and [Welsh Development Quality Requirements 2021](#)

¹³⁸ [Policy Briefing - Welsh Government MMC Policies and Strategies 2022 | Make UK](#)

¹³⁹ [Offsite construction and the Affordable Housing Supply Programme](#)

- 4.16 England has the Affordable Homes Programme which provides £11.5 billion in funding to facilitate the supply of 162,000 homes between 2021 and 2026.¹⁴⁰ One element of the funding, allocated by Homes England, will be spent through partnerships where at least 25% of the output must use MMC and among other areas, 10% of the delivery will use MMC.¹⁴¹

Conclusion on the use of MMC

- 4.17 Many housebuilders have been taking advantage of off-site manufacturing in construction for some time, and governments across GB have sought to support the sector to develop further. However, as the more advanced forms of MMC are not particularly 'modern' and take up has been reported to lag behind other construction sectors, this has led innovation levels in the construction of new homes to be characterised as 'low and slow'.¹⁴²

Benefits, challenges, and risks

- 4.18 MMC has long been hailed as the solution to numerous challenges faced by the housebuilding industry.¹⁴³ In response to the housing shortage and inefficiency of traditional construction methods, between 2017 and 2019 the UK Government advocated for more use of methods such as off-site manufacturing in construction through its Industrial Strategy and Housing White paper. The Industrial Strategy stated the goal was to 'build new homes in weeks – and even days – rather than months'.¹⁴⁴
- 4.19 There is a wide range and scale of benefits, challenges, and risks to MMC, which depend on the type of MMC used.¹⁴⁵ Our analysis for this section has focused on off-site construction, categories 1 and 2 of the definition framework at Figure 4.1 as this is where the benefits are greatest.

Benefits

- 4.20 The benefits of MMC have been subject to extensive research and are well documented by numerous sources.¹⁴⁶ The most recent example of this is the

¹⁴⁰ [Scoping Report for the Affordable Homes Programme 2021-2026](#), p4

¹⁴¹ HM Government (2023). [Built Environment Committee Written Evidence: Modern methods of construction—what's gone wrong?](#), p4

¹⁴² Corehaus (2023), [Written evidence to Built Environment Committee Written Evidence; Examining the Influence of UK Public Clients' Characteristics on Their Own Innovation-Decision towards the Modern Methods of Construction](#); HCLG committee (2019), [Modern methods of construction](#); Pan et al (2012), [Strategies for integrating the use of offsite production technologies in housebuilding](#), p4

¹⁴³ Payne, S (2023), [The potential role of Modern Methods of Construction in addressing systemic supply issues](#), p5

¹⁴⁴ Department for Business, Energy and Industrial Strategy (2019), [Construction Sector Deal](#); MHCLG (2017), [Fixing our broken housing market](#)

¹⁴⁵ Cast (2021), [PMV Technical Manual](#); KPMG (2023), [Measuring the Benefits of Modern Methods of Construction](#), p2-3

¹⁴⁶ HCLG committee (2019), [Modern methods of construction](#); Payne, S (2023), [The potential role of Modern Methods of Construction in addressing systemic supply issues](#); Cambridge Centre for Housing and Planning Research (2021),

publication of the inquiry into MMC by the House of Lords Built Environment Committee.¹⁴⁷ With this in mind, we have drawn on this and existing literature to summarise the benefits of MMC, which are:

- (a) Quality: the use of MMC can standardise parts of the housebuilding process, leading to a high level of quality control and fewer errors during construction both on and off-site.¹⁴⁸
- (b) Speed and predictability: off-site manufacturing reduces construction times. One housebuilder reported that “it is around 7 weeks quicker to build a timber frame home than a traditionally built home.”
- (c) Cost: although MMC requires a high upfront cost, estimates have been made that construction costs could be reduced by between 20 and 40%, with a further reduction across the whole life of the project.¹⁴⁹
- (d) Materials usage: MMC, with its efficient factory production, reduces waste and therefore materials usage.¹⁵⁰
- (e) Labour: MMC reduces the need for skilled labour in comparison with traditional methods, and fewer people are required to build the same number of homes. Health and safety are also improved, since labour works at safer heights in factories.¹⁵¹
- (f) Environment: off-site manufacturing can reduce embodied carbon, with research showing it can generate nearly 40% lower emissions than traditional build.¹⁵²
- (g) Local disruption: MMC means reduced disruption, as fewer materials, deliveries, and people are required on site.¹⁵³

Risks and challenges

4.21 Similarly, the risks and challenges of MMC in housebuilding have been researched extensively, outlining the reasons why take-up of off-site manufacture has been

[Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#); Barker, K (2004). Review of Housing Supply: Final Report – Recommendations; National Audit Office, (2005). Using modern methods of construction to build homes more quickly and efficiently

¹⁴⁷ The Built Environment Committee, (2023). [Modern methods of construction – what’s gone wrong?](#)

¹⁴⁸ Payne, S (2023), [The potential role of Modern Methods of Construction in addressing systemic supply issues](#), p7

¹⁴⁹ HCLG committee (2019), Modern methods of construction, para 13

¹⁵⁰ Buildoffsite (2019), [HCLG committee written evidence](#)

¹⁵¹ Sir Robert McAlpine Ltd (2019), [HCLG committee written evidence](#)

¹⁵² Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#), p16

¹⁵³ London Assembly Planning Committee (2019), [HCLG committee written evidence](#); Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#), p13; Payne, S (2023), [The potential role of Modern Methods of Construction in addressing systemic supply issues](#), p7; Glenigan (2020), [Can modern methods of construction answer our housing need?](#)

slow to develop.¹⁵⁴ Moreover, the instances of high-profile exits of modular firms across the last two decades exemplify how challenging it is to succeed in the residential housebuilding market.¹⁵⁵ The reasons given for these failures include the difficulty in building a consistent pipeline, the high costs of investment, negative perceptions and the lack of standards and regulation.¹⁵⁶ The following section provides a summary of the barriers to growth.

- (a) Housing delivery models and maintaining viability – MMC factories often have large overheads which are usually fixed.¹⁵⁷ As the housing market is cyclical in nature, demand for manufactured resource is uncertain, which makes investment and acquisition of MMC supply high risk.¹⁵⁸
- (b) Cost – Many MMC techniques have high upfront costs that affect housebuilders of all types, but disproportionately SMEs.¹⁵⁹ While larger companies are able to invest in manufacturing companies and, in some cases, vertically integrate MMC into their own supply chain, SME housebuilders do not have the financial capacity to invest in the same way.¹⁶⁰ DLUHC told us that, through Homes England, investments have been undertaken in MMC manufacturers, with the aim of supporting the sector to grow. They told us Homes England have other funding interventions, such as the Affordable Homes Programme and Levelling Up Home Building Fund that can support SMEs who want to use MMC.
- (c) Regulation and planning – Operation of planning systems has been reported to hinder MMC uptake. One trade association outlined that their members reported bias against MMC within the planning system where applications have been rejected because of its use, this was largely attributed to lack of education. Similarly, in its board papers, one housebuilder noted that some LPAs may be resistant to schemes using MMC. MMC-built homes are subject to the same building regulations and standards of traditional build homes. DLUHC said that some MMC developers can find themselves having

¹⁵⁴ Barker, K (2004). Review of Housing Supply: Final Report – Recommendations, page 113-118; National Audit Office, (2005). Using modern methods of construction to build homes more quickly and efficiently; Independent Review, (2007). [The Callcutt Review of Housing Delivery](#), page 29-31; Construction Leadership Council and Farmer, M (2016). The Farmer Review of the UK Construction Labour Model; MHCLG (2017). [Fixing our broken housing market](#), page 54; NHBC, (2018), [Modern methods of construction: who's doing what?](#); HCLG Committee, (2019). Modern methods of construction; The Built Environment Committee, (2023). [Modern methods of construction – what's gone wrong?](#)

¹⁵⁵ The Built Environment Committee, (2023). [Modern methods of construction – what's gone wrong? - Modern methods of construction in housing letter](#), para 3

¹⁵⁶ The Built Environment Committee, (2023). [Modern methods of construction – what's gone wrong? - Modern methods of construction in housing letter](#); HCLG committee (2019), [Modern methods of construction](#)

¹⁵⁷ Make UK Modular, (2023), Built Environment Committee Written Evidence: [Modern methods of construction—what's gone wrong?](#), page 14

¹⁵⁸ Royal Institution of Chartered Surveyors (2019), [HCLG committee written evidence](#)

¹⁵⁹ Make UK Modular, (2023), Built Environment Committee Written Evidence: [Modern methods of construction—what's gone wrong?](#), page 14

¹⁶⁰ National Housing federation, (2019), [HCLG committee written evidence](#)

to go further to prove the innovative construction methods meet these standards.

- (d) Safety – Concerns in regard to flooding and fire have been raised by insurers and fire protection agencies about the risk MMC homes pose due to the type of materials they incorporate.¹⁶¹ For example, a specific fire safety concern comes from the risk of gaps between modular pods which could cause a fire to spread quicker.¹⁶²
- (e) Perceptions (consumer, insurance and lenders) - Examples of early applications of MMC where structural and safety issues were found years after construction was completed have led to a lack of confidence among consumers and warranty and insurance providers.¹⁶³
- (f) Data - Data on the long-term quality and durability of housing built using MMC is not available. This has led to concerns from warranty providers and mortgage lenders on the risks of investing in MMC housing, such as those of safety.¹⁶⁴ NHBC, in its written evidence to the Built Environment Committee, outlined that better data on claims would provide more confidence in providing warranties for MMC-delivered buildings.¹⁶⁵
- (g) Storage, transport to site and onsite fit issues – The use of category 1 or 2 MMC requires more integration across phases of development as these parts often need to be delivered just-in time to prevent need for storage on site.¹⁶⁶ Moreover, transportation can be difficult due to the width of roads requiring special approaches like escort vehicles to transporting the loads to site.¹⁶⁷

Conclusion

4.22 There are a number of drivers towards greater use of MMC. However, there are also several barriers.

- (a) The multiparty nature of building a home necessitates that many stakeholders, such as lenders, warranty providers, and planning officers are comfortable with the methods and approaches that are used. This means that increasing innovation in this sector is dependent on gaining consensus

¹⁶¹ HCLG committee (2019), [Modern methods of construction](#)

¹⁶² Meacham, BJ (2022), '[Fire performance and regulatory considerations with modern methods of construction](#)', Journal of Buildings and Cities

¹⁶³ NHBC (2021), [Modern methods of construction: Building on experience](#), page 23

¹⁶⁴ HCLG committee (2019), [Modern methods of construction](#), page 19

¹⁶⁵ NHBC (2023), [Written evidence for Built Environment Committee](#), page 3

¹⁶⁶ NHBC (2019), [HCLG committee written evidence](#); Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#) page 22

¹⁶⁷ HCLG committee (2019), [Modern methods of construction](#), para 66

among multiple actors across the system that have different interests and appetite to risk.

- (b) Some forms of MMC involve high start-up costs, which may be difficult to justify even where they eventually lead to cost savings over the long term. This may be particularly the case given the cyclical nature of housebuilding, which is incompatible with the need for these providers to have a large and consistent pipeline of demand. Some argue that modular homebuilding at scale will only be viable if it is also fundamentally aligned to market absorption.¹⁶⁸

4.23 Therefore, with MMC we observe a range of housebuilder interest and action. The need for these technologies has become more pressing with the challenges faced by the industry. Moreover, the UK, Scottish, and Welsh governments have undertaken different interventions to support the sector with variable success. However, there remains a number of fundamental challenges to the greater and faster take-up of at least some forms of MMC across the housebuilding industry.

Sustainability

4.24 Sustainable development is a broad term describing a desire to carry out activities without depleting resources or having harmful impacts. For the purposes of this market study, we have defined a sustainable home as one built, operated, and maintained in ways that reduce the carbon footprint and the impact on climate change.

4.25 There is a body of statutory requirements for environmental protection and enhancement. These derive from a range of domestic legislation and international commitments. The key legislation in relation to housing include meeting net zero targets and building new homes to minimum building regulations.¹⁶⁹ Balancing the prioritisation of environmental requirements and development is done through the planning process. National Planning Policy in England, Scotland and Wales all include directives on achieving sustainable development, though the way these operate differs between the nations.¹⁷⁰

Approaches to sustainable development

4.26 Due to the breadth of sustainable development activities, objective measures of sustainability are not available, and the fact that regulatory requirements are still

¹⁶⁸ Cambridge Centre for Housing and Planning Research (2021), [Deploying modular housing in the UK: exploring the benefits and risks for the housebuilding industry](#), page 21

¹⁶⁹ In 2019, the UK committed to bringing all greenhouse gas emission to net zero by 2050; The Climate Change Act 2008 (2050 Target Amendment).

¹⁷⁰ England: Paragraph 11 of the NPPF, Scotland: [NPF4](#); Wales: [Planning Policy Wales Edition 11](#) and [Wellbeing of Future Generations Act](#)

being developed across GB makes trying to assess how industry is currently performing challenging. As a result, we have not been able to assess how sustainable current building methods and outputs are. We have therefore, focused on understanding actions the largest housebuilders have taken to improve in this space and what has been influencing these actions.

- 4.27 We have undertaken analysis of the top 11 housebuilders' approaches to sustainable development. From this, we have found that the larger housebuilders are undertaking a range of changes, and these are predominantly driven by the expectation of changes to minimum building regulations across GB.¹⁷¹
- 4.28 One of the most common activities housebuilders undertook was reviewing, amending, and creating strategies, many of which are published. For example, one housebuilder hired external consultants to support production of a Biodiversity Net Gain and Waste Minimisation Strategy. Another housebuilder appointed consultants to undertake a risk analysis on their land holdings against current and future climate scenarios.¹⁷²
- 4.29 Organisational changes were also common, including initiating new governance structures, recruiting specialist personnel, and developing training for staff. One housebuilder outlined that a new governance structure was created to ensure there was executive level sponsorship of priorities. Many housebuilders detailed the need to roll out training to their own staff and subcontractors quickly to ensure adoption of new energy efficient technologies is efficient and to promote awareness of new reporting requirements on emissions.
- 4.30 Ten of the top 11 housebuilders have sought to set and report Science-Based Targets (SBTs) to support them in creating a defined pathway to reduce their greenhouse gas emissions. In their board paper, one housebuilder outlined that progress against their SBTs to reduce carbon emissions are reviewed every 5 years and would be reported on annually.
- 4.31 The key tangible actions that housebuilders have taken are through trials, in order to provide a road map for constructing sustainable homes that meet the forthcoming minimum regulations. The following provides a non-exhaustive list of examples of ongoing trials:
- (a) Vistry has undertaken analysis of its standard house type to set a benchmark for embodied carbon. It has also undertaken trials on hydrotreated vegetable oil (HVO) diesel and solar powered site equipment to reduce site emissions.

¹⁷¹ In England, the Future Homes Standard is expected to come into force in 2025. In Scotland, the New Build Heat Standard will come into force in April 2024. In Wales, changes to building regulations are scheduled for 2025 to make new homes close to near-zero carbon.

¹⁷² [Climate Action | Berkeley Group](#)

- (b) In their strategy paper, another housebuilder listed a number of completed or ongoing trials across their sites. These includes a zero carbon home using off-site manufacturing, infrared heating, and air source heat pumps. One of the trials lessons learned were reported as a useful insight into the zero carbon world and how this could be scaled up in a cost effective way.
- (c) In 2022, Barratt and other research partners tested a home built within two environment chambers to examine different technologies and build techniques within climate extremes.¹⁷³
- (d) Redrow’s ‘Wondrwall trial’ is another example of testing sustainable housing solutions, through integration of artificial intelligence and renewable energy technologies.¹⁷⁴

4.32 Lastly, as outlined in Table 4.1, many housebuilders have invested in or acquired off-site manufacturing capabilities to support their ambition to build more sustainably.

Drivers for innovation in sustainability

4.33 In our consumer research,¹⁷⁵ energy efficiency was relatively low on the list of considerations when buying a home. Alongside this, there appeared to be an assumption that the standards required of housebuilders meant that new homes would include energy efficient features. In their internal documents, some housebuilders recognised the increase in energy efficiency and sustainability as a consumer consideration, though this was reported below key factors of location and price. One housebuilder’s quantitative research with its customers supported this sentiment, highlighting an “ever-growing awareness of the importance of energy efficient features in the home”, but despite this a high expectation among those surveyed that those features would be included as a minimum.

4.34 We have seen evidence that housebuilders compare their performance on sustainability with their competitors, specifically reporting their products, benchmarks, and market position at the board. One housebuilder commissioned an external consultant to research and report on its ranking in a certain area of sustainability. From this evidence, it is clear that the largest housebuilders take a mixture of approaches and that some are more ambitious, seeking to lead industry, while others are content with following.

4.35 The largest housebuilders have undertaken action primarily in anticipation of changes in regulation. In a board paper from 2020, one housebuilder outlined that stakeholder and regulatory pressure on sustainability continues to increase,

¹⁷³ [Nature – Barratt Developments Plc](#)

¹⁷⁴ [Our low-carbon home trial | Redrow PLC](#)

¹⁷⁵ [CMA consumer research](#)

evidenced by a leak that the future homes standard could be brought forward by two years. Another housebuilder detailed changes in sustainability requirements through regulation as a medium-level strategic risk with actions on organisational responsibility, governance, and MMC as risk controls and mitigations. Moreover, in its 2022 strategy report, the housebuilder stated that incoming changes to the Future Homes Standard and Biodiversity Net Gain had required the business to develop an energy transition strategy and BNG net gain strategy respectively.

Barriers

4.36 Barriers to housebuilders becoming more sustainable have been subject to extensive research.¹⁷⁶ These can be unique to that particular housebuilder, or they can impact a subset. The main barriers centre around cost, technology availability, skilled labour, training, culture change, and the quantum of changes happening at the same time. Examples of these issues include:

- (a) Achieving sustainability goals has led to cost barriers, prompting companies to undergo structural changes. For instance, one housebuilder invested in building brickwork and tilework factories to adapt technologies and enhance efficiencies in delivering homes to the Future Homes Standard.
- (b) To satisfy the carbon reduction target, another housebuilder disclosed that additional costs have been incurred, as well as experiencing technology challenges impeding efforts to meet established targets.
- (c) One housebuilder experienced delays, attributed to the workload of concurrently training employees and implementing new technologies.
- (d) Another housebuilder, in a board paper, highlighted barriers outside of the sector including the supply chain issues in heat pumps and skills for insulation.

Conclusion on innovation

4.37 The adoption and roll-out of MMC by housebuilders is increasing but remains variable and is regarded as low and slow relative to other sectors.

4.38 Efforts are being made by housebuilders to improve sustainability. The main spur to innovating in this regard appears to be the expectation of future regulatory requirements, rather than any pressure from investors or the public.

¹⁷⁶ Siebert, M, Rodrigues, L, Gillott, M, Hines, E and Rich, D, (2018), [Identifying the Barriers to Change in the UK Housebuilding Industry, Future Cities and Environment](#); Brickflow (2023), [Solving The UK's Housing Shortage](#), p33-35; Cambridge Centre for Housing and Planning Research (2022), [Net zero ready new build housing: benefits and barriers to delivery](#); Built Environment Committee (2023), [The impact of environmental regulations on development](#); Tierney, G., & Tennant, S. (2015). [House building in Scotland: The sustainability performance gap](#)

5. Private management of public amenities on housing estates

Background

- 5.5 The private management of public amenities on housing estates has emerged as a model in recent years and is increasingly a feature of new housing estates. In the past, the default position was that local authorities (or other relevant bodies) would generally ‘adopt’¹⁷⁷ amenities such as roads, sewers and drains, lighting and public open spaces. However, information we have collected and analysed shows that, in 2021-22, over 80% of the properties built by the 11 largest housebuilders – representing around two-fifths of all new builds across England, Scotland, and Wales – were subject to estate management charges, with private estate management companies appointed to take on the maintenance of amenities. The overall number of new build properties subject to estate management charges is likely to be much higher taking into account properties built by housebuilders other than the 11 largest.
- 5.6 The private estate management model is also likely to become more prevalent. In particular, we have heard that there is an accelerating trend of non-adoption of public spaces and that it this will accelerate further in light of Biodiversity Net Gain requirements put in place by the Environment Act 2021.¹⁷⁸
- 5.7 Although not directly determinative of high-level market outcomes in the housebuilding sector, such as the number of homes built and the price and quality of new homes, the private management of public amenities on housing estates is inextricably linked to the housebuilding process and has a direct impact on the interests of consumers, ie the purchasers of homes on new housing estates and households on those estates.
- 5.8 Unlike in, say, private gated estates, the amenities in question are generally available for use by the public at large; however, their maintenance is funded by a subset of the public, ie households on the relevant estate who pay an estate management charge, in addition to paying council tax.
- 5.9 The increase in non-adoption appears to have been driven by a combination of factors, which we explore later in this section. It is a complex area, not least given the different legal frameworks across England, Scotland, and Wales, the fact that

¹⁷⁷ Where a relevant authority or body – such as local authority or water company – takes on responsibility for maintaining amenities, such as roads, drains, sewers and public open spaces, in perpetuity. Adopted amenities are maintained at public expense.

¹⁷⁸ This makes it mandatory for developers to ensure that a development results in a minimum 10% gain in biodiversity from 12 February 2024 onwards, and from April 2024 for small sites, under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021): [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/biodiversity-net-gain).

specific legislation applies to different amenities, and that local authority and other adopting authority practices and processes differ from area to area. Adoption is also inherently linked to the planning system.

5.10 In this section we set out:

- (a) The legal framework for the adoption of amenities on housing estates in England, Scotland, and Wales.
- (b) The operation of the adoption system in practice.
- (c) Private management of public amenities on housing estates.
- (d) Our assessment of the evidence in relation to private estate management arrangements, and what this means for consumers.
- (e) Our conclusions on the private management of public amenities on housing estates.

The legal framework for the adoption of amenities on housing estates

5.11 The legal framework for the adoption by relevant authorities of public amenities in England, Scotland, and Wales consists of separate legislation for roads, sewers and drainage, and sustainable drainage systems (SuDS). There is no specific legislation for public open spaces, although we understand that these are normally adopted via planning agreements.

5.12 Relevant legislation for adoption is principally to be found in the following sources:

- (a) **Highways:** The Highways Act 1980 / the Roads (Scotland) Act 1984.
- (b) **Sewers and drains:** Water Industry Act 1991 / Sewerage (Scotland) Act 1968.
- (c) **SuDS:** Introduced by Flood and Water Management Act 2010 – appears to be managed through Section 106 of the Town and Country Planning Act 1990 / Section 75 of the Town and Country Planning Act (Scotland) 1997.
- (d) **Open spaces, including playgrounds:** Section 106 of the Town and Country Planning Act 1990 (as amended) in England and Wales and under Section 75 of the Town and Country Planning Act (Scotland) 1997 (as amended) in Scotland.

5.13 We consider these, in turn, below.

Highways

England and Wales

- 5.14 Not all streets or roads on housing estates are suitable for adoption, nor do all homeowners or developers wish or require their roads to receive adoption into the highway, to be maintained at public expense. Until roads are adopted, the developer and/or an appointed management company remains the ‘street works manager.’¹⁷⁹
- 5.15 There is no comprehensive recording of unadopted roads in England and Wales – a 2019 report on unadopted roads in Wales stated that there were some 25,000 kilometres of unadopted roads in Wales alone and in terms of unadopted roads that serve 5 properties or more (which it notes would typically be the case for an unadopted housing estate road), the length is 2,600 kilometres for the whole of Wales.¹⁸⁰
- 5.16 There are different approaches that can be taken to adoption under the Highways Act 1980:
- (a) **‘Section 38 agreements’** are voluntarily entered into between a developer and the local authority. They are a common way of creating new highways that are maintainable at the public expense. The developer must construct the roads to an agreed standard. Once this has been completed (and the developer has maintained them for a set period of normally 12 months), they are automatically dedicated as a public highway.
 - (b) **Section 37** allows the developer to construct the roads and complete the development without the need for a formal road agreement. Provided the roads are considered to be of sufficient utility to the public, the highway authority will accept the formal request (notice) of proposed dedication by the developer and, following a 12-month maintenance period, the roads will become maintainable at the public expense.¹⁸¹

¹⁷⁹ As set out in DfT Advice Note (August 2022): [Highways Adoption \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), page 8, in relation to England only.

¹⁸⁰ [Unadopted roads in Wales \(gov.wales\)](https://gov.wales), page 7.

¹⁸¹ In terms of process, the owner of the land over which the road runs, usually the developer, serves a notice on the local authority declaring its intention to dedicate the road as a highway. The local authority will assess the application, and if it considers that the road would not have such wider public benefit it may apply to the Magistrates Court for an Order not to adopt (under Section 37(2) of the Highways Act). In cases where the Magistrates Court agrees, the road remains a private street.

- (c) **Section 228** of the Highways Act 1980 provides for the adoption of a private street after the execution of works.¹⁸²

Scotland

- 5.17 Provision of roads for new developments is controlled and consented to by the local roads authority through the Roads Construction Consent (RCC) process, which is governed by Section 21 of the Roads (Scotland) Act 1984. For the purpose of adoption, all streets are deemed to be roads under the Roads (Scotland) Act 1984. Expenses will be payable by the developer to the roads authority to cover its reasonable costs in inspecting the construction of the works and associated testing.
- 5.18 The Roads (Scotland) Act 1984 sets out the obligations of the developer to construct the roads and maintain them for a set period of normally 12 months. Following the satisfactory discharge of these obligations, the new roads can be offered to the roads authority for adoption. If a road is adopted, it will in the future be maintainable by the roads authority.¹⁸³

Sewers and drains

England & Wales

- 5.19 The law covering the adoption of sewers and lateral drains is set out in the Water Industry Act 1991 (WIA 1991):
- Section 102 WIA 1991 deals with the adoption of existing private sewers and associated apparatus. An agreement under Section 102 WIA 1991 permits a new connection to an existing adopted public sewer. An application is made via either the local authority or sewerage undertaker which, when approved, allows connection of a proposed sewer system into an existing system.
 - Section 104 of the WIA 1991 focuses on the adoption of new sewers only, permitting the adoption of a sewer or lateral drain by a sewerage undertaker. When a new development is planned, the developer has the opportunity to construct the sewers using approved materials and to a standard which

¹⁸² The Private Street Works Code (PSWC) enables the local authority to make up private streets (under Sections 205 to 218 of the Highways Act 1980), so they become highways maintained at public expense. The PSWC is used in rare circumstances, predominantly due to the costs and time incurred to those that benefit from the adoption of the streets concerned. Section 228 of the Highways Act 1980 details how, in specific circumstances, new roads may be adopted when any works undertaken by the local authority have been executed in a private street. This can be used in cases where the owner of the land is not traceable, the land is not registered, or where the developer has the right of way but does not own the land. As set out in Department for Transport (August 2022), [Advice Note Highways Adoption, The Adoption of Roads into the Public Highway \(1980 Highways Act\)](#), at page 9.

¹⁸³ Scottish Government (2010), [Designing streets – a policy statement for Scotland](#).

makes them suitable for adoption when construction is complete. Adoption of a drainage system through a Section 104 agreement applies to private areas (such as roofs and driveways) and highway drainage (if both drain into the same sewer system). Once constructed it becomes maintainable at the sewerage undertaker's expense.

- 5.20 It has been suggested by a water authority that the Section 104 WIA 1991 route is the most desirable arrangement and that if all new developments were covered by such adoption agreements, there would be few, if any, new private sewers on housing estates.¹⁸⁴ However, it stated that there are many kilometres of existing private sewers that were built without an adoption agreement in place.
- 5.21 There is a right of appeal to Ofwat if adoption of the sewer is refused.¹⁸⁵
- 5.22 Ofwat is required by Sections 51A and 105ZC WIA 1991 to issue codes with respect to the agreements that water and sewerage companies enter into in order to adopt infrastructure for new connections, where that infrastructure has been provided by other parties. Its *Code for adoption agreements*¹⁸⁶ sets out principles that must be adhered to in the development of *Sector Guidance* and *Model Adoption Agreements*. It applies to water and sewerage companies whose areas of appointment are wholly or mainly in England. Water companies and sewerage companies must comply with *Water Sector Guidance* and *Sewerage Sector Guidance*¹⁸⁷ as approved by Ofwat under the Code.
- 5.23 The *Sector Guidance*¹⁸⁸ including *Design and construction guidance*¹⁸⁹ allows for additional 'Local Practice' guidance to be provided by each sewerage company eg in relation to pumping stations, setting out individual company requirements.
- 5.24 On 1 July 2011, the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 came into force. These Regulations triggered the overnight transfer of gravity private sewers and lateral drains to sewerage undertakers across Wales and England on 1 October 2011. The transfer removed the burden of maintenance from homeowners by spreading costs across all customers. Accordingly:
- Private sewers and lateral drains that were connected to the public sewer before 1 July 2011 were transferred on 1 October 2011.

¹⁸⁴ Southern Water, [Adoption of existing sewers guidance notes](#).

¹⁸⁵ Under Section 105 of the WIA 1991 there is a right to appeal to Ofwat by the applicant if adoption of the sewer is refused (Section 105(1)(b) WIA 1991), or by anyone objecting to the proposal (Section 105(1)(a) WIA 1991).

¹⁸⁶ Ofwat, [Code for adoption agreements](#).

¹⁸⁷ Water UK (June 2022), [Sector Guidance in relation to the adoption of sewerage assets by sewerage companies in England](#).

¹⁸⁸ Water UK (June 2022) [Sector guidance in relation to the adoption](#), 2.6 *Local Practices*.

¹⁸⁹ Water UK (2023) [Design and construction guidance – Appendix C](#), Part D, page 74.

- Private pumping stations were transferred by 1 October 2016.¹⁹⁰

5.25 For companies wholly or mainly in Wales, adoption agreements are regulated through arrangements introduced in 2012 by Section 42 of the Flood and Water Management Act 2010. Under this legislation where a connection to an existing sewer is required, an adoption agreement must be in place prior to any connection being made to the public sewer. The legislation also provides that the standards in the adoption agreement must be in accordance with those published by Welsh Ministers. While the Department for Environment, Food and Rural Affairs (DEFRA) sought views in 2011-12 on its proposals to implement an automatic adoption process under Section 42 of the Flood and Water Management Act 2010 for new sewers and drains, supported by national build standards, this has not been implemented in England.¹⁹¹ We discuss this further at paragraph 5.81.

Scotland

5.26 Scottish Water¹⁹² has a duty under Section 1 of the Sewerage (Scotland) Act 1968 to provide such sewers and public SuDS as may be necessary for its area of domestic sewage, surface water, and trade effluent, and to provide necessary treatment of their contents, at reasonable cost.

5.27 Unlike in England where there is a concept of adoption of sewers by a water or sewerage company, under Section 16 of the Sewerage (Scotland) Act 1968 sewers constructed by Scottish Water (or its predecessors or which are lawfully connected to these systems) automatically vest in Scottish Water unless agreed otherwise. In relation to new infrastructure, Scottish Water generally enters into an agreement with a developer that the infrastructure will vest with Scottish Water when it is completed to the technical standards set out in Sewers for Scotland.¹⁹³

SuDS

5.28 SuDS¹⁹⁴ are designed to reduce the impact of rainfall and flooding on new developments by using features such as soakaways, grassed areas, permeable surfaces, and wetlands. This reduces the overall amount of water that collects in the sewers and storm overflow discharge.¹⁹⁵ Generally speaking, SuDS mimic

¹⁹⁰ Ofwat, [Transfer of private sewers](#).

¹⁹¹ DEFRA (2011), [Automatic adoption arrangements for new foul sewers and lateral drains and national build standards for gravity foul sewers and lateral drains](#).

¹⁹² Scottish Water is a statutory corporation that provides water and sewerage services across Scotland. It is accountable to the public through the Scottish Government.

¹⁹³ [A guide to surface water drainage](#), at p 7. See also Scottish Water, [Sewers for Scotland v4.0](#), [Sewers for Adoption 7th Edition](#).

¹⁹⁴ Sustainable drainage systems.

¹⁹⁵ As described in DEFRA's (2023): [The review for implementation of Schedule 3 to The Flood and Water Management Act 2010](#) (publishing.service.gov.uk)

natural systems and differ from traditional drainage in that they aim to manage rain close to where it falls.¹⁹⁶

England and Wales

- 5.29 In Wales, the adoption of SuDS is governed by the Flood and Water Management Act 2010 (Schedule 3), which requires new developments to include SuDS features that comply with Welsh national standards and are approved by the relevant Welsh approval body.
- 5.30 Broadly, in England SuDS can either be adopted by a local authority, a water company, or a private company. Certain provisions in the Highways Act 1980 and the Water Industry Act 1991 permit that a drainage system be adopted by a sewerage undertaker (who will then be responsible for future maintenance of the system).
- 5.31 Under Section 38 of the Highways Act 1980 an agreement that a highway is adopted and therefore maintained at public expense will typically include provision for a drainage system which drains the adopted highway only. The final adoption authority is the local authority. Similarly, adoption of SuDS can be achieved through an agreement under Section 106 of the Town and Country Planning Act 1990.
- 5.32 In relation to England, following a review, the Government has agreed to a recommendation to implement Schedule 3 to the Flood and Water Management Act 2010, following a consultation by DEFRA who will collect views on the impact assessment, national standards, and statutory instruments.¹⁹⁷

Scotland

- 5.33 The Scottish Environment Protection Agency (SEPA) is the statutory agency responsible for protecting the water environment. It requires that effective, appropriate SuDS feature in new developments.¹⁹⁸ Under the Sewerage (Scotland) Act 1968, all SuDS consented would be prospectively adopted by Scottish Water upon completion. There are no private water companies in Scotland, and all water supply and drainage are publicly owned and maintained by Scottish Water.
- 5.34 Section 7 of the Sewerage (Scotland) Act 1968 also allows for agreements between the highway authority and the local authority for the provision,

¹⁹⁶ See [Sustainable Drainage, SuDS and Planning - What do you need to know?](#)

¹⁹⁷ DEFRA (2023), [Sustainable drainage systems review](#).

¹⁹⁸ SEPA, [Diffuse pollution in the urban environment \(SuDS\)](#).

management, and maintenance of their sewers, SuDS or drains. Entry into such an agreement must not be unreasonably refused.

- 5.35 Under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (the Regulations), it is a general requirement for new developments with surface water drainage systems discharging to the water environment, that such discharge will pass through SuDS. The Regulations apply, for example, to activities that are liable to cause pollution or abstraction of water, as well as the direct or indirect discharge, or any activities likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant (Section 3). Such activities require authorisation under the Regulations and must be carried out in accordance with that authorisation (Section 4). Section 5 of the Regulations imposes a general duty of efficient use of water.
- 5.36 *Sewers for Scotland*¹⁹⁹ contains Scottish Water's construction standards for detention ponds, detention basins, end of pipe swales, and end of pipe filter trenches. Scottish Water has a duty to adopt SuDS constructed to these standards.
- 5.37 *The Water Assessment and Drainage Assessment Guide (WADAG)*,²⁰⁰ published by the Scottish SuDS Working Party in January 2016, is intended as a guide for developers, planners, and others involved in water and drainage infrastructure through the necessary stages to obtain relevant permissions and comply with standards and policies.

Public open spaces

England and Wales – general provisions

- 5.38 Whilst the provision of parks and open spaces is not a statutory function, the Local Government Act 1999 provides local authorities with the powers to promote the economic, social, and environmental wellbeing of their communities.
- 5.39 The National Planning Policy Framework (NPPF), applicable in England, states: 'Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision.'²⁰¹ Specific guidance on open spaces simply states: 'It is for local planning authorities to assess the need for open space and opportunities for new provision in their areas.'²⁰²

¹⁹⁹ Scottish Water (2018), [Sewers for Adoption 7th Edition \(scottishwater.co.uk\)](http://scottishwater.co.uk)

²⁰⁰ SEPA, [Water drainage assessment guide \(sepa.org.uk\)](http://sepa.org.uk)

²⁰¹ DLUHC, [National Planning Policy Framework](#), paragraph 98.

²⁰² DLUHC (2014), [Open space, sports and recreation facilities, public rights of way and local green space.](#)

5.40 Public open space areas, different types of play area, wildlife and biodiversity areas, woodland, watercourses, ditches, and ecological features as well as other matters including combined bin collection points not on the adopted highway, public art and town centres or retail public realm can be adopted under Section 106 of the Town and Country Planning Act 1990. Such planning obligations will apply to the current owner and any subsequent owner and are legally binding and enforceable.²⁰³

The operation of the adoption system in practice

5.41 In this section we set out our understanding of how the adoption system works in practice taking into account feedback we have received on adoption processes under frameworks in place in England, Scotland, and Wales.

5.42 There is a wide range of amenities that can be adopted by the relevant authority, which can broadly be classified into the following groups: transport infrastructure (including roads and footpaths); drainage and sewers, SuDS; public open spaces; ecological areas (eg wildlife and biodiversity areas); and other amenities, such as combined bin collection points.

5.43 Most of the above categories of amenity are adoptable by the local authority (in their capacity as highway authority and local planning authority). However, some are adoptable by other authorities, such as the relevant water authority, or NAVs.²⁰⁴ As set out earlier in this section, legislation governing the adoption process varies by amenity and by nation.

5.44 During the course of the market study, we have heard a number of perspectives on the advantages and disadvantages of adoption:

- Many households have called for full adoption of their estates by local authorities, arguing that this would ensure that estate infrastructure is developed and maintained to a good standard. Housebuilders also indicated a range of benefits flowing to households from adoption, including the reductions of service charges and costs relative to private sector alternatives and removing liabilities from homeowners. In Wales, the Senedd Petitions Committee is currently considering a petition calling on the Welsh Government to commit to ‘the adoption of the maintenance of new housing estates by local authorities.’²⁰⁵

²⁰³ Section 106(5) of the Town and Country Planning Act (1991) provides that a restriction or requirement imposed under a planning obligation is enforceable by injunction.

²⁰⁴ New Appointments and Variations (NAVs) are limited companies which provide a water and/or sewerage service to customers in an area which was previously provided by the incumbent monopoly provider.

²⁰⁵ Senedd Cymru, Petition (2022) [P-06-1307 The Welsh Government should commit to the adoption of the maintenance of new housing estates by local authorities \(senedd.wales\)](#)

- General themes highlighted by housebuilders on the disadvantages of adoption include adoption costs, notably for bonds, commuted sums²⁰⁶ and inspection fees; local authority processes around adoption, including ‘onerous’ design standards and the length of time it can take to go through the adoption process; and inconsistencies in adopting authority approach and processes.
- Local authorities are concerned about the future ongoing cost of maintaining the amenities they adopt. We were told that such concerns have emerged in the context of reduced local authority budgets and resourcing pressures, with local authorities struggling to maintain, for example, even existing roads.

5.45 We now consider the adoption process for each type of amenity drawing out differences by nation where appropriate.

Roads

Guidance

- 5.46 We understand that as a general rule of thumb highway authorities tend to only adopt streets that serve more than a particular number of individual dwellings – five often being set as the lower limit. This discretionary approach is highlighted in the *Manual for Streets* guidance produced jointly by DLUHC and the Department for Transport (‘DfT’) which is applicable in England and Wales.²⁰⁷ In Scotland, two to three dwellings is often set as the lower limit.²⁰⁸
- 5.47 The *Manual for Streets* guidance applicable in England and Wales states that the highway authority has considerable discretion in exercising its power to adopt through a Section 38 agreement (see paragraph 5.16(a)), whereas Section 37 (see paragraph 5.16(b)) effectively sets the statutory requirements for a new street to become maintainable at public expense. For Section 278 agreements, the guidance notes that before entering into such an agreement a highway authority will need to be satisfied that the agreement is of benefit to the general public.²⁰⁹
- 5.48 The guidance also notes that the highway authority has considerable discretion in setting technical and other requirements for a new highway, and that highway authorities would be expected to adopt street layouts complying with their Design

²⁰⁶ Local authorities (in their capacity as highway authority and local planning authority) can request payment of commuted sums as a condition of adoption as compensation for taking on future maintenance responsibility for roads.

²⁰⁷ DfT, DLUHC, Welsh Assembly Government [Manual for the Streets \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), page 134, ‘*What is adoptable*’.

²⁰⁸ Scottish Government (2010), [Designing streets – a policy statement for Scotland](#).

²⁰⁹ DfT, DLUHC, Welsh Assembly Government, [Manual for the Streets \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), page 134 and 135.

Guide, and normally be expected to adopt, amongst other amenities, residential streets, combined footways, and cycle tracks.²¹⁰

- 5.49 The Scottish Government issued a policy statement in 2010, which roads authorities and planning authorities are directed to follow. It includes supporting guidance to help local authorities implement the guidance.²¹¹
- 5.50 The policy statement sets out what is adoptable, noting that the roads authority has considerable discretion in exercising its powers whether to grant an RCC under Section 21 of the Act (see paragraph 5.17) and that a roads authority can be required to adopt a road constructed in accordance with an RCC. The statement also notes that road authorities are now encouraged to take a flexible approach to road adoption in order to allow greater scope for designs that respond to their guidance and create a sense of place. As with the guidance applicable in England and Wales, the guidance notes that roads authorities would normally be expected to adopt residential streets, combined footways, and cycle tracks.

Feedback on roads adoption

- 5.51 There is no obligation to seek adoption. However, the Home Builders Federation (HBF) noted that, in its experience, developers' preferred option is almost always the adoption of roads by local authorities. This is consistent both with what the large housebuilders submitted (although there are exceptions) and with the findings from a 2020 Welsh Government consultation on estate charges on housing developments.²¹² One local authority in England that we spoke to indicated that the vast majority of housebuilders want highways to be adopted, and that typically this is achieved. Another English local authority noted that once a developer has entered into a Section 38 or 278 agreement, and paid the relevant fees, 'that's almost like the signing of the contract between the developer and the local authority that those roads are going to be built up to an adopted standard.' A large housebuilder said that highway authorities have the obligation to adopt roads that are built to the relevant standards, which facilitates the process of adoption.²¹³
- 5.52 Despite the above submissions, and data from our information requests to large housebuilders indicating that the majority of roads they build are eventually adopted, we have other evidence that indicates that there are barriers to the

²¹⁰ DfT, DLUHC, Welsh Assembly Government, [Manual for the Streets \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), page 135.

²¹¹ Scottish Government (2010), [Designing streets – a policy statement for Scotland](#).

²¹² Welsh Government (2020), [Estate charges on housing developments – summary of responses \(gov.wales\)](#), page 49.

²¹³ In its response to the update report, it submitted: '[it] notes the CMA's comment that it has received mixed feedback as to whether or not local authorities are required to adopt roads on new housing estates. However, the legislation is clear. The highway authority is required to adopt, provided that the road is built to the appropriate standard [under Section 37] (albeit that in practice, adoption is often achieved through voluntary s.38 agreements with the local authority).'

adoption of roads, particularly in England and Wales, and some ‘red lines’ for developers (such as ‘excessive’ commuted sums, discussed below). As a consequence, we consider that this is leading to poor outcomes for households living on estates where roads have not been adopted as the costs of maintaining the roads will ultimately fall on those households.

- 5.53 The issue of unadopted roads has been recognised through the work of the Unadopted Roads Taskforce in Wales.²¹⁴ This has led to a collaborative partnership between the Welsh Government, local authorities and representatives of housing developers in Wales and the development of, amongst other initiatives, a *Good Practice Guide* aimed at reducing the chances of new housing estate roads not being adopted, and a set of *Common Standards on highway design and construction* for use by local authorities and housing developers. We received feedback on these initiatives in response to the working paper and discuss this at paragraph 5.59(c).
- 5.54 We heard concerns from homeowners that roads on their estates had not been adopted as they had not been built to adoptable standards, and of developers taking too long to present them for adoption, often years after the sale of the last house built on the estate. One individual living in England told us that after 10 years, their council has not been able to adopt the main roads on their estate because the large housebuilder did not finish the roads or the street lighting to the required standard.
- 5.55 Our consumer research (**CMA consumer research**)²¹⁵ highlighted that some homeowners were uncertain as to whether their roads were in fact adopted, and therefore who was responsible for their maintenance, and that in some cases there were disputes between developers and other parties as to where responsibility lay.

Barriers to roads adoption – local authority processes, resourcing, and funding

- 5.56 One large housebuilder submitted that ‘local authorities simply do not want to take roads through the adoption process or are so under-resourced in this area that a developer is left for many years with the burden of maintaining estate roads’ while another raised concerns around the reluctance on the part of numerous highway authorities to proceed to formal adoption by whatever means.²¹⁶

²¹⁴ Welsh Government, [Unadopted Roads Taskforce | GOV.WALES](#)

²¹⁵ [CMA consumer research](#)

²¹⁶ Although it noted that in the vast majority of cases roads are adopted by local authorities after a number of years.

- 5.57 The HBF told us that it has long considered the non-adoption of roads to be a significant cause for concern, particularly for SME housebuilders.²¹⁷ In response to our working paper, it said that the risks, costs, and delays associated with the design, approval, and adoption of new roads has a proportionally bigger impact on SMEs, and is a major barrier to growth.
- 5.58 We heard that there are often significant delays in the process of adoption of roads, a concern that is supported by data compiled by the HBF based on freedom of information requests to highway authorities in England, Scotland, and Wales over several years. The HBF data analysis on costs and timescales associated with the adoption of new public highways indicates substantial disparity across local authorities. For 2021, for example, the data shows that the average total time taken from technical submission to formal adoption of a Section 38 agreement ranged from three months to over five years.
- 5.59 Views on the process for roads adoption varied by nation:
- (a) **In relation to England:** while some respondents to our working paper submitted that the process is effective *in principle*, with a clear legal framework set out under the Section 38 agreement route, they argued that the process *in practice* is ineffective, involves substantially longer-than-anticipated timescales, and can be problematic and complex. A number of respondents highlighted poor resourcing of the adopting authority creating delays. Uncertainties and inconsistencies in approach also emerged as a strong theme, with respondents highlighting the application of different standards of construction across local authorities. The HBF said that its members have reported highways departments increasingly moving away from existing guidance, such as the DfT's *Manual for Streets*, and issuing local guidance and standards. Tensions between the approach of local highway authorities and local planning authorities (particularly in two-tier areas) were also highlighted. A further barrier identified by some respondents was the requirement to get foul and surface water sewers adopted first by the relevant authority.
 - (b) **In relation to Scotland:** in general, we heard that the process for roads adoption in Scotland is more standardised (including local road authority departments all publishing standard forms) and provides more certainty to

²¹⁷[HBF response to the update report](#). With regard to the position for SME's, HBF noted that this was considered in its 2017 report [Reversing the decline of SME housebuilders](#). This report highlighted concerns around the adoption process, noting that it can take much longer than the date set out in the Section 38 agreement; that there is no incentive for LAs to adopt in a timely manner, when budgets are being cut. It also notes that delays can be compounded by the bonds provided by builders having to be kept in place for longer than is necessary, so adding to capital lock up and costs.

housebuilders,²¹⁸ although concerns were raised about the time taken in the granting of RCC and subsequent adoption process. Whilst welcoming the presumption of road adoption on the completion of a development, Homes for Scotland submitted that the three core barriers to timely adoption in Scotland are local authority building department resourcing, willingness from local authorities to complete adoption, and a lack of national standards in terms of road adoption and their design.

- (c) **In relation to Wales:** the HBF told us that the ongoing application of the Highways Act 1980 and the absence of devolved powers in this area means that builders in Wales experience the same types of problems and frustrations as those in England, potentially to an even greater extent due to divergence of building regulation regimes between England and Wales. Two large housebuilders submitted that issues similar to those in England arise in Wales. In our working paper, we asked what impact the *Good Practice Guide* and *Common Standards on Highway Design* – a collaborative initiative arising from the Unadopted Roads Taskforce²¹⁹ (see paragraph 5.53) – had made on roads adoption.²²⁰ Some housebuilders were sceptical about their impact and the HBF, which supported their introduction, said that they were not being used widely with primary guidance still coming from the DfT’s *Manual for Streets* (although it stated use of that document is diminishing).

5.60 Pressures on local authority finances and resourcing are well-documented and recognised as a significant factor in their reluctance to adopt amenities, with local authorities concerned around ongoing liabilities. One local authority noted that ongoing liabilities for maintenance ‘is a big problem for the public purse.’

Barriers to roads adoption: housebuilders’ incentives

5.61 We have been told by one large housebuilder that housebuilders have strong incentives to avoid the ongoing obligations in maintaining roads since adoption eliminates complications and reputational risks linked to the private management of infrastructure and common facilities. However, significant concerns have also been expressed by housebuilders about the costs associated with seeking

²¹⁸ A large housebuilder stated that in its experience, the process for roads adoption works more effectively in Scotland with the Roads (Scotland) Act 1984 providing certainty as to what roads are capable of adoption, prescribing (together with local authority road design guidelines) the standards to which roads must be constructed and prescribing the process that must be followed ‘thus avoiding many of the issues which hamper the process in England and Wales.’

²¹⁹ Welsh Government, [Unadopted Roads Taskforce | GOV.WALES](#)

²²⁰ The WLGA has led work concerning unadopted roads since 2018. It has said to the Senedd Petitions Committee that the work of the Unadopted Roads Taskforce has centred around ensuring that the tools are in place for better management and delivery of estate roads to adoptable standards that provide good and reasonable safe environments, and also avoiding the engagement and use of management companies. Recognising the net cost to the public purse in future years for taking on further maintenance liabilities, it submitted that the assumption has always been that is in the public interests that new highway infrastructure is publicly maintained as adopted highway, noting that the Taskforce’s work was set out to be ‘enabling.’

adoption, notably in relation to commuted sums, bonds, and inspection fees. We also note that, in not seeking adoption, housebuilders may incur lower costs through not having to build to adoptable standards. We therefore consider that there are commercial incentives not to pursue adoption. In response to our working paper, Professor Susan Bright submitted that:

‘An issue on some estates is that as infrastructure is not built to adoption standards it will not be durable over time. This is not about ‘design’ but the standard of construction. Poor standards reduce the costs of construction, in the knowledge that future – and higher – costs will be borne by house purchasers. This raises potentially serious problems in relation to the future of these estates and whether they will be sustainable in the long term.’

Bonds

5.62 As part of the adoption process, local authorities have the power to require a bond as a guarantee. This is a form of financial surety which ensures that a local authority has the funds available to complete works if developers fail to do so. DfT guidance notes that a Section 38 agreement is very unlikely to be completed by a local authority until all fees have been paid and a bond is in place to cover the full cost of constructing the new roads on a development.²²¹ The guidance also notes that, amongst other matters:

- The bond value should reflect the costs to the local authority of constructing and completing the road(s) in accordance with the details that have received a technical approval should the developer default on the agreement.
- The value of the bond may differ from the costs incurred by the developer in constructing and completing the road(s).
- Some local authorities use a risk-based approach in calculating bond values while others may use linear rates. In any event, the local authority’s methodology and criteria should be published and maintained.
- The local authority should provide clear information on the level and timing of fees that will be required which are likely to include, but not exclusively, costs associated with design checking, preparation of the legal agreement, and site inspection. It should be stressed that the level of costs imposed should be reasonable and proportionate.

5.63 Concerns have been raised about bonds, including from the HBF, who told us that ‘authorities require housebuilders to provide a bond or cash surety, for 100% of

²²¹ DfT (2022), [Advice Note: Highways adoption, page 16](#).

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 eg sewerage undertakers require bonds equal to 10% of the completed works.'

- 5.64 It has, however, been reported that local authorities need to be able to cover the cost of the works at a rate they would be able to secure if they had to undertake the work themselves, with a suggestion that housebuilders' costs for road construction were perhaps 70% of those of highway authorities.²²²
- 5.65 Data provided by the HBF, from its freedom of information requests to highway authorities in England, Wales, and Scotland, show that highway authorities have a wide range of costs associated with different types of road infrastructure.²²³
- 5.66 We have heard concerns around delays and inconsistencies relating to bonds, and that they can be difficult to enforce.²²⁴ It has also been submitted that housebuilders' exposure to bonds is increasing, and that local authorities are increasingly refusing to adopt or are delaying adoption requiring housebuilders to retain bonds for longer than anticipated, thereby increasing costs (through interest payments).
- 5.67 In response to the working paper, concerns were raised about access to bonding facilities, especially for SMEs, instances where "legitimate reductions" and release of bonds have been delayed for indeterminate periods, as well as bonds being in place for much longer than required.
- 5.68 Specifically in relation to Scotland, the HBF submitted that an acute problem through the RCC process is the requirement for and provision of road bonds by SMEs with upfront costs of providing a road bond being hugely significant for SMEs. Homes for Scotland said that there were particular problems in releasing the bond in most local authority areas.
- 5.69 We asked the 11 largest housebuilders to provide information on the number of Section 38 bonds (or equivalent) they had entered into for the financial years ending 2014, 2017, 2020, 2021 and 2022, and the financial value of all Section 38 Agreement bonds (or equivalent) for the same years. Figure 5.1 shows that across 10 housebuilders (we excluded one that provided inconsistent data), the average real-bond value increased from £302,447 in 2014 to £544,542 in 2021, falling back

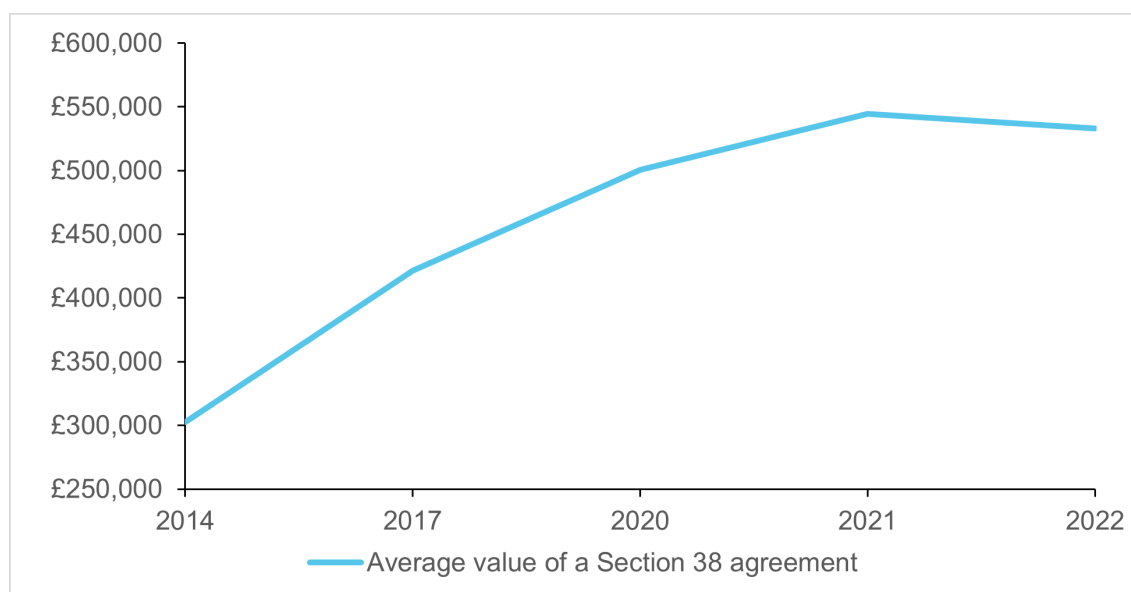
²²² Cambridge Centre for Housing and Planning Research, Dr Gemma Burgess and Michael Jones (May 2015), [Road and sewer bonds in England and Wales – report to the NHBC](#).

²²³ The data provided in the responses is not all on a like-for-like basis, but where it appears to be so, it can attract very different costs for bonds. For example, soakaways range from £2,000 to £6,000, and costs for individual trees range from around £200 to over £2,000.

²²⁴ See HBF response to the statement of scope, March 2023: [Home_Builders_Federation.pdf](#) ([publishing.service.gov.uk](#))

to £520,542 in 2022, ie a 72% increase in the space of 8 years, with increases in value greatest between 2014 and 2020.

Figure 5.1: Average bond value across 10 of the largest housebuilders, 2014 to 2022



Source: Large housebuilders' responses to information request. CPI-H Inflation data from the ONS.

Note: Average values at December 2022, adjusted for inflation.

Commuted sums

5.70 Local authorities (in their capacity as highway authority and local planning authority) can request the payment of commuted sums as a condition of adoption, as compensation for taking on future maintenance responsibility for roads.²²⁵ However, concerns have been expressed by housebuilders about the level of commuted sum required by local authorities and the manner in which the commuted sum is calculated, with one large housebuilder suggesting that local authorities can make adoption unviable as an option for the housebuilder by setting the commuted sum at a high and disproportionate level, without providing a sufficient breakdown or justification of the costs of maintenance when determining the size of commuted sums. It noted that this results in the developer having no option but to seek 'private adoption' in the absence of any legislation or regulation requiring the local authority to act reasonably and transparently when setting commuted sums.

5.71 The HBF told us:

'Commuted sums demanded by authorities have increased significantly over the years and are now often exceeding the cost of building the road.'

²²⁵ The power of local authorities to accept commuted sums under the Highways Act 1980 was confirmed by the Court of Appeal in its decision in *The Queen on the Application of Redrow Homes Ltd v Knowsley Metropolitan Borough Council* [2014] EWCA Civ 1433.

This has also resulted in a commensurate increase in inspection fees which are calculated as a percentage of the commuted sums (although there is no consistent approach in how these are calculated, leading to variance across local authorities).'

5.72 One large housebuilder submitted that the principal obstacle to achieving the adoption of roads is the need to agree an appropriate commuted sum. It told us that:

'The commuted sums required by local authorities often lack robust evidence as to how they have been calculated and any challenge to commuted sum payments invites considerable delays. There is a tendency for the highways authority to significantly over-estimate the cost of highway works (sometimes more than 50%) and these estimated costs are the basis for the highways authority inspection fees which are often excessive'.

5.73 Another large housebuilder noted that commuted sums differ by local authority and can affect the viability of a development, and another submitted that '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 approach.' One large housebuilder stated that:

'Even where a local authority is willing to adopt in principle, in practice, local authorities often make adoption unviable as an option for the housebuilder (applying the principle of 'cost in perpetuity' when considering the size of commuted sum for adoption). This is because there is no legislation or regulation that requires local authorities to act reasonably and with transparency when determining the size of the commuted sum ... this allows the local authority to set the commuted sum at an exorbitantly high level, without providing any breakdown or justification of the costs, and leaving the developer no option but to have the asset maintained privately'.

5.74 Whilst we understand that a developer could make an application to the courts challenging the level of the commuted sum, we did not receive evidence of this approach being used to resolve the issue in practice. One housebuilder suggested that there should be a rapid appeal mechanism for housebuilders to challenge the commuted sum where a dispute arises between a local authority and housebuilder as to the sum to be paid.

5.75 Housebuilders made a number of suggestions around commuted sums: one large housebuilder suggested that the process of adopting roads would benefit from the implementation of guidelines by central government which set out clear criteria as to how commuted sums payable by housebuilders should be calculated, stating

that they already exist in some areas.²²⁶ Another suggested that the CMA should consider making a recommendation to government to ensure that commuted sums are transparent, appropriate and reasonable. It suggested a fixed schedule of costs for various types of infrastructure (adjusted for regional labour costs) and fixed time periods to ensure commuted sums are reasonable and accurately reflect the cost of maintenance, that costs should be subject to review to ensure accuracy, and that they should be subject to industry consultation. It also suggested that there should be a requirement for commuted sums to be ring-fenced so they can only be used to maintain the intended adopted amenity.

5.76 One large housebuilder submitted that the calculation of commuted sums was not a concern in Scotland as a more standardised approach is taken as a result of the Scotland local authority road department standard forms.

5.77 Nine of the eleven large housebuilders provided comparable data to us on the levels of commuted sums paid. Given the time involved in agreeing and paying commuted sums, we asked the housebuilders to provide the average (mean) commuted sum paid per freehold property, across all Section 38 (or equivalent) agreements signed, whether or not they were completed in that calendar year.

5.78 We are not able to say what amenities are covered by these commuted sums, and what amenities were instead moved to an estate management company, or the number of households or estates relevant to each figure. Over the years 2018, 2020 and 2022:²²⁷

- The lowest average commuted sum paid was £2 per household in one year – while this is notably low, there were several housebuilders and years in which payments were below £100 per household.
- The highest average commuted sum paid was £1,429 per household for one housebuilder in one year – with most housebuilders average below £500 per household.
- The average rate across the housebuilders who supplied data to us was £223 in 2018, £314 in 2020, and £265 in 2022.

5.79 We observe that these one-off payments are low compared with the levels of payments made to estate management companies, to which households are committed in perpetuity.

²²⁶ It cites that in England s.106 and/or local Supplementary Planning documents stipulate the calculation criteria for certain elements; and, that some Highway Authorities have adopted the (discretionary) principles contained within ADEPT Commuted Sums for Maintaining Infrastructure Assets Guide 2009.

²²⁷ Following review of the data published in the private management of public amenities on housing estates working paper, these values have been revised.

Sewers, SuDS and associated infrastructure

Sewers and drains

- 5.80 As set out in paragraphs 5.19 to 5.27, the adoption framework for sewers (including pumping stations) and drains differs across England, Scotland, and Wales.
- 5.81 In 2011, DEFRA consulted on national build standards and automatic adoption of new gravity foul sewers and lateral drains.²²⁸ The consultation covered England and set out how the Government proposed to implement the automatic adoption, by statutory water and sewerage companies, of newly built gravity foul sewers and lateral drains connected to the public sewerage system.
- 5.82 The consultation document notes that:
- ‘Until 1 October 2011, private sewers that were connected to the public system on 1 July were the responsibility of their owners (generally the owners or occupiers of the properties they serve). Unless a problem occurred, households and other private sewer owners were often unaware of their responsibility for a private sewer especially where it extended beyond their own property boundary. Where problems occur, the private ownership of sewers and lateral drains can lead to a variety of problems. The response tends to be reactive and piecemeal rather than on the basis of planned maintenance. The costs of maintenance and repair may be high and fall to one or just a few individual households or businesses, resulting in considerable financial burdens for them. Disputes between neighbours and landowners may occur over access for and contributions to repair.’²²⁹
- 5.83 As the status quo was maintained, in that as noted at paragraph 5.25, automatic adoption was not subsequently taken forward in England despite the transfer to regulated sewerage undertakers of private sewers and lateral drains that were connected to the public sewer before 1 July 2011, these concerns remain, with households in England facing potentially significant costs as infrastructure degrades over time, or where it has not been built to satisfactory and/or adoptable standards in the first place. As reported in our consumer research, on one estate where a pumping station was not functioning properly, residents had directly contacted the local water company asking them to adopt and repair it, only to be told that it had not been built to an adoptable standard and that work to upgrade it to the required standard would cost households up to £100,000 between them. We

²²⁸ DEFRA (2011), [Consultation on national build standards and automatic adoption of new gravity foul sewers and lateral drains \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

²²⁹ *Ibid.*, paragraph 3.3.

discuss in detail quality issues that have been raised with us in relation to sewers, and adoptable amenities more generally, from paragraph 5.209.

5.84 The impact assessment published as part of DEFRA's consultation estimated £5.7m per year would be avoided for private maintenance by private sewer owners and households would save an average of £0.3m per year owing to less time spent unblocking sewers. It also noted a reduction in administration costs for local authorities responding to environmental health incidents (£2.1m).²³⁰

5.85 We received mixed feedback from market participants on the approach to, and barriers to, the adoption of sewers across each nation in response to our working paper consultation:

(a) **In relation to England:** one respondent indicated that sewer adoption is very easily obtained and said that, from a bond perspective, can be cancelled at the maintenance stage. Another submitted that the common standards in place for the design and construction of sewers makes the process easier, because they increase certainty and provide more consistency when compared to the adoption of roads. However, it noted that different water authorities do have addendums to the code, which, albeit transparent, do result in regional variations.²³¹ It also highlighted that resourcing pressures mean processing and response times for adoption can be delayed, an issue also raised by another respondent. A further respondent submitted that Section 104 agreements can expire before upstream developments are sufficiently constructed, and the adopting authority can request the submission of a new application for Section 102 drainage with more onerous requirements.

(b) **In relation to Scotland:** Homes for Scotland submitted that the process for adoption appears to be relatively straightforward and that Scottish Water appear to be proactive in their wish to have legacy schemes covered, which it said is borne out by the low number of developer legacy schemes still to be formally adopted. Some housebuilders highlighted the vesting process, with one stating that sewer adoptions are incentivised by rebates on vesting. Nonetheless, one housebuilder submitted that the adoption process can be lengthy and complex.

²³⁰ DEFRA (2011), [Impact assessment for the automatic adoption and national build standards for foul sewers and lateral drains](#).

²³¹ As noted in paragraph 5.23 Sector Guidance, including *Design and construction guidance*, allows for additional 'Local Practice' guidance to be provided by each sewerage company eg in relation to pumping stations, setting out individual company requirements.

- (c) **In relation to Wales:** we heard from a large housebuilder that the process is straightforward and efficient and from another that Welsh Water generally provides a good service.

SuDS

5.86 We have heard that where issues with SuDS arise, they can be difficult to resolve and costly to rectify, particularly if the SuDS have not initially been built to adoptable standards. For example, we heard:

- **In England:**
 - A report of SuDS on a development overflowing in heavy rain, flooding the roads and some of the public space, and washing away a path. The homeowner notes that examining the approved plans appears to show part of the system was not built in accordance with the planning approval, and that the developer has not properly engaged with the issue. They also suggest there appears to be no time limit on the adoption process and no requirement for developers to resolve problems quickly. They call for a legally binding and enforceable fixed time limit for adoption from the completion of the sale of the last property of not more than two years.
 - A submission from a homeowner stating that their estate includes a pre-existing balancing pond which serves the wider watercourse management of the region's canal system. The homeowner notes that although it is within the area covered by the management estate contract, it is neither visible nor accessible to residents, and that the cost of routinely dredging the pond has been estimated at £250,000 and residents have been told the cost will pass to them.
- **In Scotland:** concerns from a homeowner regarding a SuDS that has not been completed which the homeowner states is flooding roads and leaving unpleasant waste that has not been cleared away. The homeowner puts the situation down to a 'stand-off' between the property factor and developer.

5.87 As noted in paragraphs 5.28 to 5.37, the process for adoption differs by nation.

5.88 **In England**, SuDS are currently not mandatory in new developments, unlike Scotland and Wales. Non-statutory technical standards were produced by DEFRA for England, and England sought to address SuDS through planning policy (from April 2015) rather than adopt mandatory standards. However, it is reported that the planning-led approach was considered by many not to be working very well (as this approach made the role of the LPA difficult since there were no specific checking regimes in place to ensure that SuDS had been constructed as agreed,

leaving concerns about unsatisfactory standards of design and construction, and difficulties of ensuring proper maintenance once the developer has left the site).²³²

- 5.89 Following a review by DEFRA,²³³ a consistent and mandatory approach to SuDS in England through the implementation of Schedule 3 of the Flood and Water Management Act 2010 is proposed to be enacted in order to ensure SuDS are designed to reduce the impact of rainfall on new developments, reduce the overall amount of water that ends up in the sewers and storm overflow discharges, allow for water reuse, and reduce pressures on water resources.²³⁴ This will follow a consultation by DEFRA who will collect views on the impact assessment, national standards and statutory instruments.²³⁵
- 5.90 In our working paper we sought views on the process and asked whether the proposed changes would remove any barriers to adoption. Some respondents raised concerns around complexities in the adoption process, inconsistencies across adopting authorities, contradictory approaches between local authorities and water authorities, delays in the adoption process and unwillingness to adopt.
- 5.91 While some respondents were of the view that as adoption of SuDS becomes mandatory and increasingly regulated through Schedule 3, this will make adoption easier at least in theory, and reduce the time taken for adoption, it was also suggested that while it may improve the process to a degree, it will introduce further complexities, such as a further tier of regulatory approval and control once a SuDS Approval Body (SAB) is established. Concerns were expressed that this would increase conflicts in the requirements imposed by the local planning authority and other bodies, and impose additional costs. One respondent suggested that implementation of Schedule 3 will require national standards to be published to remove any ambiguity and differing requirements between adopting authorities.
- 5.92 Concerns were also expressed about how local authorities would cope with additional demands placed on them. A local authority that provided views in response to the working paper said that it does not currently adopt SuDS and noted that there is a concern that, whilst routine maintenance might be reasonably affordable, any significant maintenance issues which arise over time could have substantial costs, and require significant technical expertise to diagnose and address, which the local authority does not possess and may find unaffordable. It told us that this was why a decision was taken not to adopt SuDS. It also noted

²³² DEFRA (2023) [The review for implementation of Schedule 3 to The Flood and Water Management Act 2010 \(publishing.service.gov.uk\)](#), page 6; [Report of a review of the arrangements for determining responsibility for surface water and drainage assets \(publishing.service.gov.uk\)](#).

²³³ DEFRA, [Sustainable drainage systems review - GOV.UK \(www.gov.uk\)](#)

²³⁴ DEFRA, [New approach to sustainable drainage set to reduce flood risk and clean up rivers - GOV.UK \(www.gov.uk\)](#)

²³⁵ DEFRA (2023), [Sustainable drainage systems review - GOV.UK \(www.gov.uk\)](#)

that a major system failure from a design defect or over time on a single site could require significant financial sums to address. It submitted that the only way to fund repairs to important flood mitigation measures would be to cut services elsewhere, to the detriment of all.

- 5.93 **In relation to Wales**, while it was recognised that mandatory adoption of SuDS was in its infancy, there were calls for much greater consistency across local authorities and more guidance. A large housebuilder submitted that the implementation of Schedule 3 has not resolved many of the longstanding issues which it said continue to have a direct impact on the approval of SuDS infrastructure, referencing the ‘excessive’ time taken by SuDS approval bodies to approve SuDS applications. It also stated that prior to adoption it is common to find that post-construction performance monitoring of SuDS infrastructure has to be provided before adoption progresses.
- 5.94 The level of commuted sums required was highlighted as a particular concern by some housebuilders, with calls for transparency around how they are calculated, and for a national commuted sums approach. It was submitted by the HBF that commuted sums being sought could be as high as £10,000 per new property. One large housebuilder suggested that there should be an option for management and maintenance to be undertaken by a management company, thereby ensuring annual commuted sums in perpetuity through a service charge.
- 5.95 A number of respondents highlighted – and concurred with – issues identified in a post-implementation review report on the implementation of Schedule 3 of the Flood and Water Management Act 2010 carried out on behalf of the Welsh Government.²³⁶ Included in the short-term priority recommendations are the development of a national commuted sums approach, including a schedule of rates and length of maintenance period, and consideration of the desirability and viability of a service charge approach levied by local authorities as a mechanism of funding long-term maintenance of adoptable SuDS assets.
- 5.96 **In relation to Scotland**, a large housebuilder submitted that its experience of SuDS [and sewer] adoption was that the vesting process was clear and straightforward as Scottish Water will adopt all drainage assets, including SuDS. It said, however, that the process can be lengthy due to complexities associated with land transfers, but indicated that there is a clear and consistent approach to the expected condition of assets and that developers are clear on the standards required by Scottish Water to facilitate adoption. Another housebuilder said that SuDS are complicated given the different responsibilities of Scottish Water and local authorities in relation to drainage, suggesting that these should be addressed by ‘Section 7 agreements’, which it said lots of local authorities do not sign up to.

²³⁶ Welsh Government, Arup (2023), [Sustainable Drainage Systems \(SuDS\) Schedule 3 Post Implementation Review \(gov.wales\)](#)

Another large housebuilder submitted that issues experienced in Scotland are similar to those in England, with a reluctance on the part of Scottish Water to adopt SuDS infrastructure.

Public open spaces

- 5.97 As discussed in paragraphs 5.38 to 5.40, we understand that the provision of public open spaces tends to be agreed as part of Section 106 agreements between developers and local authorities, with no specific legislation governing their adoption. Adoption is, therefore, discretionary in respect of both the housebuilder and the local authority. There are no common standards in place for public open spaces, and some local authority respondents to our publications have suggested common standards would be challenging to implement given the lack of commonality, different local standards, range of elements to them and complexity of larger spaces.
- 5.98 We observe that, while contributions towards affordable housing and the community infrastructure levy (CIL) have increased, funding obtained from housebuilders for open spaces has tended to decline, as shown by Table 5.1.²³⁷

Table 5.1: Detailed nominal value of agreed developer contributions between 2005-06 and 2018-19

	<i>£m</i>				
<i>Contribution Type</i>	<i>2005/6</i>	<i>2007/8</i>	<i>2011/12*</i>	<i>2016/17</i>	<i>2018/19</i>
CIL	-	-	-	771	830
Mayoral CIL	-	-	-	174	200
Affordable Housing	2,000	2,614	2,300	4,047	4,675
Open Space & Environment	215	234	113	115	157
Other†	1,712	2,026	1,287	900	1,117
England total	3,927	4,874	3,700	6,007	6,979

Source: [Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study \(publishing.service.gov.uk\)](#) – table 3.2.

* 2011-12 values are calculated for combined in-kind and direct payment values; County Council data were not reported separately
 † Includes transport and travel, community works, education, land, and other contributions.

- 5.99 Ongoing maintenance of public open spaces appears to be a particular challenge for local authorities, given financial and resourcing constraints. Local authorities we have spoken to in England, Scotland, and Wales indicated that they do not typically seek to adopt public open spaces, such as parks and playgrounds, for this reason.
- 5.100 One local authority told us that, whereas 20 years ago it had a policy for adopting open spaces on developments with maintenance sums with a projection of up to 20 years, its current policy of not adopting is driven by the lack of finance for ongoing maintenance. It noted that because of the financial challenges local authorities are facing and because of the costs and uncertainties of taking on public open space, private management is likely to prevail. A local authority in

²³⁷ [Housebuilding update report \(publishing.service.gov.uk\)](#), para 2.64 and Table 2.1.

England did indicate to us that it is prepared to adopt open spaces, providing developers pay the 25-year maintenance cost, whereas another in Wales said that the vast majority of its open spaces on new private estates are privately managed because ‘we haven’t got the resources to manage them in perpetuity through commuted sums’. Heads of Planning Scotland noted that local authorities are not in a position financially to maintain areas of open space across new build developments.²³⁸

5.101 Housebuilders also submitted that few open spaces are adopted by local authorities, because local authorities are reluctant to adopt because of the additional costs involved in their maintenance. One large housebuilder suggested that in its experience, local authorities deploy different approaches when considering whether they will adopt new open spaces, and some local authorities will not respond at all to requests for adoption.

5.102 Another large housebuilder told us that:

‘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 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 – ie, 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 amenity, the LA could attract liability for the accident.’

5.103 Concerns have been expressed that a sub-set of households effectively fund amenities that are available to the wider public. The same housebuilder noted that:

‘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.’

5.104 In its response to the update report, another large housebuilder submitted that:

‘Legislation is the most appropriate way of resolving these issues and would suggest that the CMA considers recommending to government that local authorities should be obliged to adopt public open spaces at least where they are for the wider community provided that they have been built to the requisite standard, and, importantly, provided that housebuilders

²³⁸ [Heads_of_Planning_Scotland_-_Publication_Version.pdf \(publishing.service.gov.uk\)](#)

contribute to the costs of maintenance through the payment of commuted sums’.

- 5.105 In response to our working paper, concerns were expressed that local authorities are unable to effectively manage public open space to a standard expected by homeowners and developers and that the quality of maintenance is poorer than some management companies due to lack of specialism and technical knowledge. The Land Trust submitted that it was set up expressly for this reason by English Partnerships (now Homes England) in 2004. It said that there is a track record of local authorities’ inability to provide the level of maintenance required for public open space, often due to historic lack of funding, or inability to ringfence funding. In general, estate management companies/organisations that responded to the working paper advocated the benefits of their expertise and experience in managing complex spaces and of long-term stewardship of public open spaces, expressing concerns around a deterioration in quality in the absence of such arrangements.
- 5.106 Some respondents to the working paper were also sceptical about a commuted sums approach for public open spaces. The Land Trust said:
- ‘Commuted sums would need to be huge in order to properly maintain new developments even for 20-25 years, especially to account for inflation over time. Additionally, passing this cost on to landowners via lower land prices would not see an impact for a number of years; most developers will already have land under option agreements with the purchase price set for years into the future which cannot retrospectively be increased, meaning the cost of these commuted sums will fall directly to the developer in the meantime. This is likely to be unaffordable, meaning land will be effectively ‘mothballed’ and therefore less new homes will be brought onto the market.’
- 5.107 A local authority respondent suggested that councils would need to create new teams to deliver the management of open space, securing the specialist skills required. It also submitted that this is likely to cause tension, with different departments within the local authorities having different priorities when it comes to the planning of such spaces with maintenance departments likely to seek simplified open spaces with less hard and soft landscape provision to ensure sites can be maintained easily and at low cost. It noted that this could be to the detriment to the quality of open space schemes and, therefore, local residents.
- 5.108 It is clear that open spaces are an increasingly important element of new housing developments and are likely to become more so (in England) as environmental

regulations requiring the creation and maintenance of up to 30 years of biodiverse open spaces on new estates come into force.²³⁹

Conclusions on the adoption process

5.109 Based on our review of the evidence we consider that there are a number of factors and barriers, which, in combination have led to public amenities not being adopted by the relevant authority.

5.110 They are:

- (a) The discretionary nature of much of the legal framework underpinning adoption, with housebuilders often under no obligation to seek adoption and authorities not necessarily under any obligation to grant it where it is sought. This is especially an issue in relation to:
 - (i) Roads, particularly in England and Wales.
 - (ii) Sewers, particularly in England.
 - (iii) SuDS, in England, although concerns have also been raised with the mandatory framework in Wales, which England is moving towards, and in relation to processes in Scotland.
 - (iv) Public open spaces across all three nations.
- (b) The processes involved in seeking and achieving adoption, including inconsistencies in approach across adopting authorities, tensions between different bodies involved in the adoption process, lack of nationally imposed guidance in certain areas, and the timescales and costs involved, including a lack of transparency around how costs for commuted sums and bonds are calculated by adopting authorities.
- (c) Linked to b) above, the funding and resourcing constraints of local authorities.
- (d) The commercial incentives of housebuilders to minimise costs in particular those for commuted sums and bonds, or to keep costs down by not constructing amenities to adoptable standards.

²³⁹ Under the Environment Act 2021, from 2024 it will be mandatory for all new planning applications made in England to ensure that the development results in a minimum 10% gain in biodiversity (referred to as Biodiversity Net Gain - BNG). This requires the developer to measure the biodiversity of habitats (pre- and post-development) within the planning application boundary following an assessment process set by DEFRA. We understand that developers' 'net gain plan' will need to demonstrate that the gain can be delivered and will be secured with appropriate management for a minimum of 30 years. At present there is no equivalent legislation in Scotland and Wales.

5.111 As a consequence of falling levels of adoption, amenities may not be constructed to an acceptable and durable quality and thousands of households are paying private companies for the upkeep of those amenities available for wider public use, in addition to their council tax. In other cases, it may be unclear to households which party is responsible for maintenance, with no party to hold to account if problems materialise, and issues therefore left unresolved.

Private management of public amenities on housing estates

Emergence of the private management model

5.112 The private management of public amenities on housing estates has emerged as a consequence of local authorities not adopting amenities to the same extent as they have done in the past, and we understand that this has become a particular issue over the last 5-10 years.

5.113 Over 2021-22, over 80% of the properties built by the 11 largest housebuilders – with those properties representing around two-fifths of all new builds across England, Scotland, and Wales – were subject to estate management charges, with private estate management companies appointed to take on the maintenance of amenities. The overall number of new build properties subject to estate management charges is likely to be much higher taking into account properties built by housebuilders other than the 11 largest. This is also likely to increase. For example, we have heard that there is an accelerating trend of non-adoption of public spaces and that this will increase further in light of Biodiversity Net Gain requirements (see paragraph 5.108).

Types of management model and their prevalence

5.114 The management of the common parts and public amenities on a new build estate can take various forms and will differ by developer and depending on what stage of development a particular estate has reached. Often the developer will retain responsibility for estate management throughout the construction and development stage of a new estate, but it is increasingly common for management to be passed at the end of the development (or on a phased basis for larger developments) to a management company which will take responsibility for managing the communal areas and amenities across the estate.

5.115 We understand that there are two main models for estate management: resident management companies (RMCs) and embedded management companies, although there are other options. One option, which we understand is now rarely used, is where the housebuilder retains ownership of the estate's public amenities and management in perpetuity. In this scenario, the housebuilder will carry out maintenance itself or more likely through a managing agent, who will be

accountable to the developer under the terms of a management contract. Community land trusts, which we discuss further below, may operate across a wider area than a single housing development, with a focus on community development and support.

- 5.116 We heard from some large housebuilders that local authorities may require the management entity to be approved by them or that local authorities may specify the type of management model that should be put in place as part of their planning conditions. We observe that in stipulating the nature of management, local authorities can avoid the ongoing liabilities and costs associated with adopting those amenities.
- 5.117 A number of large housebuilders told us that their policy was to use RMCs where possible where amenities have not been adopted by the relevant authority. As noted in the previous paragraph, we also heard that local authorities may make the establishment of an RMC a condition of Section 106 agreements. However, one large housebuilder submitted that embedded management arrangements are its preferred option, with just over 40% of its estates completed in the three calendar years to December 2022 operating under embedded management arrangements.
- 5.118 Data provided in response to our information requests to 14²⁴⁰ estate management companies covering close to 6,500 relevant estates²⁴¹ across England, Scotland, and Wales in total indicates that the predominant model in use on those estates is a management company acting as the managing agent for an RMC (or equivalent).²⁴² Across the 14 estate management companies for whom we have data:
- 43% of their contracts are with RMCs (2,704 relevant estates)
 - 22% are embedded management company arrangements (1,380 relevant estates)
 - 8% are managing agents for the housebuilder (483 relevant estates)
 - 11% have other arrangements in place (699 relevant estates); and

²⁴⁰ We sent information to requests to 15 estate management companies: Broadoak, Firstport, Gateway, Greenbelt, HML, Kingston, Meadfleet, Preim, Premier, Remus, Rendall and Rittner, RMG, Scanlans, Specialist, Trinity – see *Glossary* for full company names. However, we were concerned in one case that the data was not completed on a consistent basis. Therefore, our analysis is based on data from the remaining 14 estate management companies.

²⁴¹ In our information requests to estate management companies, we defined ‘relevant estates’ as freehold estates in England and Wales, being a development which includes any housing of a freehold tenure (as such mixed tenure estates that include freehold homes would also be classed as freehold estates), and developments in Scotland requiring estate management services.

²⁴² Some of those management companies operate a mix of models, while others specialise in a particular model.

- The remaining 16% are from one company that was not able to give information on the structure of arrangements across the majority of its estates.

5.119 While the aggregate data above indicates that just over a fifth of arrangements are embedded management arrangements, this varies considerably by individual management company, with some operating predominately one model and others a mix of models.

Residents' management companies

5.120 An RMC is a not-for-profit company incorporated by a housing developer to own and manage the shared facilities and public amenities on a new build housing estate (where these are not adopted by a relevant authority).

5.121 Under the RMC model, homeowners typically become 'members' (ie shareholders) of the RMC when they purchase their home, which gives them rights including attending and voting at company meetings. Once all the plots on a development have been sold, control of the RMC will pass to the residents as members of the RMC, who will then run and operate the RMC. Prior to this transfer, the housebuilder would usually control the RMC and appoint a managing agent to carry out the maintenance of shared facilities until the development has been completed.

5.122 The freehold estate for the common parts/public amenities is generally transferred to the RMC, typically via the transfer deeds. The RMC covenants directly with the homeowners to undertake the future maintenance of the estate, but it is common for the RMC to appoint a managing agent to deliver the services in return for a fee.

5.123 Given the not-for-profit status of the RMC, and the fact that it is acting in the interests of homeowners, we might expect an RMC to be a cheaper model than an embedded management company. However, this will depend to a large extent on how the RMC is organised and operationalised, including whether the RMC appoints a managing agent.

5.124 As noted in paragraph 5.117, the large housebuilders in general (though not universally) favoured the establishment of RMCs, and housebuilders may be required to establish RMCs through planning obligations. Advantages of RMCs highlighted by housebuilders included:

- Giving customers control over estate management, ensuring managed areas are maintained for the benefit of all residents in the long term.
- Residents have a more active role in management as they are members, and some can take on the role of director or secretary.

- Residents can choose to maintain the public amenities to a higher standard than local authorities.
- The housebuilder does not retain the considerable undertaking of owning and managing an extensive portfolio of sites in perpetuity.
- Avoids delays with the development start date associated with formalising adoption agreements.
- Savings from not having to pay high inspection and bond costs, and no need to pay commuted sums.

We note that the last three bullets are also relevant to embedded management arrangements, as discussed above.

- 5.125 In contrast, we heard of many downsides to RMCs, including from a large housebuilder that said its experience has demonstrated that residents tend not to want the enhanced responsibility of running an RMC.
- 5.126 An estate management company (which operates embedded management arrangements) suggested while RMCs may seem to offer more choice and input to residents the reality is also different, with this model often resulting in higher charges (although it presented no evidence on this), inactivity, and confusion. It also questioned whether, given the increasing size and complexity of developments, it is right for public open spaces to be in the control of residents. Finally, it noted that RMCs ‘do not protect against handing over sub-standard unwarranted areas, creating an unfair disadvantage to customers who purchase a property with an RMC unknowingly accepting this liability.’ It was also suggested by an estate management company that the focus of RMCs is on short-term costs rather than considering best-value considerations and ensuring that features are well managed for the long term. A respondent to the Welsh Government’s 2020 consultation on estate charges noted that open spaces are becoming increasingly complex, often with features that carry liabilities, and which require expert handling.²⁴³
- 5.127 From the perspective of homeowners, we heard concerns around:
- Estate residents not having the skills to manage or oversee managing agents in the increasingly complex matter of land and facilities management.
 - Liabilities and administrative burdens placed on residents who act as directors, and who lack expertise. In this regard, a lack of accessible

²⁴³ Welsh Government, [Estate charges on housing developments – summary of responses \(gov.wales\)](#), page 60.

information and advisory support for directors was highlighted by one respondent.

- Issues around communicating effectively with the RMC.
- Non-cost-reflective charges being levied by developers on homeowners towards the cost of registering an RMC at Companies House.
- Challenges with switching (discussed further from paragraph 5.249), with one homeowner stating ‘switching, even if it was possible, is likely to be the weakest of competitive constraints (particularly on large estates) because of the difficulties of organising a ‘mutiny’ with disinterested and disengaged neighbours.’
- Difficulties and significant delays in gaining control of the RMC from developers,²⁴⁴ with one respondent submitting that it took nine years for the relevant homeowners’ right to become directors to come to fruition.
- Conflicts of interest. A homeowner submitted that the developer and managing agent on their estate are actively delaying the adoption process in an effort to protect their interests and prevent the election of members to the RMC. We also heard of one instance where the developer appointed the managing agent to be Company Secretary of the RMC, making it very difficult for homeowners to influence decisions.

5.128 The above challenges associated with RMCs can result in significant emotional detriment for households, as illustrated in the following case study.

Case study

‘From a mental health perspective - the whole experience over the past decade has been stressful and tiring, as the attitude from both the developer and managing agents has been unpleasant and unhelpful. Carrying out all the work and fighting to get our rights has been exhausting and despite having now taken over the residents management company we are now left with an administrative burden that takes up a very significant amount of our personal time. People should not need to run a company, nor be exposed to the associated stress that’s involved, to simply live in their home.

²⁴⁴ One homeowner told us that, on their estate, the developer’s directors are still in place five years after they moved in, and three years after the development was finished.

As you point out in your study, many residents are not motivated and in our case, just 2 of the residents have had to do 95% of the work to organise taking over the RMC and organising all elements of ongoing company operational and maintenance work. Many residents will not have the necessary knowledge, skills, or ability to undertake this onerous work and they should not be expected to do so for a piece of grass verge. It should be the responsibility of the Local Authority.'

Embedded management companies

- 5.129 Under an embedded management company, the freehold of the parts of an estate which require maintenance is generally transferred to a management company. The embedded management company is made party to the transfer deed and is thereby appointed to become responsible for managing and maintaining the estate. As such, the embedded management company is contractually imposed on the residents and residents will not have the right to participate in the company by becoming a member/shareholder or taking a role as an officer of the company.
- 5.130 Once the relevant amenities are completed to the required standard by the developer, they will usually be transferred to the management company. As far as the costs related to the transfer of land/amenities are concerned, we heard from estate management companies that these tend to be minimal with a number stating that a nominal sum of £1 is paid to the housebuilder, and in other cases that no financial terms are entered into with the housebuilder. Legal fees associated with the transfer may be incurred, which may be covered by the housebuilder.
- 5.131 Embedded management arrangements can confer significant market power to the management company named in the deeds. This is particularly so where the arrangement a) does not permit switching (see from paragraph 5.249 for our overall assessment of switching), b) where it permits switching but this cannot easily be effected by homeowners and c) where the homeowner is unable to terminate the deed even where there has been a failure by the management company to procure and perform the services specified in the deed. In such scenarios, the management company faces no competitive constraints. We have seen evidence of each of the above scenarios in operation where the arrangement is an embedded management arrangement:
- (a) **Does not permit switching:** one estate management company said that its embedded management company arrangements do not include a provision to change estate management company. However, it noted households are afforded protection through it providing free independent redress via the government-backed ombudsman, that elements of its fees are limited to a fixed price plus RPI, that the acceptance of transfer of amenities to it is contingent on the developer providing appropriate warranties to protect

households' interests, and that it will change its maintenance sub-contractors should a majority of residents request this.

(b) **Permits switching but it cannot be easily effected by homeowners:** an estate management company said that in relation to its embedded management arrangements, agreements between it and the housebuilder will not typically contain provisions to allow for the estate management company to be varied by the housebuilder although this has been included in a small number of agreements. It advised that it had incorporated provisions in Plot Transfers on newer developments which provided homeowners, rather than the housebuilders, with rights to change the arrangement. It said that in the absence of provision in the Plot Transfer, homeowners will have the benefit of its consumer choice policy. A current copy of that document was provided to us, and it sets out the requirements for the transfer of amenities to 'homeowner owned management company', including:

- affording the estate management company 'a reasonable time frame from commencement of services usually between 5 and 10 years, depending on the complexity...';
- providing 'written evidence that as least 66.6% of homeowners in the development agree to the transfer of ownership'; and
- providing evidence that [homeowners] have 'written approval from the local planning authority and any other relevant statutory body and/or relevant third parties stating that they consent to this new body becoming the owner of this land and all features upon it.'

(c) **Unable to terminate deed despite failure to provide contracted services:** a copy of the requirements of its standard deed of covenant were provided by one estate management company. This contains a provision stating that 'No failure by the management company to provide procure and perform the Scheduled Services shall entitle the owner to terminate this deed.' The deed also provides that 'The management company acting reasonably shall have power to discontinue any of the Scheduled Services which in its opinion have become impracticable or obsolete.'

5.132 Each of the above scenarios represents a significant imbalance of power in the favour of the embedded estate management company, notwithstanding any 'mitigations' in place, such as providing access to a government-backed ombudsman (whose powers, we note, are in any case limited) or disapplying the remedies available under Section 121 Law of Property act 1925.

Scotland – land-owning maintenance companies

- 5.133 In Scotland, property factors (sometimes called property managers) manage and maintain the commonly owned or used parts of residential land, for example, the common gardens or amenity areas in an estate. This land may be owned jointly by all or some of the homeowners or by someone else, for example, the property factor as a land-owning maintenance company. A property factor can be a private business, a local authority, or a registered social landlord (housing association). Obligations on property owners to pay for the land maintenance services are often incorporated into the deeds of conditions.
- 5.134 A December 2022 Scottish Parliament briefing highlights some of the issues in Scotland in relation to land-owning maintenance companies.²⁴⁵ The briefing says that the fact that they own the land they maintain means that it can be very difficult in practice to switch property factors, and highlights various inquiries into the system. This includes the Office of Fair Trading's 2009 market study into the Scottish property management market, which concluded, amongst other things, that consumers were experiencing *'particularly extreme barriers to switching land maintenance suppliers when ownership of open spaces had been transferred to private companies.'*²⁴⁶
- 5.135 In 2023 a petition was published calling on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act to cover dismissal of property factors.²⁴⁷ The petitioner noted challenges in dismissing its property factor on an estate of 860 privately owned properties, noting that the First-tier Tribunal confirmed they could not decide on the matter as it involved interpretation of the deeds. On 21 June 23 the Minister for Victims and Community Safety provided an update on issues raised including that further consideration is being given to a voluntary code of practice on dismissing and replacing land-owning maintenance companies and stating that the Scottish Government considers that the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 do provide the necessary mechanisms to enable homeowners to dismiss and appoint a property factor where the title deeds do not provide adequate procedures. It noted the volume of correspondence received by the

²⁴⁵ [Property Factors - Frequently Asked Questions \(parliament.scot\)](#)

²⁴⁶ See OFT [press release](#) and [OFT Property managers in Scotland market study \(2009\) \[ARCHIVED CONTENT\] \(nationalarchives.gov.uk\)](#) The OFT said that the legal provisions which would enable consumers to switch land maintenance companies, under the ownership model, are complex and untested (6.70) and may be a very costly mechanism (6.92), and recommended a test case be brought. It said, *'If this proves to be an impractical option for home owners, then the OFT recommends that the Scottish Government should review the legislation'*. *'Our final recommendation around land maintenance relates to the Title Conditions (Scotland) Act 2003. This Act allows property owners to amend real burdens (namely obligations) affecting the community potentially allows for property owners to switch land maintenance supplier. We are not aware of any group of consumers that have used this option to change their land maintenance supplier, possibly due to the cost or complexity involved.'*

²⁴⁷ [Scottish Parliament petition PE2006: Review and simplify the legislation in relation to dismissal of property factors - Petitions \(parliament.scot\)](#)

Scottish Government raising concerns about land-owning maintenance companies has fallen considerably over the past 10 years and that there were no plans to consult on changing the law in this area.²⁴⁸

Other models

- 5.136 We have heard of a number of community-led arrangements, which we understand are akin to RMCs. Community models in Wales have been highlighted as good practice in the context of the Senedd petition on adoption discussed earlier at paragraph 5.44.²⁴⁹
- 5.137 The Community Land Trust Network indicated that a community land trust (CLT) usually operates more widely than on a single housing estate, thus offering a wider pool of people to bring their time and energy to bear, who are invested in developing assets for the community. It submitted that by operating at a larger scale, and by often owning income-generating affordable homes and commercial spaces as well as liabilities such as open space, it is more likely that the CLT will be able to sustain staff. It also said that it provides support from its network, including supporting CLT directors to understand their role, particularly where they are contracting with third parties. It said that it is ‘currently working as part of a consortium with water companies, a local authority, a large housebuilder and others on an Ofwat-funded project to establish how the CLT model can best support long-term stewardship of “water smart” assets including SUDS, water recycling/reuse and demand reduction.’
- 5.138 The Land Trust submitted a response to the working paper stating that it is a national land management charity, specialising in sustainable stewardship solutions. It said that it was initially piloted in 2004 by English Partnerships (the predecessor of the Homes and Communities Agency, which was subsequently replaced by Homes England) ‘as a sustainable solution for long term management and ownership’, with a portfolio of over 80 sites across England, with 13 service charge sites under its management, and more in the pipeline. It highlighted its focus on delivering wider social value to communities and taking on the complexities of numerous large residential sites with a range of assets and green infrastructure over the long term.

²⁴⁸ Scottish Parliament, [Scottish Government submission of 23 March 2023, PE2006/A Review and simplify the legislation in relation to dismissal of property factors.](#)

²⁴⁹ Senedd Cymru, [Agenda for Petitions Committee on Monday, 25 September 2023, 14.00 \(senedd.wales\)](#)

Multiple management arrangements on housing estates

5.139 We have also heard of housing estates where there is more than one management arrangement in place on the same housing estate. One respondent to the working paper living in England told us that:

‘On the development there are just under 1000 new build properties. There is an Embedded Management Company which exists for the whole development which our homes are included in, but our small number of homes have this additional Management Company for this roadside grass verge with a hedge ... The hedge is in three parts and the third part is owned by another developer and maintained by their own contractors. We understand that this is scheduled to be adopted by the county council. Thus, currently for a single piece of land there are three sets of grounds maintenance companies coming to maintain the land and hedgerows in the same street.’

5.140 We consider that, in circumstances where households are liable to pay charges to more than one management company, they are likely to face additional costs, not least in the form of duplicate management/administration fees, brought about by the significant inefficiencies of having more than one management company involved. We also received a submission from an individual who explained that two management companies are involved in the management of various amenities on their housing estate. They said that when two homeowners on the estate sold their respective properties, they were required to pay fees to each company for a management pack to progress the sale of the property. We discuss this further at paragraph **Error! Reference source not found.** in the context of charges that may be incurred when homeowners come to sell their property.

Appointment of estate management companies

5.141 We asked estate management companies how they acquire contracts for new estates. The responses received indicate that they seek or are offered opportunities through a combination of proactive and reactive strategies, including:

- Appointment by housebuilders through open tender (with management companies submitting detailed management proposals/budget),²⁵⁰ or direct approach from a housebuilder based on existing relationships or recommendations, or solicitor referrals.

²⁵⁰ Some large housebuilders also noted that estate management services are tendered, or they work with managing agents they have previously worked with.

- Opportunities identified by the management companies' own business development managers; through local authority planning portals; and through targeted or generic marketing.
- Direct approaches from clients or RMCs wishing to change management company.

5.142 We also asked estate management companies on what basis they competed with each other, and responses noted a variety of parameters of competition, including location, size, and type of portfolio under management; reputation and prior experience; quality of customer service; cost, pricing, and fee structure; and technology and innovation which can be attractive to homeowners. Our data from estate management companies indicates that they tend to contract with a variety of different housebuilders, rather than always working with the same contracting partner.²⁵¹

Estate management charges and rentcharges

5.143 Estate management charges (sometimes referred to as 'EMCs') are recurring charges paid for by households on new build estates to a management company or in Scotland a property factor or a managing agent.

England and Wales

5.144 Estate management charges are usually created under the terms of the plot transfer. The legal duties relating to the management of private new build estates, including the requirement to pay an estate management charge to a developer or management company, are established by covenants entered into under the deed(s) of transfer when a plot is sold.

5.145 The transfer deed is a conveyancing document which serves to transfer legal ownership of the plot / property to the purchaser. In England & Wales, the transfer deed for registered land takes the form of the HM Land Registry Form TP1. The TP1 form will be entered into on completion of the sale and each of the homebuyer (ie the transferee), the housebuilder (ie the transferor) and the management company will be a party to the deed.

5.146 The plot purchaser will enter into a covenant in the transfer deed (TP1) to pay the management charge (often termed a 'service charge'), as a contribution towards

²⁵¹ Of the estate management companies that supplied data to us, 12 provided details on their number of contracts in the last year with each of the top 11 housebuilders, and the total number with other builders outside of the top 11. This showed that nearly all of these companies contracted with builders outside of the top 11, totalling nearly 50% of the contracts in that year. Most of the estate management companies also contracted with a number of top 11 housebuilders, with five of the 12 companies who supplied data on this contracting with at least 5 top 11 builders.

the maintenance of the estate's public amenities, and the management company will enter into a covenant to provide the estate management services, such as maintaining the public amenities.

- 5.147 The provisions in the transfer deed which create the legal obligation to pay the estate management charge will typically also cover items such as the nature of the costs accounted for through the service charge, the dates payments are due, the time period allowed for making payment, and details of how the service charge is calculated. However, the specific mechanics of the estate management charge will vary as between housebuilders.
- 5.148 The precise level or amount of the estate management charge is not prescribed in the transfer deeds – as it will vary depending on the management company's expenditure for the year – but there is usually a requirement for the transferee's proportion of the service charge to be 'fair', 'reasonable' and / or a proper 'proportion' of the overall expenditure by the management company in managing and maintaining the estate. As such, it is common for the management company to enjoy a wide discretion in setting the charge.
- 5.149 Management companies will typically covenant to perform the following estate management services (amongst others):
- maintain the common parts of the estate and any public amenities in good condition, in accordance with any planning permissions and the principles of good estate management;
 - manage and communicate the service charge budget, including setting the level of the charge each year;
 - insure the management company against risks for which it may be liable;
 - pay all taxes, rates and outgoings relating to the shared amenities;
 - set the estate regulations which homeowners must comply with;
 - maintain a reserve fund for items of future expenditure;
 - grant permissions for alterations and works etc; and
 - provide certificates to homeowners confirming certain requirements have been complied with (which can be necessary for any sale, transfer, or charge of the property).
- 5.150 To ensure that the obligation to pay the estate management charge continues for onward purchasers (ie beyond the initial plot purchaser), the initial transfer deed contains a covenant requiring any onward purchaser to enter into a deed of covenant with the management company which contains the same covenants as

those entered into by the initial purchaser. This includes the core obligation to pay the estate management charge to the management company. The arrangement is protected with a Land Registry restriction registered on the title to the plot such that any plot transfer cannot be registered at the Land Registry without a certificate from the management company stating that the provisions of the title restriction have been completed.

Rentcharges

- 5.151 Estate management charges can also take the form of an estate rentcharge. A rentcharge is a sum of money, usually payable annually, created in a conveyance or transfer. The party selling the land reserves an annual rent payable to them and their successor in title, which is charged on the land sold. A rentcharge 'runs with the land' and failure to comply with the terms of the rentcharge may result in enforcement action being taken against the current owner of the land. Effectively, this means that the positive obligations imposed in the rentcharge are binding on the current owner.
- 5.152 The Rent Charges Act 1977 prohibits the creation of new rentcharges, but certain types of rentcharge are excepted from the general prohibition.
- 5.153 This exception applies to an 'estate rentcharge', which includes a rentcharge created for the purpose of 'meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land'. This type of rentcharge is known as a 'service charge' rentcharge and can be used in large developments to support a system of service charge and estate management obligations.
- 5.154 The practice of using estate rentcharges as a means of securing the payment of service charges, including the payment of estate management charges by homeowners on new build estates, has drawn much criticism due to the severity of the remedies available to the rent owner when payment is not made.
- 5.155 Section 121 of the Law of Property Act 1925 implies two notable remedies into the rentcharge instrument for recovering monies owed to the rent owner:
- a right to enter into possession of and hold the charged land or any part thereof, and take the income from the charged land (Section 121(3) Law of Property Act 1925). Unlike forfeiture proceedings against a leaseholder following a breach of a lease (under Section 146 Law of Property Act 1925), there is no requirement for the rent owner to serve any notice to the homeowner giving them a reasonable period of time to remedy the breach, nor is there a right for the homeowner to apply to the courts for relief.

- a right to demise the charged land or any part thereof to a trustee by deed for a term of years (a lease) (under Section 121(4) Law of Property Act 1925). This effectively means that if the rentcharge goes unpaid for 40 days, the rent owner may grant a lease of the charged land to a trustee. Again, there is no need for any legal demand to have been made or notice to be given, and the lease can be promptly registered at the land registry. This can allow the trustee to effectively ‘ransom’ the charged land and exclude the homeowner from their home. The trustee can then collect any income received from the charged land or mortgage, sell, or underlet the lease to raise the amount owed and any costs incurred.

5.156 Section 125(5) of the Law of Property Act 1925 permits the express exclusion of these statutory remedies.

5.157 We consider the evidence we have received on the prevalence and use of rentcharges, and the remedies for recovering monies in this regard from paragraph 5.232.

Assessment of the evidence in relation to private estate management arrangements and what this means for consumers

5.158 In recent years, the private estate management model has attracted focus in the media, in parliament,²⁵² and in academic research.²⁵³

5.159 In this section we consider the evidence we have assessed in relation to private estate management arrangements and what this means for consumers. In particular, we consider:

- (a) The costs to consumers of private management of public amenities
- (b) Transparency of estate management arrangements and charges
- (c) Quality of amenities and estate management services
- (d) Practices that may impact the onward sale of a property
- (e) Consequences for non-payment/late payment of charges
- (f) Switching estate management company
- (g) Consumer protection and redress.

²⁵² For example: [Freehold Estate Management Fees - Hansard - UK Parliament](#) (July 2023); [Plenary 15/06/2021 - Welsh Parliament \(senedd.wales\)](#)

²⁵³ Bright, S. (2022), Far from Privatopia: Private Residential Estates in England and Wales, SSRN.

Costs to consumers of private management of public amenities

- 5.160 The private management of public amenities places costs on individual households that are in addition to their council tax and not borne by other residents in the wider locality that also have access to those amenities. We estimate that in 2022 households paid at least £260 million in estate management charges. Projecting these costs over a 25-year period, without accounting for future price rises, or increasing prevalence, affected households would pay the equivalent of more than £4.4 billion. Given the trends we have seen so far, without changes in the market this is likely to turn out to be a significant underestimate. The basis on which this figure has been calculated is set out from paragraph 5.179.
- 5.161 The levels of these charges vary significantly, based on the range and nature of amenities which are covered, the percentage management/administration fees charged by agents, and the degree of efficiency of the management company.
- 5.162 The data that we have received from estate management companies demonstrates this variation. The average amount charged to households by each management company in 2022 ranged from a £59 per year, to £951 per year. Across the 14 companies for which we have data, the average estate management charge was £358.²⁵⁴ The level of charges has fluctuated over time but have not consistently risen or fallen over the period 2013-2022.
- 5.163 Estate management companies provided supporting information about their charges. All companies highlighted that costs would vary across different estates, based upon the types and complexity of the services provided, local characteristics, economies of scale etc. Many services are provided by external contractors, with companies highlighting their tendering processes. In relation to other charges, the management companies showed wide variation in approaches – some hold a sinking fund (see paragraph 5.175), while others do not; some charge a wide range of administration or inspection fees, while others do not; some have fixed fees structures, while others have much wider variation.
- 5.164 From our consumer research, we found that homeowners were all aware prior to buying their new build property that estate management charges would apply. At that stage, relative to the overall cost of the property and other financial outlay associated with moving home, they usually regarded the amount of the estate

²⁵⁴ The Welsh Government's 2020 report on estate charges noted that the average estate management charge was £169 per year, with a range from £50 to a maximum of £500. The majority of respondents indicated this had increased over time. There were 560 responses to the question, with 389 (69%) respondents reporting a change had occurred. There were a further 393 written comments, explaining what the change had been. Of these, the majority indicated an increase in the charge over time. Some were smaller increases that could be attributed to annual cost adjustments or inflationary increase such as RPI, while others appeared to be significantly larger. In a number of cases the respondents were unable to get information as to the reason for the increase.

management charge to be proportionally very small. Once these customers were in their homes, most continued to regard the charge amount as not hugely significant, although a few thought that recent, higher-than-inflation increases in what they were being charged bordered upon unreasonable, and some expressed concern about the potential for uncapped rises in the future. However, beyond considerations of affordability, a substantial number did question the value for money that the charges represented.

- 5.165 During the course of the market study, we received submissions in a similar vein from households on new build estates. Many were concerned that the fees they are paying are disproportionate to the work carried out, with some arguing that they are being charged but see no proof of work actually being done.²⁵⁵ Concerns were also raised about uncapped rises to date and the potential for future uncapped rises.
- 5.166 In the Welsh Government's 2020 report on estate charges, respondents also raised concerns around charges, highlighting issues with unplanned and uncapped costs, poor value for money service delivery, and a high proportion of the charge being management and administration fees (discussed below). In a few cases, respondents explained that the annual costs had reduced as a result of changing to a new estate management company.²⁵⁶

Levels of 'management' fees

- 5.167 One area where participants in our consumer research consistently expressed dissatisfaction was with the proportion of the charge amount allocated to estate management company "fees" (eg 'management' or 'administration' fees), and the lack of clarity about what these covered. Homeowners provided examples of cost breakdowns where management fees accounted for a proportion of the total charge amount ranging from c.20% to c.60%.
- 5.168 This was a key concern in submissions we received from households over the course of the market study, with numerous respondents highlighting that a significant proportion of charges appeared to derive from management overheads rather than direct maintenance costs. To illustrate, one respondent to the update report highlighted that their management fees accounted for a third of costs, without the management company providing any detail on what this covered, and another indicated that management fees made up over 50% of the total cost of the charges for the estate as a whole. A respondent to the working paper provided figures showing that over 60% of the total charges applied to households on their

²⁵⁵ [Housebuilding market study – Summary of consumer responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

²⁵⁶ Welsh Government, [Estate charges on housing developments – summary of responses \(gov.wales\)](https://gov.wales), page 18.

estate was apportioned to 'Admin, management and monitoring' with just under 40% apportioned to 'maintenance'.

5.169 This customer experience is clearly shown in the data we have received from estate management companies. There is very wide variation in the proportion of their total revenue coming from management fees as a subcategory of the overall charge. Of the costs that are charged annually, the proportion made up by management fees ranged from 3% to 58%, as illustrated in Figure 5.2. In addition to this there are one-off costs, which are discussed further in paragraphs 5.176 to 5.178. This chart also includes (on the right-hand axis) the average amount charged by each estate management company.

Figure 5.2: Management fees as a proportion of annual estate management charges + additional one-off fees charged, compared with the average annual estate management charge amount



Source: Estate management company (MC) responses to CMA information request.

Note 1: Estate management companies self-defined what costs to categorise as 'management fees'; therefore, comparisons across the sample of estate management companies may not be wholly like-for-like.

Note 2: Certain estate management companies reported that their accounts are based on the financial year and not the calendar year; as such, data for 2022 (for instance) may correspond with financial information from April 2022 to March 2023.

Changes in costs over time

5.170 As noted in paragraph 5.162, for the estate management companies for which we have data the average levels of estate management charges do not show a clear

trend over time. Further, these averages can disguise significant variability for individual estates and over time.

5.171 However, we received submissions from homeowners over the course of this market study highlighting significant cost increases:

- One respondent to the statement of scope submitted: ‘Upon completion, ownership of the [green] space was transferred to a management company ... who charge circa £200 per year ... the fee has almost doubled in 4 years and there are no rules or regulations surrounding how much they are entitled to raise it ... there are no courts to complain to, and the management company do not engage in dialogue.’
- In response to our update report, an individual highlighted that their costs had increased by 42% with no explanation for the increase, and another respondent said they had received a bill that was almost double the previous year’s charge.
- Another said that ‘a few months ago the company that was originally doing the work sold the rights to another firm who immediately tripled the cost to householders.’

5.172 In addition, the model of private management of public amenities on housing estates has become increasingly prevalent over the last few years, so by their nature the majority of relevant estates were built in the last decade or so. We consider it likely that as the estates age, there will be more work needed to maintain, upgrade, renew or replace amenities, pushing up the costs that households will be required to pay. In particular, the larger and/or more technically complex amenities, such as roads, sewers, and SuDS, may require substantial investment. This was highlighted by DEFRA in its 2011 consultation on proposals for automatic adoption of sewers in England²⁵⁷ (as discussed in paragraph 5.82) and in our consumer research where households on an estate were told by their water company that it would cost them up to £100,000 between them to repair and bring a pumping station up to an adoptable standard (see also paragraph 5.83).

5.173 Some respondents to our working paper consultation also commented on the high costs of repairs. For example, one homeowner said that residents were charged more than £10,000 collectively for repairs to a communal amenity. As well as high costs for one off repairs, we have also heard of homeowners facing significant sums for ongoing maintenance. As discussed at paragraph 5.86, one homeowner told us that residents have been told that the estimated cost of £250,000 to

²⁵⁷ DEFRA (2011), [Consultation on national build standards and automatic adoption of new gravity foul sewers and lateral drains \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk), page 6: ‘The costs of maintenance and repair may be high and fall to one or just a few individual households or businesses, resulting in considerable financial burdens on them.’

routinely dredge the pond on their estate will be passed onto them, and that the pond itself is neither visible nor accessible to residents.

- 5.174 An estate management company told us (without providing supporting evidence) that:

‘It is expected that the management fee will increase over time due to the wear and tear as the development ages. As time goes on and things start to breakdown or need replacing more time is needed to manage those projects or changes in legislation take place meaning additional work is required.’

Sink funds

- 5.175 From the estate management companies that have provided information, sink funds to fund future major works are gathered from households for only some estates. There was also little evidence in our consumer research of management companies establishing sink funds. Participants in the consumer research expressed a preference for estate management where they could see a clear connection between works completed and costs charged. However, particularly where larger amenities are managed, not creating a sink fund to cover future larger costs risks exposing homeowners to substantial price shocks, which could cause significant detriment.

Permission fees etc

- 5.176 Management companies may charge additional fees for one-time events or consent/permissions or can charge fees specific to individual properties. Data from estate management companies showed that these ranged widely, with some charging zero costs in this category, and some charging up to just under 40% on top of the annual fees. It is worth noting that some of these costs may fall on individual households, so may be a larger proportion in individual instances. Figure 5.2 shows these costs in proportion to the annual charges, and in comparison with total levels of fees.
- 5.177 As noted in paragraphs 5.144 to 5.150, the transfer deeds of the large housebuilders contain obligations on the transferee to pay various types of fee in specified circumstances. This includes event/registration fees, permission fees, administration fees, late payment fees, and more. Many individuals that contacted us over the course of the market study indicated that they were subject to one-off fees in order to gain permissions for certain activities, such as making alterations to their home, re-mortgaging and selling their home. To illustrate, in response to the working paper we were told:

'When trying to remortgage our house we had to 'seek permission' from the management company, and that would cost us money. We had to provide deed maps and other information before the remortgage could proceed.'

'I was quite shocked to find out from my solicitor that [the management company] wanted a fee of [just under £500] for their management pack ... I cannot see how they can justify charging so much money from people simply to transfer information to a solicitor. The management pack is not a legal requirement so there should be a limit to the amount these companies charge.'

- 5.178 Additionally, one large housebuilder told us that one of its customers had recently brought to its attention that their managing agent wanted to charge them £1,800 to sign a document.

Total costs across consumers

- 5.179 As noted above, we have made an estimate of the minimum total costs faced by residents of these estates. In making this estimate we have made conservative estimates throughout to ensure that we can be confident that this is indeed a lower bound estimate. These include:

- (a) Only estimating households covered by the estate management companies and/or large housebuilders that we have data from. We have not attempted to estimate the remainder of the market, nor have we assumed any growth in households in the future.
- (b) Assumed that costs per household remain static, rather than having any increase over time, which we consider the more likely trend.²⁵⁸
- (c) Applied a discount factor to account for the fact that people apply greater value to present times than years in the future.²⁵⁹

- 5.180 This has allowed us to very conservatively estimate that in 2022 households that were paying for the private management of public amenities paid at least £260 million. Projecting these costs over a 25-year period, without accounting for future price rises or increasing prevalence, affected households would pay the equivalent of more than £4.4 billion. Given the trends we have seen so far, without changes in the market this is likely to turn out to be a significant underestimate.

²⁵⁸ We have also used a non-weighted average of the 14 estate management companies we have information from (£358). A weighted average (£473) is pushed upwards by two companies with substantially higher average fees, and it is possible that these are less representative of other companies.

²⁵⁹ A discount factor of 3.5% was applied, as per the [Green Book](#).

Transparency of estate management arrangements and charges

5.181 Our consumer research highlighted that while the existence of estate management arrangements and charges was known to everyone interviewed before they bought their new home, understanding of what would happen post-sale (for example, when estate management would transfer from the developer to a management company, the type of the management company that would be in place, and what the charges covered), was very patchy. Many homeowners admitted that, with everything else going on at the same time, this was not information with which they had particularly engaged:

‘We really found out about it from the solicitor when we were completing the purchase agreement. I think the developer probably told us about it before, but there are so many other pieces of information you’re dealing with which are more important, I think the EMC gets lost.’

5.182 One homeowner in Scotland suggested that the existence of estate management charges should be made more prominent earlier in the sales process and before they were legally committed to the sale (ie before signing ‘the missives’).

5.183 Many homeowners who contacted us during the market study highlighted a lack of transparency regarding estate management arrangements and charges.²⁶⁰ One respondent to our statement of scope told us:

‘We were told each year there would be a small fee to cut the central grass etc as this was not adopted by the council. We were told it’s £120 and would go up by inflation each year. We have, since we moved in, been charged £200 already ... it was very much glossed over... we were never given a breakdown of what we would pay for’.

5.184 Such concerns were also raised by some individuals in responses to our update report. They said that during the sales process they were informed that they would be charged a small fee for minor landscaping duties carried out by the management companies, only to find out once they had purchased their property or when they were close to exchanging with the sellers that there was a long list of charges that they were ultimately required to pay. Some respondents added that the transfer documents did not contain information on future costs. One was told during the process that the council no longer adopted the green spaces on the estate, and that this would cost over £100, which then rose to over £200 the following year.

²⁶⁰ [Housebuilding market study – Summary of consumer responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- 5.185 In response to our update report, the Homeowners Rights Network (HorNet)²⁶¹ submitted that while most of its members were informed of the existence of a “service charge” they were not made aware of the true liability they signed up to when they bought their properties, noting that ‘sales staff from all the big national building firms appear to use the same pitch: “a small annual charge for grass cutting/keeping the estate tidy.”’ HorNet submits that, in fact, a wide range of additional charges were levied.
- 5.186 We also heard concerns about purchasers being encouraged to use housebuilders’ preferred conveyancing solicitors, and those solicitors either not bringing the estate management arrangements / implications to the attention of the purchaser during the house buying process or glossing over them.
- 5.187 As previously noted, in November 2020, the Welsh Government published the outcome of a consultation it conducted in relation to estate charges on housing developments.²⁶² A total of 566 respondents completed questions in the *Homeowners and residents* section of the report. Of the 509 who indicated when during the purchase process they were first made aware of the charges:
- 110 (22%) stated it was right at the start of the process
 - 28 (6%) stated it was when they paid the deposit or reserved the plot
 - 90 (18%) stated it was during the conveyancing process
 - 125 (25%) stated it was at the signing or exchanging of contracts stage
 - 103 (20%) stated it was at completion
 - 44 (7%) stated it was after completion or after they had moved in; and
 - 9 (2%) stated they were never made aware.
- 5.188 The report notes that 12% of respondents indicated that even when they were made aware they were not properly informed of the full details and potential risks or implications of the estate charges or they were misled into thinking they could not increase or would only be charged until the areas were adopted by the local authorities.

²⁶¹ [Home_Owners_Rights_Network_-_Publication_Version.pdf \(publishing.service.gov.uk\)](#). On its website, HorNet states that, by 14 January 2024 it had 10,700+ supporters in its Facebook Group and 863 estates representing over 185,00 households. It describes itself as ‘a group of ordinary homeowners who feel exploited by their respective land management companies on privately owned managed estates with charges.’ See: [Homeowners Rights Network | HorNet - NO to fleecehold!](#)

²⁶² Welsh Government, [Estate charges on housing developments – summary of responses \(gov.wales\)](#), page 27.

- 5.189 Approximately a quarter of respondents indicated they were informed at the early stages prior to conveyancing. However, a number of these indicated that they were not fully informed of the true extent of the estate charges.
- 5.190 In May 2022 HomeViews, in collaboration with the HomeOwners Alliance, compiled a list of ‘10 things homeowners wish they’d known before buying’.²⁶³ This identified ‘Service charges – and particularly future rate increases’ as something many owners said they wish they had known more about before buying with one reviewer quoted: ‘We wish we had known more about the annual estate maintenance charges and what these covered.’

Review of internal documents

- 5.191 The evidence that we have reviewed from the large housebuilders, which consists predominantly of sales and marketing materials and materials shared with conveyancers, suggests that homeowners *should* have been made aware of the existence of estate management charges before buying their home. However, from the documents provided it appears that minimal information is provided right at the outset of the process.
- 5.192 Housebuilders appear to be giving homebuyers the information they need to be aware of estate management charges and understand their immediate obligations around the reservation stage. At this stage in the home buying process, the reservation deposit may not be refundable in full or in part, if a customer pulls out of the process outside of any cooling-off period. To the extent that information is shared after signing the reservation agreement – we note, for example, that there is a high degree of transparency of estate management charges within housebuilders transfer deeds that we have seen²⁶⁴ – it may be too late to have the necessary impact as the buyer by this point is arguably psychologically committed to the purchase. Additionally, estate management charges are likely to be perceived as being insignificant in comparison with the purchase price of the property, although this does not mean that as an ongoing annual liability the charges are in fact insignificant at all, and as annual variable fees the total liability is likely to be extensive and impossible to estimate accurately.
- 5.193 Based on materials we have reviewed, there appears to be inconsistency between housebuilders as to the quality and extensiveness of information that is provided to homebuyers concerning estate management charges. Further, it is unclear at what stage in the sales process many of the materials are provided to purchasers in practice. If homebuyers only receive comprehensive details at, for example, the moment of completion, then this means they have not had sufficient insight or time

²⁶³ HomeViews, [New-Build-Buyer-Guide-FINAL.pdf](https://www.hoa.org.uk/New-Build-Buyer-Guide-FINAL.pdf) (hoa.org.uk)

²⁶⁴ Based on our review of transfer deeds provide by large housebuilders in response to our information requests.

available to make a proper decision on whether to proceed with the purchase of their home in full knowledge of the charges that apply. In this regard, we would note that whilst the 'information sheets' provided to the buyer's solicitors often do contain considerable information covering estate management and applicable charges, how they affect homeowners etc, it is unclear how much of this information is passed on to the buyer and at what stage. It is also not clear in all cases when the large housebuilders began using the information shared with the CMA.

- 5.194 In our review, we have observed no attempts to communicate to buyers that estate management charges can change *significantly* year on year. We have also seen little on important topics like how to change management company, or what to do when homeowners disagree over the types of work carried out etc. Such information will generally only be included in provisions in the transfer deed and in the articles of association of RMCs which are frequently provided at the end of the sales process (ie as part of the legal formalities which solicitors invariably lead on).
- 5.195 Current policies may also not be consistent with past practices. What we do not know from our review of internal documents is whether and how well information about estate management charges is communicated *verbally* to purchasers throughout the sales process. It is also unclear to what extent paperwork (such as reservation checklists) are worked through during sales discussions.
- 5.196 We requested sight of the 11 largest housebuilders' relevant internal guidance and training for their sales staff and found, based on our review, that many did not produce internal guidance to ensure that their sales staff provided sufficient information to their customers in the course of the sales process, including as regards the practical implications of estate management arrangements. Although some provided us with reservation checklists that showed the estate management charge to be paid (but with no further information), and one company provided us with a training presentation explaining how the adoption process works, we have so far seen no evidence to suggest that the majority of large housebuilders take steps to ensure that their sales staff fully inform customers about the cost and practical implications of buying a property on a privately managed estate.
- 5.197 In response to our update report, one large housebuilder submitted that information on estate management arrangements and charges is provided by members of its team who are specifically trained in the importance of transparency and treating customers fairly. In its response, another large housebuilder noted that it has always provided details of the service charge (the annual estimated sum) prior to reservation, and notes that it always requires its sales team to provide the whole breakdown of the budget and has developed a training module for sales to improve knowledge.

New Homes Quality Code

- 5.198 Several housebuilders have indicated that the recently implemented New Homes Quality Code (NHQC),²⁶⁵ alongside pre-existing codes such as the HBF Code for Home Builders²⁶⁶ and Consumer Code for Homebuilders,²⁶⁷ has been implemented to mitigate issues around transparency and other issues that can affect purchasers of new build homes.
- 5.199 Specifically relevant to the transparency of estate management arrangements, participating housebuilders are required under the NHQC to provide information at the start of the sales process in sales and marketing literature, in the terms and conditions of the reservation agreement, and at pre-contract stage. They are required to:
- In describing the new home, properly inform and not mislead consumers including in relation to management services and service charges (1.2i and j of the code) and any agreements or restrictions that may affect the consumer if they want to sell the property in future (1.2l of the code).
 - Provide an affordability schedule of any costs that are likely to be directly associated with the tenure and management of the new home over the 10 years following the sale, and which the developer can reasonably be expected to be aware of. This must include estimated amounts of any additional costs that the developer knows or expects will arise directly from the sale. This includes 'management fees' (for example to maintain the landscaping, highways that the local authority is not responsible for, and so on), event fees and other charges. This information should bring to the customer's attention any service charges that may increase or be charged in the future as more facilities become available or sinking fund charges that may be introduced for repairs or maintenance. If the developer does not know the actual value of costs or charges, they should give the customer a schedule of costs without including the values. (2.1 of the code).
- 5.200 The NHQC is a non-statutory code. We understand that around 200 developers, including the vast majority (but not all) of the large housebuilders have voluntarily registered to operate under the NHQB Code, meaning that once activated, around 80% of all new builds in England, Scotland, and Wales will be delivered under the requirements of the NHQC. By signing up to the code, developers are also signing up to the non-statutory New Homes Ombudsman Service.

²⁶⁵ New Homes Quality Code: [Downloads \(nhqb.org.uk\)](https://www.nhqb.org.uk/downloads). The NHQC is overseen by the New Homes Quality Board (NHQB), an independent not-for-profit organisation: [About us \(nhqb.org.uk\)](https://www.nhqb.org.uk/about-us). The NHQB also oversees the performance of the New Homes Ombudsman Service.

²⁶⁶ Home Builders Federation, [Consumer Code for home builders \(hbf.co.uk\)](https://www.hbf.co.uk/consumer-code)

²⁶⁷ Consumer Code for Homebuilders, [What does the Code cover? - Consumer Code](https://www.consumercode.org.uk/what-does-the-code-cover/)

- 5.201 The NHQB has a compliance audit in place where developers have to provide evidence of compliance with the NHQC. NHQB is working towards an onsite developer audit process and seeking Stage 2 approval under the Chartered Trading Standard Institute's Consumer Codes Approval Scheme.²⁶⁸ Stage 2 requires a code sponsor to demonstrate the full role as code sponsor, including auditing, sanctions, and Code reviews. This is a longer-term process requiring tried and tested practical applications. The NHQC anticipates submitting its application for Stage 2 in Q2 2024.²⁶⁹
- 5.202 The New Homes Ombudsman Service²⁷⁰ is the route to redress for breaches of the NHQC. As at November 2023, and in the short time that it has been operating, it had received 1,400 contacts, of which three related to estate management.

Conclusions on transparency

- 5.203 While our review of internal documents indicates that many homebuyers may have been made aware of the existence of estate management arrangements and charges before buying their home, homebuyers may be less informed about the important details of those arrangements and the long-term implications of estate management arrangements. Indeed, given that estate management charges are capable of changing each year, and of increasing significantly, we do not see how homebuyers can be given any meaningful transparency about the level of likely future charges, or potentially significant one-off repair costs as amenities degrade over time. They could, however, be made aware that there are potentially large additional costs that come with buying the house and that these may be uncapped. Moreover, as set out above, there are clearly a number of homebuyers who have been motivated to contact us, and other organisations, who have felt ill- or mis-informed about estate management arrangements.
- 5.204 In addition, as things stand there are risks that homebuyers are not made aware of estate management charges and arrangements early enough in the process, including in Scotland where purchasers are committed at an earlier stage in the sales process than they are in England and Wales. In Scotland, when the 'missives' are concluded the sale becomes legally binding and generally this happens much earlier in the sales process than in England.
- 5.205 As homebuyers progress through the purchasing process, they are likely to become psychologically committed to purchasing the home, so it is essential that information in relation to estate management arrangements, and their implications

²⁶⁸ Chartered Trading Standards Institute (CTSI), [Consumer Codes Approval Scheme \(tradingstandards.uk\)](https://tradingstandards.uk)

²⁶⁹ CTSI, tradingstandards.uk/business-hub/prospective-code-sponsors/

²⁷⁰ [NHOS - The New Homes Ombudsman Service](https://nhos.org.uk).

for the future, are disclosed at the earliest possible opportunity, and before they are committed to the purchase.

5.206 While the NHQC has provisions that address transparency in relation to estate management fees, and many developers are signed up to this, we note that it is a voluntary scheme and does not provide complete coverage of the sector.

5.207 We therefore consider that some homebuyers are poorly informed about estate management arrangements, and the implications of such arrangements, and that existing consumer protections do not go far enough to adequately address this issue. In particular, those homebuyers who are poorly informed are unable to exercise informed choice in the house buying process.

5.208 We also observe that the size of the estate management fee relative to the purchase price of the house may mean that even where an estimate of the likely level of fee is given, some homebuyers will not engage with this information, and even if they do, they may not necessarily be in a position to take a different decision about whether to purchase their home, or be in a position to shop around for a home on the basis of the possible size of an estate management charge. Therefore, we consider that greater transparency may not improve outcomes for some consumers, although as noted above, it could serve to raise awareness of potentially large and unpredictable additional costs that come with buying the house and that these are uncapped.

Quality of amenities and estate management services

5.209 Our concerns around quality centre on four areas:

- (a) The standard of construction of amenities, with evidence of amenities being built to a poor standard and or/not to the standards required for adoption, potentially requiring expensive repairs to upgrade them.
- (b) Lack of responsibility and accountability for maintenance, with evidence of households not knowing who is responsible for the upkeep of specific amenities on their estate.
- (c) The quality of maintenance and repair of amenities; and
- (d) Customer service and complaints-handling in relation to the ongoing maintenance and repair of amenities.

5.210 As discussed above, our consumer research indicated that homeowners on one estate were facing significant bills to upgrade a pumping station that was not functioning properly and had not been built to an adoptable standard. Some respondents to our working paper also said that amenities had not been constructed in accordance with approved plans, and that relevant authorities had

refused to adopt them because the amenity was either incomplete or substandard. They provided examples of substandard highways works, unsurfaced/poorly surfaced footpaths, unfinished streetlighting, incorrectly/poorly installed sewers and drains, main sewers not being connected to houses for several years, and substandard and overflowing SuDS. We were told that one estate alone has unsurfaced footpaths and roads (causing potholes), unfinished street lighting, incomplete grassed areas, and incorrectly installed sewers requiring extensive remedial work.

- 5.211 A common issue highlighted in our consumer research was confusion as to who was actually responsible for maintenance, and a lack of clarity as to which party would be responsible for maintenance once a housing estate was completed. Examples of disputes between housebuilders and estate management companies over responsibility were raised. These disputes were often unresolved, with developers saying the infrastructure was ready to be handed over to the relevant authority or an estate management company, but the relevant authority was declining to adopt it, or the estate management company was unwilling to assume responsibility for its maintenance. Instances of parties not accepting responsibility or 'stand-offs' between housebuilders and estate management companies (including a property factor in Scotland) were also highlighted by homeowners in response to our working paper.
- 5.212 While our consumer research found that the initial quality of the communal green areas and other public amenities on estates was generally regarded as good, these standards were not always maintained over time, or evenly throughout estates, and in a sizeable minority of estates, basic communal area maintenance was seen as either patchy or of a poor standard.
- 5.213 Our consumer research also highlighted examples of poor maintenance of 'infrastructure' amenities, including poor pavement/kerb maintenance, badly maintained roads, poor drainage, and, on two estates, poorly maintained sewage pumping stations. While a sizeable minority of those interviewed expressed satisfaction with the value for money that their EMCs provided, others felt they were not getting value for money based on the quality of upkeep on their estates.
- 5.214 Some respondents to our statement of scope argued that they were being charged for services but saw no proof of work actually being done. Where work had been undertaken, many said that it was inadequate or incomplete, with infrastructure in a substandard condition.²⁷¹
- 5.215 Respondents to our update report raised similar issues, with some noting they had to personally assume the cost of maintenance work despite paying fees to the management company to carry this out. We also heard that households have been

²⁷¹ [Housebuilding market study – Summary of consumer responses \(publishing.service.gov.uk\)](#), page 1.

placed in a position where they have had to pay the management company to put right work that had not been carried out to a satisfactory standard in the first place.

- 5.216 We have also received complaints of poor customer service, and difficulties in communicating with management companies, including, as discussed in paragraph 5.224 below, in relation to homeowners seeking sellers packs from management companies to progress the sale of their homes. Similar concerns are published in online reviews of some estate management companies:

‘Shocking customer service. My house chain is at risk of falling over because they are taking weeks to answer basic queries.’

‘Our house chain fell through after 6 months because they took so long answering queries... mortgage offers in the chain expired’.

‘Report an issue and good luck if you hear anything from them!’

‘Probably the poorest customer service I’ve ever experienced’.

- 5.217 In our information requests to estate management companies, we asked them to set out the volume and nature of complaints they received. There were very wide differences in the number of complaints per 10,000 homes. The number of complaints received in 2022 varied significantly by company, ranging from one complaint to nearly 250 per 10,000 homes. We also note that two companies still had a large percentage of complaints in process, even for earlier years.
- 5.218 While all companies indicated that they have a complaints management process in place, there was a wide range in the average time taken to deal with the complaints, from under 10 days, to over 80, and wide variations in the number of complaints that were successfully upheld.
- 5.219 In terms of the nature of complaints received, several management companies highlighted ‘finance’ (ie estate management charges) as the most complained-about category, and notably households seeking clearer breakdown of their bills and invoices, with ‘maintenance work’ the other most complained-about category, and ‘customer service’ also featuring as one of the major topics of complaints.

Conclusions on quality of amenities and estate management services

- 5.220 There is likely to be wide variability in the standards of service delivered by estate management companies, and many households we have not heard from may be satisfied with the service delivered by their management company, and with the quality of their amenities.

- 5.221 Nonetheless, our evidence shows that households do suffer detriment where construction is below standard, where maintenance services are not carried out to an acceptable level of quality and where customer service is poor.
- 5.222 In practice it may be very difficult for households to hold anyone to account for the quality of work done and resolve problems - they may not contract directly with any sub-contractors who carry out maintenance, they may encounter problems resolving problems with their management company or they may face challenges in establishing who is actually responsible for maintenance. As we discuss below, switching away from a management company may not be possible, or may be very challenging in practice, and in such circumstances, management companies are not incentivised to improve the quality of their offering.

Practices that may impact the onward sale of a property

- 5.223 Respondents to our publications during the course of the market study, as well as respondents to the Welsh Government's consultation on estate charges, have expressed concerns at challenges that they have faced in selling their property due to estate management arrangements.
- 5.224 One of the reasons cited by respondents was that management companies have issued homeowners with management packs, at the cost of several hundred pounds, to progress their sale. One respondent to our working paper said that they were asked to pay just under £500 for such a pack, and called for a limit on the amount that can be charged. According to several respondents, this information was not conveyed to them until the point of sale. As noted at paragraph 5.139, where we discuss housing estates with more than one management arrangement in operation, we heard that homeowners in this scenario were required to pay two management companies for management packs from each to progress the sale of their property. A conveyancer that responded to the working paper told us that they 'have seen three different companies on one site meaning the costs for the legal owner (whether it is freehold or leasehold) means that they have to pay 2 or 3 times for separate information packs.'
- 5.225 There have also been complaints about the length of time it has taken for management companies to provide these packs, which has delayed the sales process and therefore risked the sale of the property. The same law firm referenced in paragraph **Error! Reference source not found.** submitted that some management companies are also very difficult to contact by telephone and do not respond to emails chasing for the certificates, delaying registration with the Land Registry. They called for regulation to be imposed in this respect.
- 5.226 In response to our working paper we received a submission on behalf of households on a housing estate in England which stated that sales had fallen through for some residents when the arrangements for the management of the

public space emerged during the sale. Five lawyers responding to the Welsh Government's consultation on estate charges indicated that they had encountered sales falling through because of the existence of an estate charge.²⁷² Examples of why this had happened included the buyer pulling out of the sale as fees amounted to over £500 a year, and buyers deciding not to make an offer having discovered an estate charge existed with staff not able to confirm that it was capped and that the Section 121 Law of Property Act 1925 provisions did not apply.

5.227 The Conveyancing Association Protocol for England and Wales offers guidance to conveyancers and addresses the issue of estate charges.²⁷³ Part of the Protocol in relation to estate charges states:

'Advise clients of terms which may be considered onerous and would not be accepted by major lenders. Eg, Nationwide require estate rentcharges over £500 per annum to be referred for approval' [Clause 7.1]

'Ensure that the drafting of rentcharges excludes the remedies to enter or lease the property to recover arrears whether demanded or not' [Clause 7.2].

5.228 Having reviewed Nationwide's Property and Construction lending criteria (aimed at professional intermediaries),²⁷⁴ we note that this states in relation to estate charges that:

'Charges must be reasonable at all times. Where charges are greater than £500 per annum, we'll need to be advised what the charges cover so the valuer can assess whether the valuation is affected'.

5.229 We note that, while not common, data provided to us by estate management companies shows that charges in the region of £1,000 per annum are being applied.

Conclusions on the impact of estate management charges on resale

5.230 The evidence we have seen during the course of the market study indicates that the existence of private estate management arrangements can have a detrimental impact on consumers' ability to sell their home, resulting in abandoned sales and the associated costs incurred,²⁷⁵ and potentially downgraded valuations.

²⁷² Welsh Government, [Estate charges on housing developments – summary of responses \(gov.wales\)](#), page 73.

²⁷³ [Conveyancing Association Protocol for England and Wales, Fifth Edition \(2023\)](#)

²⁷⁴ [Property and construction | Nationwide for Intermediaries \(NFI\) \(nationwide-intermediary.co.uk\)](#)

²⁷⁵ See eg: 'Freehold charges cost us our dream home' - BBC News.

5.231 It also introduces additional one-off costs for consumers, eg in the form of management packs required to progress a sale, which can be duplicated where a household is liable to more than one management company. In its response to our working paper, one housebuilder expressed its support for a requirement that any information about the [estate management] arrangement that a household reasonably requires to progress the sale of their home should be provided without charge.

Consequences for non-payment/late payment of charges

5.232 We have considered concerns that sanctions available under Section 121 of the Law of Property Act 1925 where a rentcharge is in place are disproportionate and if threatened or enforced, can have a significant financial and emotional detriment on consumers.

5.233 To illustrate, we have seen notices served on homeowners and their mortgage companies:

(a) One solicitor's letter addressed to a mortgage company stated:

'Should your mortgagor fail to comply with the Notice [under s121 of the Law of Property Act 1925] and make payment of the requested sum of [£1000-1500] we are instructed to issue possession proceedings, with a view to repossessing the property on behalf of the management company.

Please note, that to obtain possession under the above detailed section neither a County Court Judgment nor consideration by a Leasehold Valuation Tribunal is required.

If payment is not made to us within 14 days of this notice we will enter into possession without any further notice.'

(b) Another stated:

'Should our client grant a lease or re-enter the property, then this will have a detrimental impact on the value of your property and may result in our client applying for a possession order and ultimately our client obtaining an eviction in respect of the property.'

5.234 Our review of transfer deeds provided by the large housebuilders as part of the market study would tend to suggest that the industry is generally not using estate rentcharges as a way to secure payment of estate management charges (although there may be some exceptions). A number of large housebuilders do not use rentcharges as a matter of standard practice. In these cases, there will be a provision in the plot transfer deeds expressly stating that the estate management charge does not constitute a rentcharge. Further, we observed from our review of large housebuilder transfer deeds that the large majority of housebuilders

expressly disapply the remedies available under Section 121 of the Law of Property Act 1925. By expressly excluding these statutory remedies, the deeds of transfer remove the ability of the management company to enforce them against homeowners in order to secure payment of a service charge (or to enforce any other covenant the homeowner entered into on plot transfer).²⁷⁶

- 5.235 Of the transfer deeds which did expressly refer to a 'rentcharge' for the purposes of facilitating the estate management charge (which was the case for 3 large housebuilders), all three also disapplied the remedies.
- 5.236 Our review of the transfer deeds therefore suggests the industry approach is currently to exclude the possibility of using estate rentcharges, and the remedies available under the Law of Property Act 1925, to impose and enforce obligations relating to payment of an estate management charge by homeowners on newbuild private estates. However, they have been used and as we discuss below, we have clear evidence of threats being made to enforce those remedies by management companies.
- 5.237 One large housebuilder that responded to our update report suggested that the 'disproportionate sanctions under the Law of Property Act 1925, s121, have largely been addressed by the UK Finance Lenders Handbook, so we would not expect any new estate rentcharges created by developers to include those disproportionate sanctions.'
- 5.238 UK Finance advised us that the UK Finance Lenders' Handbook instructions do not specifically include estate rent charges in the generic instructions (known as 'Part 1'). However, several lenders use the Handbook's lender-specific instructions (known as 'Part 2s') relating to leasehold properties and/or management companies to give specific instructions around estate rent charges. For example, we note that Nationwide's Part 2s instructions in relation to estate rent charges state that:

'In the event of non-payment the agreement must either:

Specifically prohibit the collector/recipient from being able to create a lease over the property, or

If a lease is created the agreement must clearly state that on payment of all arrears, costs of collecting arrears, all legal costs including court costs and costs of creating and surrendering the lease, then the lease must be surrendered. All costs must be reasonable. The agreement must

²⁷⁶ We note that 9 out of the 11 large housebuilders disapplied the Section 121 Law of Property Act 1925 remedies in their form TP1s and included provision for management companies not to be able to rely on these remedies to collect outstanding estate management charge payments from residents.

specifically state no premium can be charged to surrender the lease. If the agreement doesn't include these details a deed of variation is required.²⁷⁷

- 5.239 We note that other lenders set out specific criteria where rentcharges are payable, including indicating that this may be acceptable where provisions under Section 121 of the Law of Property Act have been excluded under the estate rent charge clause.²⁷⁸
- 5.240 However, it may be the case in practice that for historic estate management arrangements (eg those put in place 5 or 10 years ago), the approach of excluding the remedies available under Section 125 Law of Property Act 1925 was not adopted and so the draconian measures available to rentowners (ie management companies here) remain available. A homeowner that responded to our working paper indicated that one of the 11 large housebuilders had included such remedies within their deeds, which was identified by the homeowner's conveyancer. The homeowner told us they negotiated the removal of the clause, but this was 'not straightforward.' They also said that the housebuilder refused to make the amendment for the whole estate and 'as such the majority of the estate ... are left with this archaic, unreasonable remedy within their deeds.'
- 5.241 As noted above, we also have clear evidence of threats being made to enforce those remedies by management companies. Six estate management companies told us that, for the three years to 31 December 2022, they – or parties acting on their behalf, such as solicitors or debt recovery agencies – had issued letters to freeholders in England and Wales warning that they may enforce the remedies available under Section 121 of the Law of Property Act 1925 to secure payment of any outstanding charges. However, none of those companies instigated follow-on enforcement action using the remedies available under Section 121 of the Law of Property Act 1925.^{279,280} We have been told that in some circumstances, such letters may be issued on behalf of a client of the estate management company, rather than directly on behalf of the estate management company. While the numbers of such letters issued are generally low relative to the overall numbers of relevant units under management, we note that the emotional impact on individuals in receipt of such letters is likely to be significant.
- 5.242 One of those estate management companies provided data showing that it has given written warning, via its solicitors, that it may enforce the remedies available

²⁷⁷ [Nationwide Building Society - UK Finance Mortgage Lenders' Handbook](#), clause 5.15.2a. It notes that these requirements also apply where residents of the estate are members/shareholders of the management company and that the requirements will only apply to a statutory rent charge and not where the payment obligation is created by a personal positive covenant/restriction.

²⁷⁸ As set out in [Lenders' Handbook - UK Finance Mortgage Lenders' Handbook](#), Answers for England and Wales, Question 5.15.2.

²⁷⁹ One company noted that it had issued such letters on less than ten occasions over the period in question.

²⁸⁰ Another noted that the number of such letters issued is very low compared with the overall number of relevant units under management and it had not taken any follow-on enforcement action. It also noted that any action would always be on behalf of its client and not directly on its own behalf.

under Section 121 of the Law of Property Act 1925, issuing, on average, 855 written warnings a year between 2020 and 2022. It explained that in a small number of cases (on average 7 cases in each of those years) its external solicitors instigated small claims actions for recovery of the outstanding debts, obtained judgment and then served a notice under Section 121 of the Law of Property Act, noting that it is not their external solicitor's practice to issue an application for possession, despite warning this may occur.

- 5.243 One of the estate management companies that indicated it had not taken enforcement action under section 121 of the Law of Property Act 1925 stated that: if a debt over a threshold of £100 is outstanding after 7 days from a final reminder being sent, a matter may be referred to solicitors for debt recovery action, and a Section 121 'Right of Re-entry notice' may be issued by the solicitors to both the mortgagee and the mortgagor. It noted that in all cases it is expected that where a mortgage is in place, the mortgagee will step in and settle the debt. Other companies have indicated they also pursue outstanding payments as debt claims.
- 5.244 We have also seen evidence of Deeds of Variation (DOV) being drawn up or sought to remove threats of people's homes being repossessed, should rentcharges not be paid on time, with costs being incurred by homeowners, and purchasers' lenders may also require this in certain circumstances in order for a purchase to go through.

Conclusions on sanctions for non-payment

- 5.245 When considering the balance of power between homeowners and estate management companies, an important factor is the legal route for securing the estate charge. In England and Wales, where a rentcharge has been created there are two possible routes for securing payments that are owed (assuming these remedies have not been disapplied).
- 5.246 Companies should have the means to recover sums of money that are owed to them, but those means should be proportionate to the sums owed. Based on the evidence we have reviewed, where remedies under Section 121 of the Law of Property Act 1925 are available they are significantly disproportionate to the sums owing and are likely to cause considerable distress to homeowners when they are threatened with enforcement action, and significant emotional and financial harm should threats be followed through.
- 5.247 Several respondents to our working paper, including some large housebuilders, and an estate management company agreed that these remedies should be abolished in relation to the non-payment of estate management charges. In November 2023 in response to the working paper, the Law Society submitted that it hoped the 'inappropriate use of s121 remedies will be addressed in the forthcoming Leasehold and Freehold [Reform] Bill.' In this regard we note that an

amendment to the Leasehold and Freehold Reform Bill has been tabled to omit Section 121 of the Law of Property Act.²⁸¹

- 5.248 Part 4 of that Bill, as introduced, also include provisions for demands for payment to be made in a specified form and containing specified information, where 'specified information' means specified in regulations made by the Secretary of State.²⁸²

Switching estate management company

- 5.249 Submissions received from homeowners during the course of the market study have highlighted the difficulties they face in switching estate management company. In response to our update report, one individual told us:
- 'We have no access to competition ie we are locked into one managing agent chosen by our developer.'
- 5.250 In our information requests to estate management companies, we sought to understand whether households have the ability to switch to an alternative management company.
- 5.251 The narrative responses we received indicated that, where a management company is acting as the appointed agent for an RMC, management agreements will often allow for termination of the existing contract, generally where three months' notice is given. Some management companies indicated residents can switch on the expiry of an existing agreement or can serve notice where a breach has been established. We also heard from some large housebuilders that where the arrangement takes the form of an RMC, there should not be high barriers to switching. However, as noted at paragraph 5.127 where we discuss the RMC model of estate management, there can still be significant challenges with switching under such a model.
- 5.252 The responses to our information request indicate that, for embedded management company arrangements, TP1 terms may include the ability to transfer to another management company with some parties noting that 50% of homeowners must vote to serve notice to effect this, after an initial period. Others noted they would not usually provide notice or allow switching other than where breaches have occurred. However, as reported at paragraph 5.131, where we discuss the embedded management company model, in some circumstances, switching is not possible at all.²⁸³

²⁸¹ House of Commons, [Leasehold and Freehold Reform Bill \(Amendment Paper\), NC4](#).

²⁸² Clause 45 Leasehold and Freehold Reform Bill (as introduced).

²⁸³ For example, an individual homeowner that responded to our working paper submitted: 'Regarding switching our management company. We have no right to do this as our TP1 doesn't permit it.'

- 5.253 Asked what the main barriers to switching are, estate management companies identified obtaining collective agreement from residents to switch, parties reaching agreement on termination, costs (including termination fees and legal transfer fees if the management company owns the land), and a lack of guidance issued to homeowners on how to switch. Obtaining collective agreement was also highlighted as a key barrier by individual homeowners. This was raised by a homeowner in Scotland who also told us that in their case they have no legal means of removing factors if the developer – whom we were told holds a casting vote by virtue of the deeds – does not support a majority vote. They suggested that developers should not be allowed to place restrictive clauses in deeds which ‘protect only their business interests by making switching too difficult.’ The respondent also said that homeowners in another development in Scotland who have tried to dismiss their factors and reappoint a company of their choice going through the process set out in the deeds ‘have been disregarded by the factors on technical grounds’ and that ‘The First Tier Tribunal decided it could not help with the matter required to be dealt with in court.’ A housebuilder said that requirements to transfer biodiversity net gain land may create friction in the switching process and prevent some estate management companies from being appointed altogether.
- 5.254 As outlined above and at paragraphs 5.114 to 5.132, the contractual structure of estate management arrangements can impede customers from switching to an alternative provider in search of an improved service or price. This is borne out in the data that we have received from estate management companies:
- (a) Two estate management companies which in aggregate operate (close to) 100% embedded management contracts for relevant estates had only one lost contract between them over the period 2020-2022 and gained no new contracts via switching from an alternative provider.
 - (b) In addition, another five estate management companies with a range of contract types with homeowners for relevant estates had very few lost contracts – a maximum of two in any year in the period 2020-2022, and with zero lost contracts in most cases.
 - (c) Of the remaining seven companies, we selected two that had the largest absolute number of lost contracts for relevant estates (42 and 80 respectively in 2022) and where this represented a larger proportionate loss from their portfolio (a loss of 4% and 10% of the contracts they held at the end of the previous year respectively). We requested that these two companies provide us with details of recent lost contracts for relevant estates to understand the extent to which homeowners/RMCs are able to instigate a switch:

- (i) In one case, the vast majority were lost contracts with RMCs, ie the RMC instigated the switch.²⁸⁴
- (ii) In the other case, just under half were lost contracts with RMCs (ie the RMC instigated the switch), while the remainder of switches were instigated by developers, or specific freeholders.
- (iii) In relation to RMCs, where the estate management company knew the reasons for the loss of the contract it was related to price or quality concerns.

Conclusions on switching

- 5.255 Our data analysis bears out the theory that it is possible for homeowners that are part of an RMC to switch provider to seek better terms, and therefore to exert some pressure on estate management companies to provide better services and prices. However, the low numbers of switches we have observed, alongside other evidence we have seen, including that set out in the section on the RMC model (see paragraph 5.127) shows that homeowners can face significant barriers to doing so, particularly in terms of achieving the collective agreement of estate residents.
- 5.256 Our analysis of the data on switching in respect of embedded management arrangements alongside other evidence we have seen on this (including that set out in the section on the embedded management model, see paragraphs 5.131 to 5.134) shows that homeowners may not be able to switch at all, or face very significant barriers to doing so, and that in practice, switching is negligible.
- 5.257 The lack of competitive constraints in these circumstances results in a significant power imbalance between estate management companies and homeowners. Homeowners who are dissatisfied with their private estate management arrangements are severely constrained in their ability to exercise choice and thus drive competition between estate management companies on service quality and price.

Consumer protection and redress

- 5.258 Homeowners subject to private estate management arrangements enjoy protections afforded under general competition and consumer law, like consumers in many markets across the UK. For example, since the introduction of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) in 2009, businesses in the UK have been under a legal duty not to omit or hide information

²⁸⁴ The other two cases were a termination by the developer prior to handover to an RMC, and a termination by the estate management contract due to specific circumstances.

which is material to the average consumer's transactional decision. Material information is defined as 'information which the average consumer needs, according to the context, to take an informed decision.'²⁸⁵ In addition, under Part 2 of the Consumer Rights Act 2015 (CRA), the terms of estate management and property sales contracts must be transparent and fair.²⁸⁶ A term is unfair if it causes a significant imbalance in the parties rights, to the detriment of the consumer, contrary to good faith. An unfair term is not binding on the consumer.

5.259 In this section, we consider:

- (a) The ability of homeowners to challenge the level of charges and quality of service through contractual provisions, eg in their deeds and at common law.
- (b) Specific protections available to homeowners in England, Scotland, and Wales and channels for redress.

Contractual provisions and common law

5.260 In our review of transfer deeds, we looked for provisions concerning the rights of transferees (ie homeowners) to challenge the level of a management charge or the quality of services provided by the management company.

5.261 We found that in some cases, though not all, there is a way for the transferee to challenge the management charge being applied, often with the matter being determined by an independent person such as an expert appointed by the Royal Institute of Chartered Surveyors.

5.262 While this approach to challenging the estate management charge and service level appears to be the norm amongst the large housebuilders, it is unclear how difficult it is in practice to bring about such a challenge and the deeds tell us nothing about the level of expense involved which may be a significant deterrent to a homeowner minded to challenge the level of their estate management charge. Furthermore, where there is no formal mechanism for challenging the service charge included in the transfer deeds, the only recourse the homeowner will have is to challenge the reasonableness of the sum charged in court. This will be a time-consuming, expensive, and complicated legal process which many homeowners will not be prepared to engage in given the sums involved. The

²⁸⁵ Regulation 6(3) The Consumer Protection from Unfair Trading Regulations 2008. Guidance issued in November 2023 by the National Trading Standards Estate and Letting Agency Team on [Material information in property listings \(sales\)](#) states at 3.1: 'There are other aspects of freehold title which may be relevant in some properties which are briefly covered below. If these apply to the property, they should also be disclosed on the listing: Freehold with managed common areas - Some freehold properties may have common areas which are managed on behalf of all the properties which are permitted to use / access them, such as a car park, garden areas, staircases, and lobby/reception areas. If there are fees payable in respect of this, these should be included on the listing. The property owner should know these details.'

²⁸⁶ However, terms which define the main subject matter of a contract, or set out the price, may not be challenged provided they are transparent and prominent.

outcome is also likely to be highly uncertain, and there is a risk that the homeowner ends up responsible for the other side's costs.

- 5.263 In addition, in circumstances where a homeowner challenges the estate management charge being applied by a management company, it is common (based on what we have seen) that the homeowner must still pay the management company the sum regardless of whether their challenge is upheld. The management company will hold the sum and, should the transferee's challenge be upheld, the management company will apply the sum as a credit against their next estate management charge payment. This may seem unfair on the face of it as: (i) the homeowner still has to pay the charge even though they are contesting the amount (and the charge may be a significant sum with consequences for their financial wellbeing), and (ii) if their challenge against the estate management charge level succeeds, they still do not receive an immediate cash refund but have to wait for a credit to be applied to the following year's service charge.
- 5.264 The rights which are conferred in the deeds and at common law to new build freehold owners can be contrasted with the statutory rights leaseholders have to challenge service charges and management standards.

Statutory rights in England and Wales

- 5.265 A key concern raised about estate management arrangements and charges on freehold estates relates to the ability (or lack thereof) of homeowners to challenge the management company on the amount of the estate management charge and on the nature and quality of the services being provided in return. Currently, freeholders who pay service charges in England and Wales do not have the equivalent statutory rights as leaseholders to challenge unreasonable service charges and the standard of work carried out. However, this is likely to change with the introduction of the Leasehold and Freehold Reform Bill.
- 5.266 The Leasehold and Freehold Reform Bill was introduced into Parliament on 27 November 2023 and will apply to England and Wales.²⁸⁷ As introduced,²⁸⁸ Part 4 of the Bill concerning the regulation of estate management includes provisions to give freeholders the right to challenge at a tribunal the reasonableness of charges and standard of services provided, amongst other protections. Relevant provisions include:

²⁸⁷ [Leasehold and Freehold Reform Bill - Parliamentary Bills - UK Parliament](#) (as introduced).

²⁸⁸ We note that, given the time of drafting, our report does not highlight amendments to the Bill made in February 2024 in Public Bill Committee, or thereafter. Any references in this report are therefore to the Bill as introduced.

- That a charge demanded as an estate management charge is payable only to the extent that the amount of charge reflects relevant costs.²⁸⁹
- That costs incurred by an estate manager are relevant costs only to the extent that they are reasonably incurred, and where they are incurred in the provision of services or the carrying out of works, only if the works are of a reasonable standard.²⁹⁰
- A consultation requirement if costs incurred by an estate manager in carrying out works exceed an appropriate amount (to be set by regulations made by the Secretary of State).²⁹¹
- Time limits for charging – estate managers can charge for costs up to 18 months after incurring them, and estate managers must have notified the property owner of the requirement to pay the costs within the same time period.²⁹²
- A duty to publish an administration charge schedule setting out the amount or, if not possible to determine the amount before it becomes payable, how its amount will be determined.²⁹³ Further, administration charges are required to be reasonable.²⁹⁴
- A right for homeowners to request information specified in regulations made by the Secretary of State.²⁹⁵

5.267 Unlike leaseholders, freeholders do not currently have the right to apply to a First-tier Tribunal (or Leasehold Valuation Tribunal in Wales) to appoint a new manager or to take over the management of the estate via a Right to Manage Company. However, a clause has been tabled in the Leasehold and Freehold Reform Bill which would permit the Secretary of State to establish a Right to Manage regime for freeholders of residential property on private or mixed-use estates.²⁹⁶

5.268 In addition, a clause has been tabled which would allow homeowners to give their estate manager a notice of complaint (on certain matters²⁹⁷) as a precursor to

²⁸⁹ Clause 40(1)(a) and (b) Leasehold and Freehold Reform Bill (as introduced).

²⁹⁰ Clause 41(1)(a) and (b) Leasehold and Freehold Reform Bill (as introduced).

²⁹¹ Clause 42 Leasehold and Freehold Reform Bill (as introduced).

²⁹² Clause 43 Leasehold and Freehold Reform Bill (as introduced).

²⁹³ Clause 51 Leasehold and Freehold Reform Bill (as introduced).

²⁹⁴ Clause 53 Leasehold and Freehold Reform Bill (as introduced).

²⁹⁵ Clause 47 Leasehold and Freehold Reform Bill (as introduced).

²⁹⁶ House of Commons, Leasehold and Freehold Reform Bill (Amendment Paper), NC5

²⁹⁷ Those matters are: (a) that the estate manager— (i) is in breach of an obligation in relation to the dwelling, or (ii) in the case of an obligation dependent on notice, would be in breach of such an obligation but for the fact that it has not been reasonably practicable to give the estate manager the appropriate notice; (b) that sums payable by way of estate management charges by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, are not being applied in an efficient or effective manner;

making an application for appointment of a substitute manager.²⁹⁸ A further clause would allow homeowners to apply to the tribunal for the appointment of a substitute estate manager. Several conditions are set out in connection with applying for an appointment order.²⁹⁹

- 5.269 A further clause would enable the Secretary of State to make provision for estate management redress schemes through regulations, requiring estate managers to be members of redress schemes.³⁰⁰

Statutory rights in Scotland

- 5.270 As noted at paragraph 5.133, in Scotland property factors manage and maintain the commonly owned or used parts of residential land, for example, the common gardens or amenity areas in an estate.
- 5.271 The Property Factors (Scotland) Act 2011 is made up of three principal constituents: i) a mandatory register of property factors providing services to homeowners in Scotland ii) a Code of Conduct that specifies the minimum standard of service property factors must provide and iii) the Housing and Property Chamber (First-tier Tribunal for Scotland), to enable homeowners to report their property factors.
- 5.272 It is an offence to operate as a property factor without joining the register of property factors (the Register). There is a legal requirement in Scotland for all registered property factors to comply with the Code of Conduct. The Code of Conduct sets out the minimum standards that must be met, including details that must be included in the written statement of services (WSS).³⁰¹
- 5.273 The written statement must be simple and transparent, and include information about the services provided, costs of services, the complaints procedure and also how to change or end the arrangement with the property factor. Specifically, the WSS must set out the following matters, amongst others:
- The core services that the property factor will provide, including target times for taking action for both routine and emergency repairs.

(c) that an estate management charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(d) that an administration charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(e) that the estate manager has failed to comply with a relevant provision of a code of practice approved by the Secretary of State under Section 87 of the LRHUDA 1993 (codes of management practice). House of Commons, Leasehold and Freehold Reform Bill (Amendment Paper), NC10

²⁹⁸ House of Commons, Leasehold and Freehold Reform Bill (Amendment Paper), NC10

²⁹⁹ House of Commons, Leasehold and Freehold Reform Bill (Amendment Paper), NC12

³⁰⁰ House of Commons, Leasehold and Freehold Reform Bill (Amendment Paper), NC15

³⁰¹ [Property Factors \(Scotland\) Act 2011: Code of Conduct for Property Factors - Effective from 16 August 2021 \(www.gov.scot\)](http://www.gov.scot)

- The types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges, and how these fees and charges are calculated and notified to homeowners.
- The management fee charge by the property factor, including the fee structure and also the property factor's policy for reviewing and increasing or decreasing this management fee.
- What proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner is responsible for.
- Any arrangements relating to payments towards a deposit, float or floating fund, confirming the amount etc.
- Timing and frequency of billing; how payments will be collected; debt recovery procedures.
- Declaration of financial interests.
- Clear information that homeowners may (by collective or majority agreement or as set out in their title deeds) terminate or change the service arrangement.
- A clear statement confirming the property factor's procedure for how it will co-operate with another property factor to assist with a smooth transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners.
- Where land is owned by a maintenance company, a statement of the legal basis of the arrangement between the property factor and the homeowner and a description of the use and location of the area of land to be maintained, including a map where possible.

5.274 The Code does not require charges to be cost-reflective, although costs can be contested.

5.275 Homeowners who find that their property factor has breached the Code of Conduct or is not carrying out their duties as expected, can either apply to the First-tier Tribunal for Scotland (Housing and Property Chamber), or follow the process as set out in title deeds. The First-tier Tribunal can make a 'property factor enforcement order' (PFEO) if it finds that the property factor has not met the requirements of the Code. A PFEO may require a property factor to take certain actions, such as making a payment or providing information to the homeowner.

Failure to comply with a PFEO may result in the removal of the property factor from the Register.

- 5.276 In our working paper we asked whether protections afforded to households in Scotland by virtue of the Property Factors (Scotland) Act provide adequate protection, in accordance with the consumer protection principles we outlined in the working paper. The consensus from the few market participants that responded was that the consumer protection measures in Scotland provide adequate protection, and that introducing similar provisions in England and Wales would benefit homeowners in these nations. One of the respondents said that as a result of the Code of Conduct for Property Factors, property factors are transparent in their dealings with homeowners and provide them with easy access to the First Tier Tribunal (FTT).
- 5.277 Our consumer research suggests that the homeowners participating in the research who live in Scotland were happier with their property factor than residents in England were with their management company. Issues of transparency also appeared to be less frequent in Scotland than in England. However, one participant in Scotland called for estate management charges to be made more prominent earlier in the process (ie before they were legally committed to the sale).
- 5.278 A small number of homeowners who responded to the working paper did raise some concerns about the system in Scotland and we are also aware of a petition in Scotland of relevance (as discussed in paragraph 5.135 and below). Issues include:
- (a) A petition calling on the Scottish Parliament to urge the Scottish Government to amend the Property Factors (Scotland) Act to cover dismissal of property factors or bring forward other regulations that would achieve the same aim. The petition notes that this could include giving the First Tier Tribunal powers to resolve disputes related to the dismissal of property factors.³⁰²
 - (b) Linked to the petition described in a) above, a respondent to our working paper indicated that they were aware of homeowners in Scotland who tried recently to dismiss their factors and reappoint a company of their choice following the process set out in the deeds, but the factor 'frustrated this on technical grounds'. Reportedly, the First Tier Tribunal was unable to help, with the matter being required to be dealt with in court.
 - (c) An individual said that rather than delivering the standard of services as set out in the WSS when households complained that those services were not

³⁰² The Scottish Parliament: [PE2006: review and simplify the legislation in relation to dismissal of property factors](#).

being met, their factor re-wrote the WSS to reflect the lower standards. The individual said the FTT was unable to address this as it did not appear to breach any rules.

- (d) An individual called for a more streamlined method for homeowners to contest poor service and excessive charges, such as an independent Ombudsman, noting that charges they have disputed with the management company were not financially worth escalating to the First Tier Tribunal due to the small award per property for a successful challenge (on the particular matter in question), and the 'daunting and arduous' process of taking a matter through the Tribunal.
- (e) Concerns around backdated billing for costs incurred several years ago, with no cut-off point for historical costs.
- (f) Concerns highlighted in our consumer research that information on arrangements is not disclosed early enough in the process home buying, see paragraph 5.182.

Ombudsman schemes and consumer codes

- 5.279 All 15 estate management companies that we sent information requests to indicated that they have a complaints-handling process. Some are also members of redress schemes, such as the Property Ombudsman Scheme (TPO), which is approved by government to provide independent redress in relation to disputes between consumers and property agents.³⁰³ The majority of estate management companies that responded to our information request indicated that consumers have access to an ombudsman as part of the process for escalating a complaint about them if the consumer's complaint is not resolved through the company's complaints process.
- 5.280 As highlighted above, a clause tabled in the Leasehold and Freehold Reform Bill would enable the Secretary of State to make provision for estate management redress schemes through regulations, requiring estate managers to be members of redress schemes.³⁰⁴
- 5.281 In certain circumstances – see paragraph 5.202 – homeowners in England, Scotland and Wales may be able to raise matters in relation to transparency of information to the New Homes Ombudsman, where breaches of the New Homes

³⁰³ [The Property Ombudsman scheme: free, fair & impartial redress \(tpos.co.uk\)](https://www.tpos.co.uk); TPO also operates in Scotland: [TPO Scotland](#). TPO is approved by the Chartered Trading Standards Institute under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

³⁰⁴ House of Commons, *Leasehold and Freehold Reform Bill (Amendment Paper)*, NC15

Quality Code have occurred by those housebuilders who are members of the scheme.

Conclusions on consumer protection and redress

5.282 While freeholders' rights in England and Wales are being enhanced through the Leasehold and Freehold Reform Bill, we consider that these do not go far enough to protect homeowners subject to estate management arrangements and charges. Similarly, in Scotland although there is a consumer protection system in place under the Property Factors (Scotland) Act 2011 the concerns we have set out in paragraph 5.278 indicate that this too does not go far enough to protect homeowners living under such arrangements.

5.283 For example, we have concerns that:

- (a) Consumers are not provided with sufficient information pre-sale about the existence and implications of estate management arrangements to enable them to take informed decisions before being committed to a property purchase (whether contractually or psychologically). We consider that this cannot be satisfactorily addressed through non-statutory codes.
- (b) There is no statutory requirement for estate management companies to belong to an approved ombudsman / redress scheme,³⁰⁵ although this is changing in England and Wales. We have also heard that consumers are deterred from taking matters through tribunal or court processes.³⁰⁶
- (c) Households cannot readily change management company where they are dissatisfied with costs or standards of service, or where they wish to find a more competitive offering, ie on a 'no fault' basis.

Conclusions

5.284 The imposition of arrangements and charges related to the private management of public amenities such as roads, sewers and drains, SuDS, and public open spaces on new build housing estates is now a common aspect of the supply of new homes. Private companies increasingly provide and charge for such management services, whereas in the past the default position was that relevant authorities or bodies, in particular local authorities, would generally adopt such amenities.

³⁰⁵ Though we note a partial redress scheme exists in Scotland, that property factors are subject to.

³⁰⁶ See paragraph 5.278(d). We also described in our working paper (paragraph 3.194) that one household told us that taking their management company to the small claims court would be futile, as the management company is not prevented from adding its costs incurred/awarded against it, and any fine imposed, to the household's bill for the next year.

- 5.285 We conclude that, as a result of the proliferation of this model, and with some households unable to switch provider at all, households may face detriment in the form of the charges they pay, the quality of amenities available to them and the quality of management services they receive, the potential for disproportionate sanctions to be applied for outstanding charges, and the sometimes significant efforts required to achieve a satisfactory outcome in those regards.
- 5.286 The increasing prevalence of private management arrangements on new build housing estates is due to the combination of the discretionary nature of aspects of the legal framework underpinning adoption, the commercial incentives of housebuilders not to seek adoption and local authorities being unwilling to adopt amenities (largely for financial reasons). This situation is unlikely to improve without government intervention.
- 5.287 Even with greater protections in place for households, there is still likely to be a significant imbalance of power and misalignment of incentives between companies managing amenities available for wider public use and the subset of households required to fund their maintenance.
- 5.288 Also, even if households had greater control over the amenities on their estates, and with additional protections in place, the cost of maintaining amenities will remain hard for them to predict and control and is likely to be higher than it would otherwise be if managed by local authorities, given potential for local authorities to achieve greater efficiencies through economies of scale and locally based maintenance teams, and local authorities' focus on best value as opposed to the profit maximisation objectives of private firms.
- 5.289 Over time, the requirement to pay estate management charges will be likely to also depress the value of the homes subject to those charges.
- 5.290 Overall, therefore, we see a model that has emerged in recent years to become extremely prevalent on new build estates and that creates significant detriment for households over an extended period. Absent intervention we would expect to see this model increase in prevalence and the aggregate detriment to grow accordingly.

6. The planning systems

Introduction

- 6.1 The planning systems of England, Scotland and Wales play an important role in housebuilding markets across all three GB nations.
- 6.2 In this Section we provide an overview of these planning systems, covering the key features they have in common, as well as areas of difference.
- 6.3 We then present our analysis of how the planning systems in England, Scotland and Wales impact outcomes in the housebuilding market. One of the key aims of these systems is to achieve an outcome whereby a sufficient number and range of homes can be provided in the right locations to meet the needs of present and future generations. However, this is far from the only objective of the planning systems: there are also significant social, environmental and wider economic objectives.³⁰⁷ The exact objectives, and the emphasis placed on the various objectives, differ between each of the nations.
- 6.4 Our statutory duty is to promote competition for the benefit of consumers. In line with this, and the role of market studies in making markets work better for consumers, we have focussed our analysis largely on how the planning systems facilitate meeting housing need. However, we acknowledge this analysis is therefore necessarily partial and that policymakers taking decisions on the overall design of the planning systems have to consider the wider range of policy objectives.
- 6.5 To facilitate enough homes being built to meet housing need, the planning systems must help to ensure a sufficient amount of land is brought through the planning process and a sufficient number of planning permissions are granted. How the planning systems are designed and implemented is a key influence on land supply and hence the number of new homes that are built.
- 6.6 The planning systems are not the only factor that influences the number of new homes that are built. In particular, the land market will have an impact on the amount of land that is made available for development and the number of planning applications brought forward. If there are physical constraints on land supply, and/or competition in the land market is not working effectively, then the amount of land brought into the planning systems may be insufficient to meet housing need. We explore the land market in Section 7.

³⁰⁷ See: NPPF [National Planning Policy Framework](#) para 8; NPF4 [National Planning Framework 4](#) part 2; PPW [Planning Policy Wales - Edition 12](#) .

- 6.7 In addition, if downstream competition is not working effectively and this reduces the rate of build out of new homes, then more planning permissions are needed to build a given number of homes. We discuss this subject in Section 9.
- 6.8 In this Section we also present our analysis of the planning systems in England, Scotland, and Wales. This shows that across all three nations, the level of new housing delivery is below publicly stated targets.
- 6.9 We then set out the key issues we have identified with the planning systems which may contribute to this under delivery. These are:
- (a) Lack of predictability: decision making lacks certainty and consistency, which can reduce the willingness of developers to bring forward planning applications;
 - (b) Length and complexity of the planning process: it is lengthy, complex and costly to navigate, which can increase the risk associated with making planning applications; and
 - (c) Insufficiently clear incentives: it lacks internal consistency within its objectives and targets, meaning that LPAs may be insufficiently focused on meeting housing need.
- 6.10 We also consider how planning processes may disadvantage SME housebuilders in this Section. During this analysis we make reference to stakeholder feedback received in response to our November 2023 Planning Working Paper.
- 6.11 In addition, we have considered the system for securing developer contributions, the analysis of which is contained in Appendix J.

Overview of the GB planning systems

- 6.12 In this section we summarise the key aspects of the legal and policy framework for planning in England, Scotland and Wales.
- 6.13 Housing, environmental and planning policy are devolved to the respective legislatures in Scotland and Wales. Each of the nations of the UK has a ‘plan-led’ system, which means that LPAs develop local development plans and make decisions about development based on planning policy.
- 6.14 Each system is discretionary, whereby the LPA is responsible for deciding whether a proposed development should be allowed to go ahead and then granting, or refusing, planning permission. Planning applications should be decided in line with local development plans unless there are material considerations that indicate otherwise.

- 6.15 The Town and Country Planning Act 1990 (TCPA 1990), as amended, sets out the legislative framework for planning in both England and Wales, although there are differences in primary and secondary legislation as it applies to Wales.³⁰⁸ In Scotland, planning legislation and policy is distinct from the rest of Great Britain with the Town and Country Planning Act (Scotland) 1997, as amended by the Planning (Scotland) Act 2019, being the basis for the planning system.³⁰⁹
- 6.16 In relation to planning policy, all three nations have a national policy framework: the National Planning Policy Framework (NPPF) in England,³¹⁰ the Planning Policy Wales (PPW) in Wales,³¹¹ and the National Planning Framework 4 (NPF4) in Scotland.³¹² The legislation requires LPAs to have regard to these national policies when taking planning decisions.
- 6.17 In each nation, planning law requires LPAs to consult specified bodies ('statutory consultees') before a decision is made on a planning application.³¹³ The range of bodies consulted varies according to the nature of the development process.³¹⁴
- 6.18 In each nation, central government is ultimately responsible for overseeing the planning system including by producing national legislation, the policy and guidance against which the planning system is administered, and by monitoring local plan production.
- 6.19 We set out the key features of each planning system in turn.

England:

- 6.20 The main legislation is the Town and Country Planning Act 1990, which has been amended by a number of Acts including the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism Act 2011. The administration of the planning system in London is governed separately by the Greater London Authority Act (1999).
- 6.21 The NPPF sets the framework for planning and the building of houses in England. It was introduced in 2012 and has been updated since (in 2018, 2019, 2021 and 2023). The NPPF sets out the government's priorities and provides further detail on how the TCPA 1990 should be applied.

³⁰⁸ [The Town and Country Planning Act 1990](#)

³⁰⁹ [Town and Country Planning \(Scotland\) Act 1997 \(legislation.gov.uk\)](#); [Planning \(Scotland\) Act 2019 \(legislation.gov.uk\)](#)

³¹⁰ [The UK Government, National Planning Policy Framework](#)

³¹¹ [The Welsh Government, Planning policy Wales](#)

³¹² [The Scottish Government, National Planning Framework 4](#)

³¹³ See: [Consultation and pre-decision matters - GOV.UK \(www.gov.uk\)](#).

³¹⁴ Specific statutory consultees vary depending on specific circumstances of the application but in England include the Canal and River Trust, Environmental Agency, Forestry Commission, Health and Safety Executive, Natural England and Water and sewerage undertakers.

- 6.22 The NPPF sets out that each LPA must produce a local development plan for its area. The purpose of these is to identify sites for new development and set out policies that guide decision making on planning applications. The local plan should be based on up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. When preparing local plans, LPAs are required to involve the community by including in the process all those who have an interest relating to development in the area. LPAs must also submit every development plan document for independent examination.
- 6.23 The NPPF introduced a ‘presumption in favour of sustainable development’, meaning that applications should be approved if they are sustainable, if the local plan is not up-to date or where an LPA does not have a five-year housing land supply (5YHLS), which would mean that supply sufficient for 5 years of housing need could not be demonstrated. This is separate from the statutory ‘presumption in favour of a development plan’³¹⁵, which requires LPAs to make any planning determination in accordance with the development plan, with some exceptions. The statutory presumption will prevail in cases where there is conflict between the two.³¹⁶ The presumption in favour of sustainable development does not apply to so called ‘footnote 7’ land, such as greenbelt land or areas of outstanding natural beauty.³¹⁷
- 6.24 Local plans should set the strategic priorities for the area and be drawn up over an appropriate timescale – a minimum of 15 years – and anticipate long term requirements and opportunities. Local plans should be reviewed to assess whether they need updating at least once every 5 years and should then be updated as necessary.³¹⁸

³¹⁵ The TCPA 1990 provided in former section 54A that the development plan must be regarded so far as it is material. This requirement is now found in section 38(6) of the Planning and Compulsory Purchase Act 2004.

³¹⁶ For example, see *Barwood Strategic Land II LLP v East Staffordshire Borough Council and another* [2017] EWCA Civ 893. The High Court held that the statutory presumption in favour of a development plan in section 38(6) of the Planning and Compulsory Purchase Act 2004 is not displaced by the presumption in favour of sustainable development in the NPPF, which is a presumption of planning policy and not a statutory presumption. In practice, this means a development which does not earn the "presumption in favour of sustainable development" may still merit the grant of planning permission, and vice versa.

³¹⁷ Paragraph 11 of the NPPF states ‘Strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan. Footnote 7 defines area of assets of particular importance as: habitats sites and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest); and areas at risk of flooding or coastal change.

³¹⁸ See section 13 of the Planning and Compulsory Purchase Act 2004 for matters which may be expected to affect the development of an area corresponding to a local development plan, or the planning of its development.

- 6.25 The NPPF also introduced the concept of viability whereby required developer contributions could be challenged on the basis of the economic viability of a site.
- 6.26 Planning performance agreements (PPAs) were introduced as part of the of the NPPF in 2012, with the intention of providing increased certainty and dedicated resources for determining planning applications. Where PPAs are used, a different timeframe (rather than the 13 weeks statutory period) for determining planning applications can be applied.³¹⁹
- 6.27 The NPPF's 2018 update introduced the centralised Standard Method (SM) as the baseline for assessing local housing need (previously this was based on a local 'objective' assessment). The SM is the baseline for LPA housing targets and is an assessment of local housing population growth which is then adjusted for affordability and in some cases, there is an 'urban uplift'. It also introduced the Housing Delivery Test (HDT) where the presumption of sustainable development would apply where an LPA was not delivering more than 75% of its housing need target.³²⁰
- 6.28 NPPF sets out that for major developments at least 10% of the total number of homes should be affordable homes.

Scotland:

- 6.29 In Scotland, NPF4 was adopted in February 2023, replacing NPF3 and other Scottish Planning Policy.³²¹ NPF4 is a long-term spatial plan for Scotland that sets out where development and infrastructure is needed, as well as setting out the Scottish ministers' policies and proposals for the development and use of land. The focus of the plan is improved sustainability, with an emphasis on limiting urban expansion to optimise the use of land and improving the environment.
- 6.30 With regard to regional planning, the Planning (Scotland) Act 2019 introduced a duty requiring the preparation of Regional Spatial Strategy whereby a planning authority, or authorities acting jointly, are expected to prepare long-term spatial strategies for the strategic development of a regional area.
- 6.31 Scottish LPAs are required by law to prepare a local plan for their district. Local plans must be prepared at intervals of no more than 10 years or when required by the Scottish Ministers and must also include targets for meeting the housing need of people in the region to which the local plan is applicable.

³¹⁹ See: [Before submitting an application - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

³²⁰ The HDT measures the number of homes delivered over three years against a target based on local need.

³²¹ See NPF4: [National Planning Framework 4](#)

6.32 NPF4 sets out that for housing-led schemes, at least 25% of the total number of homes should be affordable homes.

Wales

(a) The Welsh planning framework is set out in Planning Policy Wales (PPW), which was first introduced in 2002 and last updated in February 2024 (12th version). The Welsh Government also sets out its National Development Framework in the Future Wales: The National Plan 2040, which focuses on providing solutions to issues and challenges at a national level, setting the direction for strategic development plans at regional level, as well as setting the direction under which LPAs must prepare their local plans at a local level.³²² The national plan is to be built on by regional plans in the form of Strategic Development Plans that aim to focus on issues that cross LPA boundaries.

6.33 PPW sets out that local plans are required to cover a 10–15-year period and must be reviewed by an LPA at least every four years from the date the plan was adopted.

6.34 In terms of planning law, the primary legislative framework in Wales includes (inter alia) provisions in the Town and Country Planning Act 1990 (as applied to Wales), the Planning and Compulsory Purchase Act 2004 and the Planning (Wales) Act 2015.³²³

Wider policy context

Approach to Housing Targets

6.35 **England:** There is a government commitment to deliver 300,000 new houses per year by the middle of the decade³²⁴. Alongside this, LPAs must conduct a local housing need assessment, as set by the Department for Levelling Up, Housing and Communities (DLUHC) using the SM. The current version of the SM was implemented in December 2020 after consultation.³²⁵ It introduced changes to help ensure that it 'delivers a number nationally that is consistent with the commitment to plan for the delivery of 300,000 new homes a year'.³²⁶ While the SM is the

³²² See the Welsh Government, [Future Wales: The National Plan 2040](#)

³²³ See also relevant provisions applicable to planning in Wales in the Planning Act 2008, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Local Government and Elections (Wales) Act 2021.

³²⁴ [Written statements - Written questions, answers and statements - UK Parliament](#)

³²⁵ See: [Government response to the local housing need proposals in "Changes to the current planning system" - GOV.UK \(www.gov.uk\)](#).

³²⁶ Proposed changes to the standard method for assessing local housing need: [Government response to the local housing need proposals in "Changes to the current planning system" - GOV.UK \(www.gov.uk\)](#).

baseline, it is not binding, and LPAs can adjust their needs target according to local circumstances. England does not have a national affordable housing target.

- 6.36 **Scotland:** LPAs must set out in their Local Housing Land Requirement for the area they cover. This is expected to exceed the 10 year Minimum All Tenure Housing Land Requirement (MATHLR). The MATHLR is the minimum amount of land, by reference to the number of housing units, that is to be provided by each planning authority in Scotland for a 10-year period.³²⁷ This acts as a minimum target for the local authority area, which LPAs are expected to exceed. LPAs are able to adjust the initial default estimates to arrive at a locally adjusted figure. However, they are required to explain the case for change and to submit this to the Scottish Government for assessment.³²⁸ The sum of the MATHLR targets set out in Annex E of NPF4 equates to land for 20,000 home per year. In relation to affordable housing, during the last parliamentary term (May 2016 to May 2021), the Scottish Government adopted a target of delivering 50,000 affordable homes and has since adopted a target of delivering 110,000 affordable homes by 2032.
- 6.37 **Wales:** LPAs must explain how they will ensure that their housing requirement and associated land supply will be delivered in their LDP. This must be based on evidence and express the number of market and affordable homes that the LPA considers will be required in their area over the plan period. In Wales, work published by the Welsh Government in August 2020 provided a central estimate of annual all-tenure housing need of 7,400. In relation to affordable housing, in July 2021 the Welsh Government committed to deliver 20,000 new low-carbon homes for rent within the social sector during the government term.

Developer contributions

- 6.38 Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. England, Wales, and Scotland all use these to require developers to contribute to the cost of infrastructure required to support new developments, including the provision of affordable housing.
- 6.39 **In England and Wales**, section 106 of the Town and Country Planning Act 1990 sets out that agreements (referred to as section 106 agreements) can be negotiated between those with an interest in the land and an LPA, if an application does not comply with the policy for the area, including when an LPA may have concerns about meeting the cost of providing new infrastructure.³²⁹ Section 106 agreements are legally binding and may either be in cash or kind, to undertake

³²⁷ See: [NPF4 Annex E](#)

³²⁸ See: [NPF4 Minimum All-Tenure Housing Land Requirement Guidance](#).

³²⁹ [The Town and Country Planning Act 1990, section 106](#)

works not included in the initial application, provide affordable housing, or provide additional funding for services.

- 6.40 Alongside section 106 agreements, in England and Wales, the Community Infrastructure Levy (CIL) is a levy that LPAs can charge new developments in their area to help pay for the supporting infrastructure.³³⁰ Planning obligations are sometimes set out in the form of an undertaking made by the developer alone (unilateral undertaking).
- 6.41 **In Scotland**, section 75 of the Town and Country Planning (Scotland) Act 1997 sets out the framework for agreements that can be negotiated between Local Authorities and developers.³³¹

Key differences between the nations

- 6.42 While the planning systems of all three nations are similar, there are some key differences:
- (a) **Regional planning:** unlike in Wales³³² and Scotland³³³, England no longer has a regional planning system³³⁴. However, it should be noted that few regional plans in these forms currently exist in Scotland and Wales.
 - (b) **Affordable housing:** Both the English and Scottish planning frameworks include a requirement for a percentage of new homes on developments to be affordable housing. While Wales does not have such a requirement, the Welsh Government has committed to build 20,000 new low-carbon social homes for rent between 2021 and 2026.³³⁵ Similarly, the Scottish Government has committed to deliver 110,000 affordable homes between 2022-32. There is no equivalent target in England.³³⁶
 - (c) **Targets:** In England there is an all-tenure housing target of 300,000 homes whereas in Scotland and Wales, there is no all-tenure housing target.
 - (d) **Incentives:** Unlike the English system, in Scotland and Wales there is no statutory equivalent to the presumption in favour of sustainable development

³³⁰ See: [CIL guidance](#)

³³¹ [The Town and Country Planning \(Scotland\) Act 1997, section 75](#)

³³² See sections 4-6 of the Planning (Wales) Act 2015 as originally enacted. Provisions in the Local Government and Elections (Wales) Act 2021 repealed the relevant sections of the Planning Act on regional planning so that responsibility for preparing SDPs resides with Corporate Joint Committees (CJCs) and not Strategic Planning Panels (SPPs). See also: <https://www.legislation.gov.uk/asc/2021/1/notes/division/3/8> and [planning-wales-act-2015-implementation-update-march-2021.pdf \(gov.wales\)](#)

³³³ [Planning \(Scotland\) Act 2019 \(legislation.gov.uk\)](#)

³³⁴ England was formerly divided into eight regions ([Regional Development Agencies Act 1998](#)). The regional level was abolished by the Localism Act 2011.

³³⁵ [Welsh Government Programme for government: update](#)

³³⁶ Although there is no formal government target for the provision of affordable housing in England, the government's [Affordable Homes Programme aims to deliver 180,000 new homes between 2021 and 2026](#)

or requirement for a 5YHLS. The Scottish Government removed the presumption in favour of development of sustainable development as part of the development of NPF4. This follows a previous decision of the Scottish Government to retain a reworded version of the presumption as part of a consultation on the Scottish Planning Policy in December 2020.³³⁷ In Wales, until March 2020, LPAs were required to attach ‘considerable’ weight to the lack of a 5-year housing land supply as a material consideration in determining planning applications for housing. This requirement was removed in March 2020 following a review, due in large part to the land supply situation in many Welsh LPAs meaning that they attracted a significant number of speculative applications.

Recent policy developments

The Planning White Paper

- 6.43 In August 2020, the UK government published the Planning White Paper (Planning for the Future).³³⁸ It proposed to reform the planning system in England with a move towards a rule-based or zonal planning system based on the classifications of land into identifying ‘Growth’, ‘Renewal’ and ‘Protected’ zones. It also sought to introduce a nationally set target of 300,000 homes per annum with binding targets for LPAs which would factor in land constraints. It also proposed to replace s106 agreements and the CIL with a new Infrastructure Levy (IL).
- 6.44 The UK government dropped plans for a zonal system in favour of attempts to incentivise the production of more up to date local plans through The Levelling Up and Regeneration Act. The UK government also dropped plans to set binding targets for LPAs. The government took forward the IL as part of the LURA.

The Levelling up and Regeneration Act (LURA)

- 6.45 The LURA introduces a series of changes to the planning system in England.³³⁹ The key relevant measures contained in the LURA are as follows:
- (a) **New National Development Management Policies (NDMP):**³⁴⁰ a new NDMP policy document will set out national policies on issues that apply to most local authorities (such as general heritage protection) to speed up the plan process and to make local plans easier to navigate.

³³⁷ See Section 2, [Scottish Planning Policy – finalised amendments: December 2020](#)

³³⁸ [Planning for the future \(publishing.service.gov.uk\)](#)

³³⁹ [Levelling Up and Regeneration Act 2023](#)

³⁴⁰ [Levelling Up and Regeneration Act 2023, Part 3, Clause 94](#)

- (b) **New Infrastructure Levy**³⁴¹: the current system of S106 and CIL are replaced with a new Infrastructure Levy.³⁴²
- (c) **Planning enforcement**³⁴³ : a range of measures to change the planning enforcement regime in order to speed up the development of permissioned land, including stricter penalties for breaches, and measures to encourage implementation and completion of developments.
- (d) **Design**³⁴⁴ : every LPA to introduce a design code, as part of the government’s objective to encourage beautiful buildings.
- (e) **Regeneration**³⁴⁵: LPAs will have powers to compulsorily purchase land for regeneration purposes³⁴⁶.
- (f) **Empowerment of communities**³⁴⁷: increased community consultation, giving further weight to neighbourhood plans and introduces street votes which would allow for intensification of housing development on existing residential streets.
- (g) **Housing delivery**³⁴⁸: LPAs will be required to make a new development plan within 30 months and should be updated every 5 years. LPAs will be required to carry out two rounds of community engagement before plans are submitted for independent examination.
- (h) **5YHLS**³⁴⁹ : The Act removes the requirement for LPAs with an up-to-date plan to demonstrate continually a deliverable 5-year housing land supply.

December 2023 NPPF update

6.46 The UK government brought forward the following relevant housing policy changes contained within the December 2022 draft NPPF into the December 2023 adopted NPPF.

³⁴¹ [Levelling-up and Regeneration Act 2023, Part 4, Clauses 137-140](#)

³⁴² The rates and thresholds will be set and raised by LPAs meaning that rates are tailored to local circumstances. The levy will be charged on the value of the property when it is sold and applied above a minimum threshold – rates will be set as a percentage of gross development value. Unlike the CIL system, the new Infrastructure Levy will be mandatory.

³⁴³ [Levelling-up and Regeneration Act 2023, Part 5, Clauses 115-121](#)

³⁴⁴ [Levelling-up and Regeneration Act 2023, Schedule 7, Clause 15F](#)

³⁴⁵ [Levelling-up and Regeneration Act 2023, Part 9, Clauses 180-190](#)

³⁴⁶ This is in addition to current powers for promoting or improving the economic, social or environmental well-being of the area

³⁴⁷ [Levelling-up and Regeneration Act 2023, Neighbourhood Plans, Clauses 98-99 and Street Votes, Clauses 106-108](#)

³⁴⁸ [Levelling-up and Regeneration Act 2023, Part 2, Clauses 92-101](#)

³⁴⁹ [Levelling-up and Regeneration Act 2023, Schedule 7](#)

Housing Targets

- 6.47 The new NPPF³⁵⁰ confirmed that the standard method for calculating housing need is an “*advisory starting point*”³⁵¹ for LPAs in determining housing numbers. Furthermore, more explicit indications are given of the types of local characteristics which may justify the use of an alternative method of assessing housing need.
- 6.48 The NPPF retained the uplift of 35% to the assessed housing need for the 20 largest towns and cities in England³⁵². The NPPF has also been amended to state that the uplift should be accommodated within those cities themselves, except where there are cross boundary redistribution agreements in place.
- 6.49 The UK government added a specific expectation to meet need for retirement housing, housing with care, and care homes amongst others³⁵³.

Five-year housing land supply (5YHLS)

- 6.50 LPAs with an up-to-date Local Plan no longer need to show a deliverable 5YHLS³⁵⁴.
- 6.51 LPAs will no longer have to provide 5YHLS buffers of 5% or 10%. However, in a change to what was consulted upon, a 20% buffer is still to be applied if Housing Delivery Test targets are not met³⁵⁵.
- 6.52 LPAs can include historic oversupply in their 5YHLS calculations in decision-making. The NPPF has been amended to include a reference to the “*circumstances in which past shortfalls or over-supply can be addressed*”³⁵⁶. The government’s consultation response said DLUHC will offer further clarification on how this can be done in guidance.

Local Plans

- 6.53 Where emerging Local Plans have been submitted for examination or are subject to Regulation 18 or 19 consultation which include both a policies map and housing allocations, LPAs will only have to demonstrate a four-year housing land supply³⁵⁷.
- 6.54 The UK government has extended the protection of Neighbourhood Plans from two to five years. It has also removed tests which had meant LPAs needed to

³⁵⁰ [DLUHC, National Planning Policy Framework, December 2023](#)

³⁵¹ DLUHC, National Planning Policy Framework, December 2023, paragraph 61

³⁵² DLUHC, National Planning Policy Framework, December 2023, paragraph 62

³⁵³ DLUHC, National Planning Policy Framework, December 2023, paragraph 63

³⁵⁴ DLUHC, National Planning Policy Framework, December 2023, paragraph 76

³⁵⁵ DLUHC, National Planning Policy Framework, December 2023, paragraph 79

³⁵⁶ DLUHC, National Planning Policy Framework, December 2023, paragraph 77

³⁵⁷ DLUHC, National Planning Policy Framework, December 2023, paragraph 226

demonstrate a minimum housing land supply and have delivered a minimum amount in the Housing Delivery Test in order that Neighbourhood Plans benefit from the protection³⁵⁸.

- 6.55 The UK government also brought forward the following new housing policy text changes not originally contained within the December 2022 draft NPPF:
- (a) LPAs are not required to review their green belt boundaries during plan-making but does not explicitly link this issue to housing supply³⁵⁹.
 - (b) Setting out the objective to protect the character of local areas stating that significant uplifts in the average density of residential development may be inappropriate if the resulting built form would be “*wholly out of character with the existing area.*”³⁶⁰
 - (c) Instructing LPAs to support small sites to come forward for community-led housing and self-build and custom build housing³⁶¹.
 - (d) A change effectively dropping the previously existing “*entry-level exception sites policy*” and replacing it with an exception site policy for community-led housing³⁶².
- 6.56 The UK government also outlined potential future consultations in the following areas³⁶³.
- (a) The new NPPF did not proceed with reforms which would have ‘switched off’ the application of the presumption in favour of sustainable development as a consequence of under-delivery against the Housing Delivery Test, for those authorities which had delivered more than 115% of required permissions. However, they said it still supports this idea and that it could be introduced in a future policy update³⁶⁴.
 - (b) Past “*irresponsible planning behaviour*” by applicants could, in the future, be considered when applications are being determined³⁶⁵.

³⁵⁸ DLUHC, National Planning Policy Framework, December 2023, paragraph 14

³⁵⁹ DLUHC, National Planning Policy Framework, December 2023, paragraph 145

³⁶⁰ DLUHC, National Planning Policy Framework, December 2023, paragraph 130

³⁶¹ DLUHC, National Planning Policy Framework, December 2023, paragraph 70

³⁶² DLUHC, National Planning Policy Framework; December 2023, Paragraph 73

³⁶³ DLUHC, [Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation](#), 19 December 2023

³⁶⁴ DLUHC, Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation, 19 December 2023 - Question 19

³⁶⁵ DLUHC, Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation, 19 December 2023 - Question 30

- (c) Pushing ahead with measures designed to speed up build out of sites. Last year, they proposed three interventions that:
- (i) Data will be published on developers of sites over a certain size who fail to build out according to their commitments.
 - (ii) Developers will be required to explain how they propose to increase the diversity of housing tenures to maximise a scheme's absorption rate; and,
 - (iii) Delivery will become a material consideration in planning applications.

6.57 In its consultation response³⁶⁶, the UK government said it wanted to take all three proposals forward, but that they would be subject to “*full consultation on them and related issues of build-out.*”

6.58 The UK government is continuing to consider the proposal that planning for provision of social rent homes be given higher priority in the NPPF³⁶⁷.

February 2024 Announcement

6.59 On 13th February 2024, the UK government announced new planning and housing changes focused on encouraging brownfield development.³⁶⁸ It included a new consultation on changes to the NPPF including the introduction of a presumption in favour of brownfield residential development where a LPAs housing delivery test result is below 95% and it is one of the 20 LPAs in receipt of the 35% uplift to the Standard Method³⁶⁹.

6.60 Other changes include a consultation on a change to the NPPF (paragraph 129c) that would expect all LPAs to give significant weight to the benefits of delivering as many homes as possible, and to be flexible in applying policies or guidance on the internal layout of developments especially for proposals on brownfield land, on further PD rights³⁷⁰³⁷¹ and a £3bn loan guarantee scheme for affordable housing.

³⁶⁶ DLUHC, Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation, 19 December 2023

³⁶⁷ DLUHC, Government response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation, 19 December 2023 - Question 22

³⁶⁸ DLUHC, [Press Release - 13 February 2024](#)

³⁶⁹ DLUHC, [Strengthening planning policy for brownfield-development consultation](#), 13th February 2024

³⁷⁰ This included changes to:

- certain permitted development rights which enable householders to improve and enlarge their homes.
- the building upwards permitted development rights which enable the upward extension of a range of existing buildings.
- the permitted development right which allows for the demolition of certain buildings and rebuild as homes.
- the permitted development rights which enable the installation of electrical outlets and upstands for recharging electric vehicles.
- the permitted development right for the installation of air source heat pumps.

³⁷¹ DLUHC, [Changes to various permitted development rights consultation](#), 13 February 2024

Nutrient neutrality

- 6.61 Natural England has advised 74 English LPAs that, where protected sites are in unfavourable condition due to excess nutrients, development should only go ahead if it will not cause additional pollution to sites. This means that new residential development must achieve ‘nutrient neutrality’ by mitigating the nutrient load created through additional wastewater. This has had an impact on the number of homes that are granted planning permission in affected areas.
- 6.62 The government sought to address this through an amendment to the LURA which meant LPAs would have been instructed to assume developments would not ‘adversely affect’ areas affected by Natural England’s nutrient neutrality advice. The amendment to the Bill was rejected by the House of Lords.

NPF4

- 6.63 NPF4 is Scotland’s long-term plan looking to guide spatial development to 2045, as well as setting out national planning policies, designating national development and highlighting regional spatial priorities.

Background to NPF4

- 6.64 Prior to the Planning etc (Scotland) Act 2006³⁷², there was no requirement for a Scottish-wide national spatial plan be produced. Following the Act, however, three successive National Planning Frameworks were produced by the Scottish Government.
- 6.65 The Planning (Scotland) Act 2019³⁷³ introduced significant changes to the status and role of the National Planning Framework. As well as covering procedural matters relating to the production and status of the National Planning Framework, the Act set out outcomes for it to address. These included, among others, meeting the housing needs of people living in Scotland and meeting any targets relating to the reduction of emissions of greenhouse gases, within the meaning of the Climate Change (Scotland) Act 2009³⁷⁴. The expectation was that these should be realised in National Planning Framework (NPF4).

³⁷² [Planning etc. \(Scotland\) Act 2006](#)

³⁷³ [Planning etc. \(Scotland\) Act 2006](#)

³⁷⁴ [Planning etc. \(Scotland\) Act 2006](#)

NPF4

- 6.66 On 13th February 2023, NPF4 became part of the Development Plan³⁷⁵. Significantly, this means that NPF4 is the first national planning framework that must be considered in determining planning applications, alongside the relevant Local Development Plan of a LPA, and other material considerations. On its introduction, the Scottish Government's Scottish Planning Policy document was withdrawn, along with the four Strategic Development Plans in Scotland³⁷⁶.
- 6.67 Their replacement, NPF4³⁷⁷, contains 33 national planning policies which allow it to function as part of the Development Plan. Therefore, there are material considerations in approving or refusing planning applications in Scotland. NPF4 also introduced new planning policy themes (eg Tackling the Nature and Biodiversity Crises, Community Wealth Building, Zero Waste, Local Living and 20 Minute Neighbourhoods). In summary, it introduced a number of changes to the planning system including:
- (a) **National planning:** NPF4 has an enhanced status and becomes part of the 'development plan' alongside local development plans and, therefore, has a direct influence on planning decisions across LPAs.
 - (b) **Sustainability:** NPF4 has a new emphasis on the transition to net zero updating planning policies to include a requirement to give weight to the climate emergency in plans and decisions.
 - (c) **Affordable housing:** NPF4 requires housing developments to include 25% affordable housing.
- 6.68 Additionally, NPF4 sets out a Spatial Strategy for Scotland³⁷⁸. This defines five areas under Regional Spatial Priorities³⁷⁹ and puts in writing the challenges and opportunities each area has. NPF4 follows on from previous versions of the NPF by designating 18 National Developments³⁸⁰. They vary in scale and scope, from a National Walking, Cycling and Wheeling Network to Strategic Renewable Electricity Generation and Transmission Infrastructure.
- 6.69 Of particular relevance to this study, under the 2019 Planning Act³⁸¹, NPF4 is required to set housing targets for the use of land in different areas of Scotland.

³⁷⁵ The development plan for any given area of Scotland now consists of NPF4 and the relevant local development plan (LDP). These documents are both material considerations in the assessment of planning applications in Scotland.

³⁷⁶ Clydeplan, SESplan, TAYplan and the Aberdeen City and Shire Strategic Development Plan.

³⁷⁷ [Scottish Government; National Planning Framework 4](#)

³⁷⁸ [Scottish Government; National Planning Framework 4 - Part 1: A National Spatial Strategy for Scotland 2045](#)

³⁷⁹ North and West Coast and Islands, North, North East, Central and South.

³⁸⁰ National Planning Framework 4 - Page 21

³⁸¹ [Planning \(Scotland\) Act 2019 Section 2](#)

Addressing this issue at a national level represents a significant change in policy, although the identification and allocation of sites for new homes is still proposed to happen at LPA level.

- 6.70 Finally, the 2019 Planning Act also explains the development of two non-statutory types of plans that will not be part of the Development Plan. First, Regional Spatial Strategies are to be prepared by more than one LPA on a regional basis outlining the long-term development of the specified area. Second, Local Place Plans³⁸², can be prepared by local communities for their own area.

Planning Policy Wales – Edition 12

- 6.71 A new version of Planning Policy Wales (PPW) was published on 7th February 2024³⁸³. It updated PPW Chapter 6 (Distinctive and Natural Places) to ensure the Welsh Governments duty to maintain and enhance biodiversity and the resilience of ecosystems in Wales is met. This included changes to policies concerning green infrastructure; a net benefit to biodiversity using a “step-wise approach”; a strengthening of protection for Sites of Special Scientific Interest; and a strengthened approach to trees and woodlands policies, including promoting new planting as part of development. The revisions reflect the Welsh government’s focus on Net Biodiversity Benefit.
- 6.72 Additionally, there were housing updates including wording changes to emphasise that LPAs need to consider the prevalence of second homes and short-term holiday lets in their area when assessing housing needs and determining their housing requirement. Additional text also recognises that community-led housing can contribute to the provision of affordable homes (Section 4.2).³⁸⁴

Planning system outputs and new home delivery

- 6.73 In this section we present analysis of high-level evidence on the relationship between the number of homes built, the number of planning permissions granted and the housing need in England, Scotland and Wales. The analysis provides some insight into how effectively the planning systems of England, Scotland and

³⁸² [Planning \(Scotland\) Act 2019 Section 14](#)

³⁸³ [Welsh Government; Planning Policy Wales, Edition 12 \(February 2024\)](#)

³⁸⁴ Further changes included:

Transport updates in line with the Wales Transport Strategy 2021 and text on Ultra Low Emission Vehicles to reflect changes to Building Regulations (Section 4.1).

Retail and Commercial Development updates on retail assessments / sequential test for uses in town centres to complement and reflect policy in the Future Wales document and emphasis on the possible use of Local Development Orders for retail uses. (Section 4.3)

A community facilities update regarding community assets and new text on ‘changing places toilets’ to reflect changes to Building Regulations (Section 4.4)

An electronic communications update in order to relocate existing policy from the now revoked Technical Advice Note 19: Telecommunications and an update regarding fixed line broadband to complement and reflect Future Wales policy (Section 5.2).

Wales are helping each nation to meet their housing need. To note, data available on certain metrics in Scotland and Wales is more limited.

England

6.74 In England, the volumes of planning permissions granted and housing delivered have increased significantly since the Global Financial Crisis (see Figure 6.1).³⁸⁵

Figure 6.1 Housing net additional new homes built and net additional planning permissions in England



Sources: *DLUHC analysis of Glenigan data* [DLUHC Open Data : Units granted planning permission on all sites, England](#) ([opendatacommunities.org](#)); *DLIHC Live Table 118: annual net additional dwellings and components, England and the regions*

6.75 Since the Global Financial Crisis there has been substantial reform to the English planning system. In 2012, the NPPF introduced a number of changes to the planning system in England including the ‘presumption in favour of sustainable development’ where there was no up-to-date local plan or 5YHLS. These policy changes have been credited by a range of stakeholders with increasing the volumes of homes given planning permissions since 2012, although other factors such as the long-term recovery from the 2008 Global Financial Crisis will also have had a significant impact. For example, in one document, one housebuilder describes how the introduction of the NPPF and the presumption in favour of sustainable development created many new development opportunities outside of the local plans, something which benefited land promoters in particular:

‘The introduction of NPPF in 2012, with the presumption-in-favour of development in areas with no local plan or 5YLS, created the biggest shift in the strategic land market in the last 40 years. Moving the

³⁸⁵ Global Financial Crisis refers to the period of extreme stress in global financial markets and banking systems between mid 2007 and early 2009.

market from one dominated by housebuilders securing options, to one dominated by land promoters offering landowners a planning promotion agreement whereby they would secure planning permission and then sell the site on the open market to the highest bidding housebuilder. This new 'presumption' created many hundreds of new off plan planning opportunities in the period up to 2019.'

6.76 Similarly, in its 2022 Annual Report Bellway notes that:

'The National Planning Policy Framework system ('NPPF') introduced in March 2012, working in parallel with the Localism Act 2011, has had a positive effect on the planning environment. This is evidenced by an increase in the number of planning permissions over recent years'³⁸⁶

6.77 In more recent years, an increasingly uncertain and complex political and policy environment is cited as a key reason for the growth in planning permissions stalling somewhat (see 6.150 to 6.159), although the impact of the Covid pandemic and general economic conditions will also have been a significant factor. In 2022-23 (not shown in the chart) the number of units granted planning permission fell to 269,000 after several years where permissions had been in excess of 300,000.³⁸⁷

6.78 In England, the government has set out a commitment for the delivery of housing of 300,000 per annum by the middle of the decade.³⁸⁸ As Figure 6.1 shows, in England there is currently an under-delivery of housing against a 300,000 target. This is despite the number of planning permissions exceeding this number in several recent years. Since 2008-09 there has also been a growing gap between the number of permissions granted annually and the number of new homes built.

6.79 Some stakeholders, such as the Local Government Association (LGA), argue that this growing gap is reflective of a slower than necessary rate of build out of new homes by housebuilders. They further argue that low build out rates are a significant contributor towards below-national target delivery of housing.^{389,390}

³⁸⁶ Bellway, Annual Report and Accounts 2022: [annual-report-2022.pdf \(bellwayplc.co.uk\)](https://www.bellwayplc.co.uk/annual-report-2022.pdf).

³⁸⁷ See: [Planning applications in England: January to March 2023 - statistical release - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/planning-applications-in-england-january-to-march-2023-statistical-release). We do not show this chart as, at the time of writing equivalent value for the new build component of the DLUHC net additional dwelling statistics for 2022/23 was provisional. With the provisional value being 212, 570.

³⁸⁸ Whilst commitment to 300,000 new homes a year remains, the LURA has moved away from proposals for 'binding' targets for LAs, with it being made clear that the SM is advisory.

³⁸⁹ See, for example: [Over 1.1 million homes with planning permission waiting to be built - new LGA analysis | Local Government Association](https://www.local.gov.uk/news/over-1-1-million-homes-with-planning-permission-waiting-to-be-built-new-lga-analysis). This recurring analysis has been criticised as it assumes that permission on all sites which are not completed are unused see: ([stock-and-flow-planning-permissions-and-housing-output.pdf \(lichfields.uk\)](https://www.lichfields.uk/stock-and-flow-planning-permissions-and-housing-output.pdf)). See also discussion of concerns over land banks in Section 8.

³⁹⁰ We discuss factors affecting build out rates in Section 9

- 6.80 The view of land promoters and housebuilders is that this does not reflect the reality of housing pipelines. Research undertaken by Lichfields on behalf of the Land Promoters and Developers Federation and the Home Builders Federation provides some substance to this view. This research highlights that:
- (a) some planning applications lapse for technical and viability reasons and that many applications are duplicates or reapplications so not all permissions will translate into additional deliverable homes;^{391, 392} and
 - (b) there is lag between a planning permission being granted and the build out of housing units meaning that current planning permissions will not immediately translate into housing delivery.³⁹³
- 6.81 The research finds that between 15% and 20% of planning permissions will either lapse (approx. 5%) or are reapplications (between 10% and 20%). This implies that the planning system would need to grant between 353,000 and 375,000 permissions to enable 300,000 homes to be delivered. The research also finds that the average time taken to build out a site is approximately 4 years. The lag between permission and build out of the sites means housing delivery depends not on the current level of planning permissions, but on the stock of permissions built up over a period of time. As an illustrative example, to deliver 300,000 homes annually with an average time to build out of 4 years and a lapse/reapplication rate of 15% the planning system would need to build up and maintain a stock of approximately 1.4m permissions.³⁹⁴
- 6.82 While we are not making an assessment of the specific quantitative findings of the Lichfields research, in our view there will necessarily be a lapse/reapplication rate for permissions and a lag between permission being granted and sites being built out. Therefore, moving forward the planning system would need to produce in excess of 300,000 permissions each year over a sustained period to achieve the government's commitment to deliver 300,000 homes annually by the middle of the decade. Over the period since the Global Financial Crisis, the system has not

³⁹¹ See: [Tracking Progress: Monitoring the build-out of housing planning permissions in five local planning authority areas \(lichfields.uk\)](#).

³⁹² See for example: [Feeding the Pipeline Research.pdf \(lpdf.co.uk\)](#).

³⁹³ See for example: [Feeding the Pipeline Research.pdf \(lpdf.co.uk\)](#).

³⁹⁴ $(300,000/(1/4))/(1-0.15)=1.4m$. The exact stock of permissions required would depend on the distribution of delivery of homes over 4 years. If more homes tend to be delivered in the early years, then the required stock would be lower. The LGA estimate this that over decade to May 2021 that a stock of 1.1m unused applications was built up (see: [Over 1.1 million homes with planning permission waiting to be built - new LGA analysis | Local Government Association](#)). However, our understanding is that its analysis counts all applications on projects that were unfinished as unused. In practice many of the projects in the dataset are likely to include completed homes on sites that are in progress. The LGA analysis would count the completed homes of sites that were not finished in their entirety as unused applications. The LGA estimate of unused applications is likely to be an overestimate, potentially substantially so.

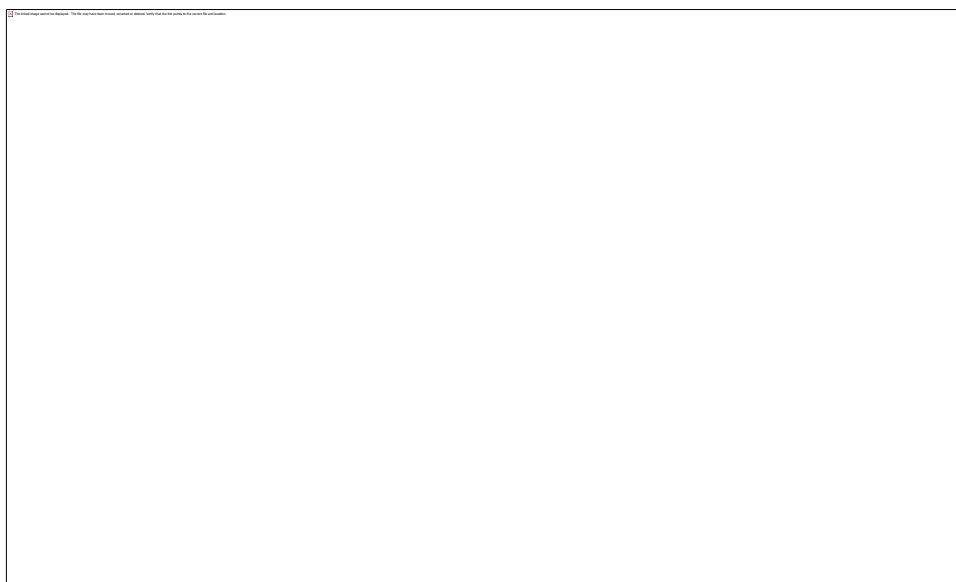
delivered sufficient permissions to build up a stock of permissions compatible with this aim.

6.83 The number of homes that are granted planning permission annually is a function of the number of planning applications that are received, and the proportion of those that are granted planning permission. Other factors such as the size of the sites applying for planning permission and the time taken to make decisions will also play a role. Analysis of data on major residential applications³⁹⁵ presented in Figure 6.2 shows:

- (a) The proportion of decisions that were approvals remained relatively constant between 2010-11 and 2022-23, at between 80 per cent and 85 per cent; and
- (b) The number of planning decisions made on major applications increased between 2012-13 and 2017-18 before falling afterwards.

6.84 This means the slowing of the number of permissions granted since 2016-17 can be largely attributed to a fall in the number of decisions made on major applications.

Figure 6.2 Number of major residential planning decisions in England and percentage of these granted, 2008-09 to 2022-23



Source: DLUHC District planning application statistics (PS2): [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/live-tables/planning-application-statistics)

6.85 Looking solely at national figures can be misleading as there is significant variation in housing delivery against housing need across LPAs. Analysis of LPA performance in the HDT is presented in Table 6.1. The HDT measures the number

³⁹⁵ A planning application involving new dwellings is a major application if: the number of dwellings to be constructed is 10 or more; or if the number of dwellings is not provided in the application, the site area is 0.5 hectares or more.

of homes delivered over three years against a target based on local need.³⁹⁶ It shows that 51 out of more than 306 LPAs in our analysis (17%) achieved less than 75% of their need based HDT targets in 2021 whereas 214 (or 70%) of LPAs achieved more than 95% of their housing need. The majority of the areas that achieved less than 75% (37) are located in the South East, East of England and London. Since the HDT began in 2018 the pattern of LPA performance in the HDT has been broadly consistent.³⁹⁷

Table 6.1 Summary of LPA HDT test results for 2021 and 2020 for England by Government Office Region³⁹⁸

	HDT 2021 LPAs in range:				HDT 2020 LPAs in range:			
	<75%	75%-85%	85%-95%	>95%	<75%	75%-85%	85%-95%	>95%
East Midlands	1	1	4	32	3	1	2	31
East of England	10	1	2	26	12	0	4	25
London	4	5	5	19	8	2	8	16
North East	1	0	1	10	0	1	0	10
North West	3	2	3	30	6	1	2	30
South East	23	6	2	37	19	8	10	34
South West	3	4	4	19	4	3	1	20
West Midlands	3	0	0	24	2	2	1	22
Yorkshire and the Humber	3	0	1	17	1	1	4	15
England	51	19	22	214	55	19	32	203

Sources: *Housing Delivery Test: 2021 measurement - GOV.UK* (www.gov.uk); *Housing Delivery Test: 2020 measurement - GOV.UK* (www.gov.uk); *Housing Delivery Test: 2019 measurement - GOV.UK* (www.gov.uk)

6.86 As we note elsewhere in this section, the methodology used to estimate LPA level housing targets, including those used in the HDT in England, has received some criticism. Nevertheless, this analysis is indicative of wide variation across LPAs in England in meeting housing need and a significant geographic concentration of the areas which perform worst against HDT targets. The LPAs in these regions also account for a large proportion of the population of England. The SE, East of

³⁹⁶ HDT score is a ratio of the number of homes delivered by the LPA over a three-year period to the housing need target for the LPA over the same period. The potential housing delivery test outcome's are: No Action (delivery >95% of target); LPA is required to put in place action plan (delivery >75%, <85 of target); LPA is required to introduce buffer on its 5 year land supply of 20% (delivery >75%, <85% of target); or LPA should apply a presumption in favour of sustainable development for planning decisions (<75%). See: [Housing Delivery Test: 2021 measurement technical note - GOV.UK](http://www.gov.uk) (www.gov.uk)

³⁹⁷ In 2020 the percentage of LPAs scoring more than 95% was 66%, in 2019 65% and in 2018 66%. In 2020, 2019 and 2018 the percentage of LPAs scoring less than 75% was 18%. In 2020 the percentage of LPAs who scored less than 75% that were located in either London, the SE or the East of England was 71%, in 2019 it was 69% and in 2018 it was 58%.

³⁹⁸ Removed Isles of Silly, Barrow on Furness, Redditch due to zero or negative need numbers; removed Oxford from 2021 and 2022 due to implausibly low need numbers; only includes values from LPAs with joint plans or jointly assessed LAs once. Note the number of LPAs which are included in the analysis over time differs due to changes in the number of LPAs as local authority boundaries change and new LPAs are formed whilst others no longer exist. In addition, some LPAs commit to joint plans and targets and are assessed against the HDT accordingly, the identity of these LPAs changes over time.

England and London accounted for 43% of the population³⁹⁹ and 41% of the dwellings in England in 2021.⁴⁰⁰ These three regions also have the three highest median affordability ratios (ie median house prices to median workplace earnings) of all English regions in 2021.⁴⁰¹

Scotland

- 6.87 Unlike in England, in Scotland there is no all-tenure housing target (although there is a Scottish Government affordable housing target).⁴⁰² LPAs are required to set out a Local Housing Land Requirement based on local housing need for the number of homes to be provided for a 10-year period. Across Scotland as a whole, this requirement sums to land for 20,000 homes per year.⁴⁰³ We take this as our baseline for annual housing need in Scotland.
- 6.88 Available data on number of units given planning permission in Scotland is more limited than for England. However, we have been able to source a limited time series of data for this from HBF analysis of Glenigan data.⁴⁰⁴
- 6.89 We present analysis of data on the number of new homes completed and the number of units given planning permission for Scotland in Figure 6.3. This analysis shows that:
- (a) The number of new build homes completed took a long time to recover from the pre-2008 level of over 25,000 and still remained some way below this level in 2021-22, with new build completions of around 21,000;
 - (b) In some recent years levels of completions have been just above 20,000, however, over a 10-year period (2012-13 to 2021-22) completions were below this, averaging approximately 17,800; and
 - (c) The number of homes given planning permission has increased significantly above the level of completions and assessed overall housing need since 2014-15. Since 2014-15 the average number of homes given planning permission annually was 29,000, significantly in excess of the sum of LPA land supply targets although this varies substantially on a year-by-year

³⁹⁹ CMA analysis of: [Estimates of the population for the UK, England, Wales, Scotland and Northern Ireland - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk).

⁴⁰⁰ CMA analysis of: [Live tables on dwelling stock \(including vacants\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

⁴⁰¹ See: Figure 5 of: [Housing affordability in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk).

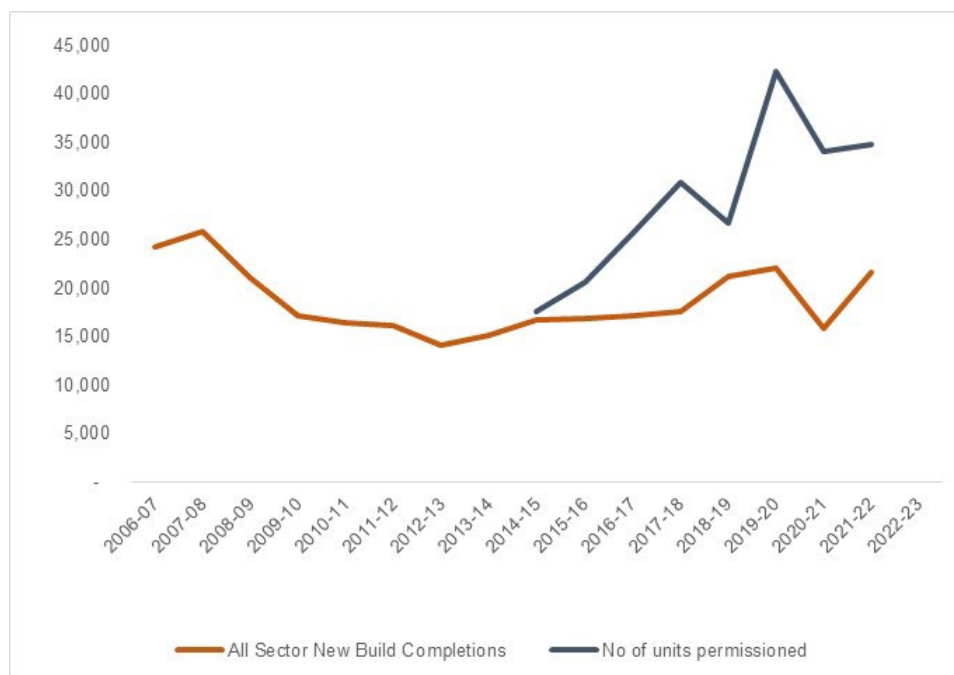
⁴⁰² During the last parliamentary term (May 2016 to May 2021) the Scottish Government adopted a target of covering 50,000 affordable homes and has since adopted a target of delivering 110,000 affordable homes by 2032, see: [50,000 affordable homes target reached - gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁴⁰³ CMA analysis [Annex F – Glossary of definitions - National Planning Framework 4 - gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁴⁰⁴ See: [Housing Pipeline Report \(hbf.co.uk\)](https://www.hbf.co.uk).

basis.⁴⁰⁵ If this is sustained then this may feed through into an increased number of housing completions in the coming years.

Figure 6.3 New build completions and units given planning permission in Scotland



Sources: [HPL_REPORT_2022_Q3_HG_DRAFT_3.pdf \(hbf.co.uk\)](#); [Housing statistics quarterly update: new housebuilding and affordable housing supply - gov.scot \(www.gov.scot\)](#).

6.90 In Figure 6.4 we set out analysis of the number of decisions made on applications for housing developments in Scotland and the proportion of these decisions that were approvals. The key points from this are:

- decisions on all housing development applications fell over the period between 2013-14 and 2022-23 from around 5800 to close to 4300, although there is some year-on-year variability in the numbers;
- the average number of applications for major housing developments between 2013-14 and 2022-23 was approximately 120, with the total number of major applications fluctuating around this over the same period; and
- we have data only for 2019-20 to 2022-23 on the number of applications that were approved – it shows that overall levels of approvals during this period was consistently between 87% and 89%, but that there was more variation in

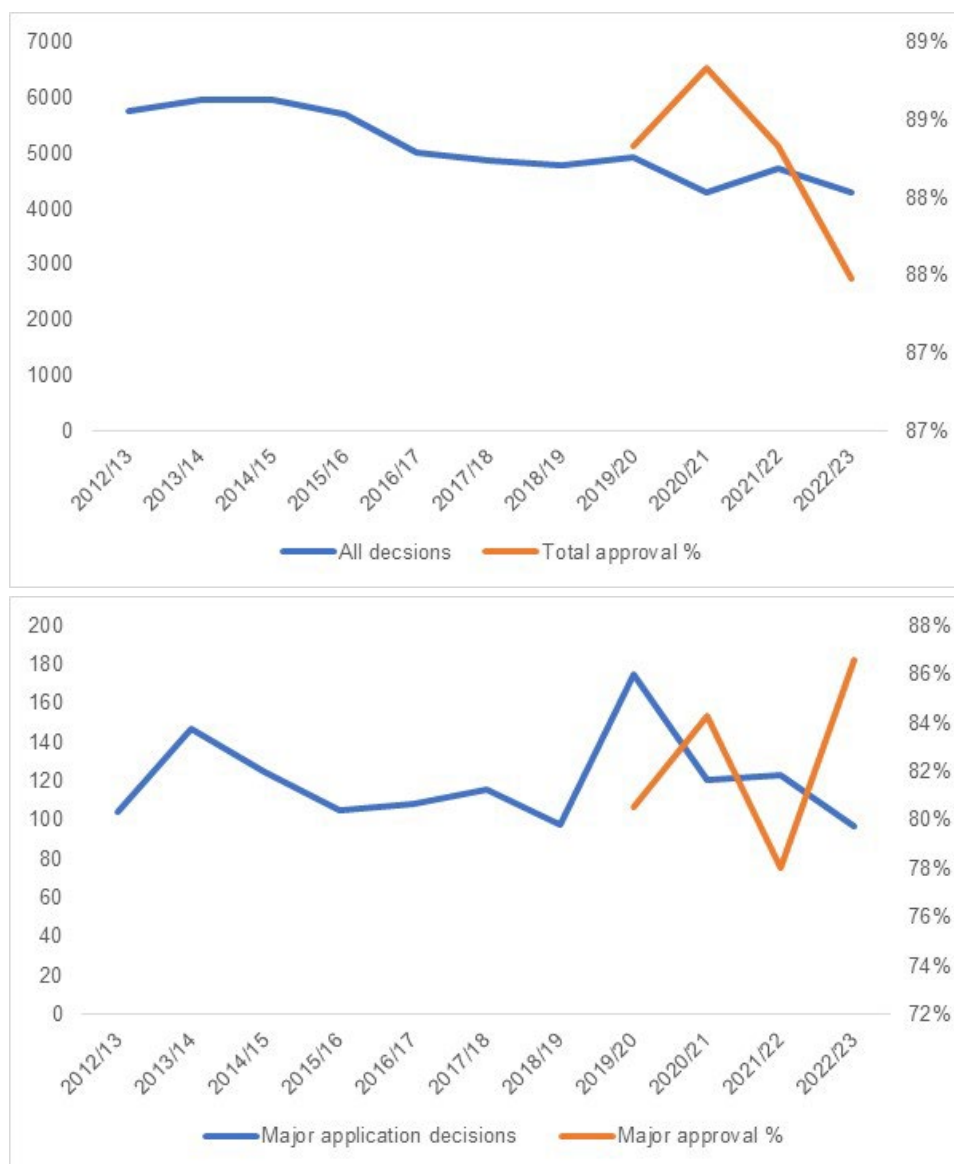
⁴⁰⁵ However, this increase follows a period during which the number of homes given planning permission was significantly less than this. Evidence compiled in a report for the Scottish Land Commission shows that for the five year prior to the average number of planning permission was below 20,000. See figure 3.1 of [An Investigation into land banking in Scotland: a report to the Scottish land commission 11 June 2020](#). The report concluded that in the years prior to 2018 the Scottish system had not been producing enough planning permissions to meet need (based on a housing need of 23,000).

the proportion of major applications approved, which varied between 78% and 87%.

6.91 The relationship between the number of planning decisions and the number of homes given permission in Scotland is weaker than for England. In Scotland, while the number of homes given planning permission has been generally increasing since 2014-15, the number of planning decisions that have been made had generally been falling. We have only four years of data on rates of approval of residential development applications,⁴⁰⁶ which is insufficient to understand if an increase in approvals is responsible for the increasing number of homes being permissioned. However, this is one possible explanation along with an increase in the size of sites (on a per plot basis) for which planning applications are being made. We present some evidence showing that the average size of sites applying for planning permissions in Scotland has been increasing over recent years in paragraph 6.290.

⁴⁰⁶ Longer time series of approval rates can be sourced from statistics published by the Scottish government (See: [Planning statistics - gov.scot \(www.gov.scot\)](http://www.gov.scot)), but these are for all planning applications rather than those only for housing developments.

Figure 6.4 Total and major housing development⁴⁰⁷ planning decisions and approval rates in Scotland between 2012-13 and 2022-23



Sources: CMA analysis of data provided by the Scottish Government and sourced from: 2. Annual Trends – Local Developments (excludes legacy cases) - Planning performance statistics: annual report 2018-2019 - gov.scot (www.gov.scot)

6.92 Analysis of the ratio of housing completions to the NPF4 MATHLR across LPAs in Scotland is presented in Table 6.2. It shows that, over the last 5 years, in 7 out of 33 LPAs (21%) housing completions were equivalent to 75% or less of their NPF4 MATHLR, whilst in 18 (55%) housing completions were in excess of 100% of this. Over the past 10 years, 9 LPAs (27%) had a ratio of housing completions to MATHLR of less than 75%, with 16 LPAs (48%) having a ratio in excess of 100%.

⁴⁰⁷ In Scotland major housing developments are those with 50 or more dwellings or with a site area that is or exceeds 2 hectares where the predominant use is for housing. Local housing developments are those that have less than 50 dwellings and a site area that is less than 2 hectares. As the definition of major housing developments only includes significantly larger developments in Scotland than England and Wales, we also include information on total planning decisions and approvals in Scotland to avoid missing significant amounts of potential housing.

Table 6.2 Distribution of housing completions to NPF4 MATHLR across LPAs in Scotland

	Housing completions/annual NPF4 MATHLR	
	2018/19 to 2022/23	2013/14 to 2022/23
less than 75%	7	9
75% to 100%	8	8
100% to 150%	13	13
150% to 200%	4	2
200% or greater	1	1
Total	33	33

Source: CMA analysis of data provided by the Scottish Government

Wales

- 6.93 As in Scotland, in Wales there is no all-tenure housing target based on housing need (although there is a Welsh Government affordable housing target).⁴⁰⁸ Instead, local plans will incorporate evidence-based, locally-set housing and land supply requirements.
- 6.94 However, there are some sources that estimate the level of housing need in Wales at a national level. In September 2015 the Welsh Government commissioned the Welsh Centre for Public Policy (WCPP) to estimate housing need. The resulting report's central estimate was that between 2011 and 2031 the annual all-tenure housing need would be 8,700.⁴⁰⁹ More recent work published by the Welsh Government in August 2020 provides a central estimate for annual all-tenure housing need of 7,400.⁴¹⁰ As with Scotland, we have been able to source a limited time series of data on the number of homes permissioned from HBF analysis of Glenigan data.⁴¹¹
- 6.95 We present analysis of data on the number of new homes completed and the number of units given planning permission for Wales in Figure 6.5. The analysis shows that:
- (a) the number of new build homes completed remains below its pre-2008 level of around 9,000 and in 2021-22 was less than 6,000;
 - (b) completions have been below both the WCPP or Welsh government estimates of need; and

⁴⁰⁸ In July 2021 the Welsh government committed to deliver 20,000 new low carbon homes for rent within the social sector during the government term, see: [Written Statement: Social Housing in Wales \(15 June 2021\) | GOV.WALES](#)

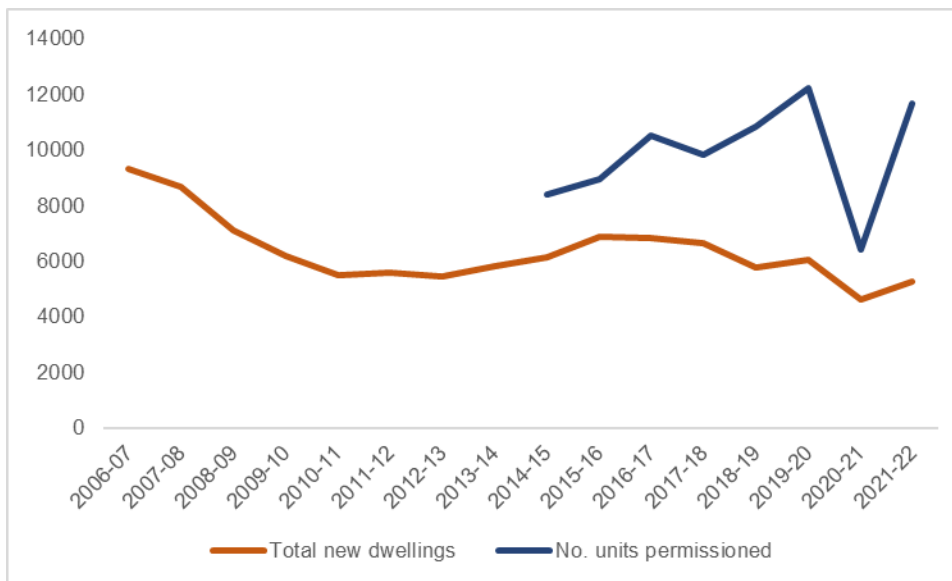
⁴⁰⁹ [Future-Need-and-Demand-for-Housing-in-Wales-REVISED.pdf \(wcpp.org.uk\)](#).

⁴¹⁰ [Estimates of housing need: 2019-based | GOV.WALES](#).

⁴¹¹ [HPL_REPORT_2022_Q3_HG_DRAFT_3.pdf \(hbf.co.uk\)](#)

- (c) the average number of homes given planning permission annually has been slightly in excess of both need estimates since 2014-15, although as above this has not led to completions above estimates of need.

Figure 6.5 New build completions and units given planning permission in Wales

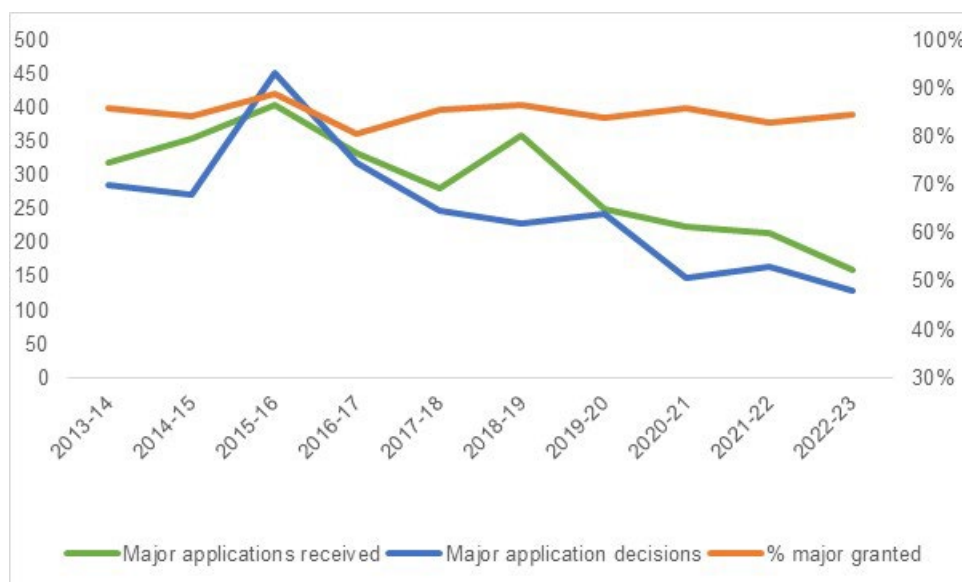


Sources: [New dwellings completed by period and tenure \(gov.wales\)](http://gov.wales); [Future-Need-and-Demand-for-Housing-in-Wales-REVISED.pdf \(wcpp.org.uk\)](https://www.wcp.org.uk); [Estimates of housing need: 2019-based | GOV.WALES](https://gov.wales); [HPL_REPORT_2022_Q3_HG_DRAFT_3.pdf \(hbf.co.uk\)](https://hbf.co.uk).

6.96 Analysis of data on major residential applications in Wales,⁴¹² presented in Figure 6.6, shows that the number of planning applications and decisions made over the last 10 years has been falling in Wales, especially in recent years. Over the period between 2013-14 and 2018-19 the number of planning applications and decisions averaged 342 and 301 respectively. Over the period 2019-20 to 2022-23 the number of applications averaged 213 and the number of decisions 172. Between 2012-13 and 2022-23 major application approval rates varied between 81% and 89%.

⁴¹² In Wales, major residential applications are defined as follows: housing developments of 10 residential units or more; and housing developments of greater than 0.5 hectares where the number of units is not known.

Figure 6.6 Major residential planning applications, decisions and approval rates in Wales



Source: CMA analysis of various Welsh government development management quarterly surveys, see: Development management quarterly surveys | GOV.WALES

6.97 Analysis of the ratio of housing completions to the latest housing requirement set out in the most recently adopted LPA local plans across Wales is presented in Table 6.3. This shows that over the last five years, 13 out of 21 LPAs (62%) achieved housing completions equivalent to 50% or less of their local plan housing requirement whilst none achieved housing completions in excess of 100% of this. Over the period 2013-23, 10 LPAs (48%) had a ratio of housing completions to local plan requirements of less than 50%, with no LPAs exceeding 100%.

Table 6.3 Distribution of housing completions to most recent local plan requirements across LPAs in Wales

Housing completions/latest local plan requirement	2017/18 to 2022/23	
	2017/18 to 2022/23	2013/14 to 2022/23
less than 50%	13	10
50% to 75%%	5	9
75% to 100%	3	2
Greater than 100%	0	0
Total	21	21

Source: CMA analysis of data provided by the Welsh Government

6.98 The analysis set out in this section shows that, across all three nations, the level of new housing delivery is below publicly-stated targets. In Wales, and to a lesser extent in Scotland, housing delivery is still below the levels achieved prior to the Global Financial Crisis in 2007-8.

6.99 To hit the publicly stated targets, the planning systems within each of the nations of GB need to grant enough planning permissions over a period of time to build the stock of unused permissions to required levels.

- 6.100 In England, the government has committed to delivery of 300,000 homes per year by the middle of the decade. Over the last 10 years the number of homes granted permissions would have been insufficient to achieve this. Moving forward the planning system would need to produce (perhaps significantly) in excess of 300,000 permissions each year over a sustained period to achieve the commitment.
- 6.101 In the case of Scotland and Wales, the limited available time series for the number of homes does not make it possible to conclude whether sufficient permissions have been granted over recent years to meet need. In more recent years, the number of permissions granted in both Scotland and Wales has exceeded need. However, as with the system in England, the Scottish and Welsh systems would need to sustain a number of annual permissions in excess of housing need over a number of years to meet this need.
- 6.102 The ratio of housing delivery to housing need varies significantly across LPAs. This means that any analysis of the GB planning systems must take account of differences in local circumstances and how policies and frameworks are implemented at an LPA level.

Issues in the market

- 6.103 The analysis we set out in the preceding section shows there is a link between planning applications granted and the number of homes that are built, certainly in the case of England. Although there will be other factors as well that are influencing the rate of building, which are not within the scope of this study.
- 6.104 We have identified a number of key issues with the planning systems that may prevent more planning applications being granted, these being:
- (a) Lack of predictability;
 - (b) Length, cost and complexity of the planning process; and
 - (c) Insufficient clarity, consistency and strength of LPA targets, objectives and incentives to meet housing need
- 6.105 In this section, we cover each of these in turn and then describe recent relevant policy developments. We also consider how the planning systems may disadvantage SME housebuilders.

Impact of the planning systems on land supply and housebuilding

- 6.106 The planning systems are an important determinant of the supply of land for residential development and the number of new homes built.

6.107 We have analysed the distribution of various planning outcomes for major applications in each LPA, and how these outcomes relate to HDT performance. Although this analysis does not prove a causal relationship, it is consistent with the view that there is a link between planning outcomes and housing delivery as proxied by the results of the HDT test. The analysis of the distribution of planning outcomes across LPAs, presented in Table 6.4, shows that:

- (a) The LPAs with the highest delivery against their housing targets tend to process a higher number of applications relative to their housing stock; approve a higher proportion of those applications; have a lower proportion of their rejection decisions appealed; and lose a lower proportion of appeals.
- (b) The LPAs with the lowest delivery against their housing targets tend to process a lower number of applications; approve a smaller proportion of those applications; have a higher proportion of rejection decisions appealed; and lose a higher portion of those appeals.

Table 6.4 LPA HDT outcomes and planning outcomes

HDT 2021 outcome	Number of LPAs	Median value between 01/01/2018 and 31/09/2022 for major dwellings for:			
		<i>Number decisions per 1000 dwellings</i>	<i>% applications approved</i>	<i>Number of appeals as % of rejected applications</i>	<i>% appeals successful</i>
<75%	51	1.07	75%	58%	42%
75%-95%	43	0.84	85%	52%	39%
95%-150%	116	1.17	81%	46%	38%
150%-200%	65	1.55	85%	44%	33%
>200%	44	1.27	86%	49%	33%

Sources: CMA analysis of HDT data [Housing Delivery Test: 2021 measurement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/housing-delivery-test-2021-measurement); [Planning Inspectorate Casework Database - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/planning-inspectorate-casework-database); [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-planning-application-statistics)

6.108 For their part, housebuilders view the planning systems as a crucial determinant of the supply of land for their business and, in turn, of how many homes they are able to build. For example, in its Strategic Land Delivery Plan, one housebuilder states:

‘In simple terms, the levels of planning consents and pull-through [of strategic land] is not keeping pace with the levels of site intake and the gap is widening. Whilst dysfunction in the planning system is a key factor, we need a much-increased focus on planning promotion and pull-through’.

6.109 Similarly, in a strategy paper presented to its Board, one housebuilder states:

‘A key challenge facing the entire sector is our ability to retain sufficient / deliver additional outlets to maintain build rates and seek to deliver our disciplined growth strategy. The way in which the Planning System is operating at any given time is fundamental to land supply.’

6.110 Internal documents show that, while other factors such as shortages of labour play an important role, the planning system has a crucial impact on housebuilders' ability to secure development land and build housing.

Lack of predictability and consistency in planning decision making

6.111 For several reasons, planning decision-making lacks predictability and consistency. This creates uncertainty about which planning applications will be granted. When housebuilders choose to pursue residential development at a site, they incur a number of upfront sunk costs (such as the costs of identifying and investigating a site, securing an option on a site, site design, navigating the planning process) prior to planning permission being granted. When there is significant uncertainty about whether planning permission will be granted, housebuilders will be more reluctant to incur these costs and hence bring forward planning applications.

6.112 In this section, we set out the key causes of uncertainty in planning decision making, and the evidence on how this affects the willingness of housebuilders to bring forward planning applications and the delivery of housing.

6.113 Our analysis has suggested several factors which make the planning systems significantly less certain and consistent, notably:

- (a) **Policies that impact the planning process and the delivery of housing:** The planning systems are used as a means of implementing a range of new policies, most commonly environmental regulations.
- (b) **Continuous revision of the planning process:** Since the introduction of the NPPF in 2012, there have been three significant revisions before the current review, which started with the White Paper in 2020. The uncertainty arising from this review has yet to be resolved, with many changes proposed to be rolled out gradually on a 'test and learn' basis. There have also been significant recent changes in Scotland and Wales over the past few years.
- (c) **Lack of up-to-date local plans:** The LPA's local plan is a key factor in determining which land is allocated for development and therefore likely to get planning permission. As of May 2021, less than 40% of LPAs in England have an up-to-date local plan. Areas with older or no plans are associated with lower levels of planning applications and housing delivery.
- (d) **Political and public attitudes to development expressed through the planning process:** Residential development is increasingly political and attitudes to development vary significantly by area, with the release of greenbelt land being particularly controversial. Partly as a result of this, planning outcomes and housebuilding vary significantly across LPAs.

Policies that impact the planning process and the delivery of housing

- 6.114 When asked about the key risks and uncertainties faced when bringing forward land for planning permission, all of the 11 largest housebuilders mentioned policy uncertainty. In its Statement of Scope response, the HBF argued that policy, tax and regulatory changes were damaging the housebuilding market and listed a timeline of significant regulatory and policy changes that have impacted the market.⁴¹³
- 6.115 Changes to policy can change the economics of development at a site, as these policy changes are often associated with increases in the costs of development. Therefore, policy changes can increase uncertainty about the value that housebuilders will be able to realise at a site. This can make housebuilders more reluctant to incur the sunk costs required to develop a site, having a chilling effect on development activity.
- 6.116 Below we set out the most recent and upcoming policy changes that have impacted or will impact the planning systems. This provides a clear indication of how frequently and significantly the policy environment within which planning decisions are taken is changing.
- 6.117 Significant recent and upcoming wider policy changes that impact the English planning system include:
- (a) 2019 – Nutrient neutrality requirements imposed on development in the Solent, covering approximately 30 local authority areas. Natural England,⁴¹⁴ in reference to an EU court judgment, deemed that development cannot take place unless ‘nutrient neutrality’ can be demonstrated and take effect.⁴¹⁵
 - (b) 2021 – Nutrient neutrality requirements extended to cover 74 LA areas in total, with more than 100,000 plots with planning permission estimated to have been impacted. Research by the HBF suggests that 145,000 homes were being delayed by the impact of this advice as of 30 June 2023.⁴¹⁶ The government had recently proposed a change⁴¹⁷ to the law to allow residential development to proceed in the affected areas, but this was subsequently blocked in the House of Lords.⁴¹⁸

⁴¹³ See page 10-12 and Appendix 1 of: [Home_Builders_Federation.pdf \(publishing.service.gov.uk\)](#).

⁴¹⁴ [About us - Natural England - GOV.UK \(www.gov.uk\)](#).

⁴¹⁵ See: [Nutrient Neutrality and Mitigation: A summary guide and frequently asked questions - NE776 \(naturalengland.org.uk\)](#)

⁴¹⁶ ‘Nutrient neutrality’ – four years of government failure ([hbf.co.uk](#))

⁴¹⁷ [Nutrient neutrality announcement: explanatory paper - GOV.UK \(www.gov.uk\)](#).

⁴¹⁸ [Nutrient neutrality: update - GOV.UK \(www.gov.uk\)](#).

- (c) 2024 – Biodiversity Net Gain (BNG) requirements for major sites has taken effect from 12th February 2024⁴¹⁹, with new guidance on BNG, including the statutory biodiversity metric for calculating the requirement. The BNG requirement will apply from 2nd April 2024 for small sites. The policy necessitates a 10% uplift in biodiversity on all new sites.⁴²⁰
- (d) 2024 – Building Safety Levy (BSL) expected to be introduced. This will be a £300m per year tax on all developments and paid by all house builders. The £3bn intended to be collected through the BSL will raise funds for the remediation of mid-rise buildings with cladding defects.⁴²¹
- (e) 2025 – Future Homes Standard due to be implemented with significant changes to energy efficiency requirements for new homes, necessitating a wholesale change of heating technology in new homes.⁴²²

6.118 In Scotland, significant policy changes that have impacted the planning system include:

- (a) 2023 – Firstly, NPF4 gave national planning policy more weight in the determination of applications and production of plans by making NPF4 part of the development plan.
- (b) Secondly, NPF4 aims to ensure that at both application and plan making stages, climate change and nature are considered as high priorities. In this context, one of the goals of the NPF4 is to limit urban expansion to optimise the use of land to improve the environment. Furthermore, related legislation changes singled out 'sustainable development' as a new purpose of planning.⁴²³

6.119 The Scottish planning system has not had the equivalent nutrients, housing target, building safety and homes standard challenges the English planning system has faced.

6.120 In Wales, significant policy changes that have impacted the planning system include:

- (a) 2020 – Phosphorus Concentration. Natural Resources Wales published new targets to reduce the concentration of phosphorus in Special Areas of Conservation (SAC) across Wales. Requirements include that developments

⁴¹⁹ [The Environment Act 2021 \(Commencement No. 8 and Transitional Provisions\) Regulations 2024; Made 17th January 2024](#)

⁴²⁰ [Biodiversity Net Gain for local authorities | Local Government Association.](#)

⁴²¹ [The Building Safety Levy: consultation - GOV.UK \(www.gov.uk\).](#)

⁴²² [The Future Homes Standard: changes to Part L and Part F of the Building Regulations for new dwellings - GOV.UK \(www.gov.uk\).](#)

⁴²³ Section 3ZA(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning Act (Scotland) 2019)

within the SAC River catchments that would generate an increase in wastewater must prove they do not contribute to increased phosphate.

- (b) December 2022 – A Chief Planning Officer letter on biodiversity was published. It highlighted the role the planning system must play in meeting the challenges laid down by COP15 and in fulfilling the Section 6 duty in Wales to secure biodiversity enhancements.
- (c) March 2023 – a consultation on changes to PPW on net benefit for biodiversity and ecosystems resilience strengthening policy on Sites of Special Scientific Interest, Trees and Woodlands and Green Infrastructure.
- (d) 2023 – Action Plan on Relieving pressures on Special Areas of Conservation (SAC) river catchments to support delivery of affordable housing set out clear actions, timescales, and responsibilities to tackle pollution in SAC river catchments.
- (e) February 2024 - In Wales, recent changes in Chapter 6 (Distinctive and Natural Places) of PPW edition 12⁴²⁴ concerning green infrastructure, net benefit for biodiversity, the protection of Sites of Special Scientific Interest, and trees and woodlands. This reflects the Welsh governments focus on Net Biodiversity Benefit, and an expectation that development demonstrates ecosystem resilience through the DECCA framework⁴²⁵, and via the delivery of green infrastructure. There were also minor changes to transport, retail and commercial development, community facilities and electronic communication policies. In relation to housing, additional wording was included to emphasise that LPAs need to consider the prevalence of second homes and short-term holiday lets in their area when assessing housing needs and determining their housing requirement, along with recognition that community-led housing can contribute to the provision of affordable homes.

6.121 While wider policy changes impact uncertainty in the planning system, they also reflect other societal priorities besides housing supply, such as environmental and safety issues. These concerns and their desirability in a wider societal context go beyond the scope of this market study. However, we note that the number of policy changes set out above highlights how the context within which planning decisions and housebuilder investment decisions are made is constantly changing.

⁴²⁴ [Welsh Government; Planning Policy Wales; Edition 12; February 2024](#)

⁴²⁵ The DECCA framework was developed by Natural Resources Wales (NRW) as a method of evaluating ecosystem resilience based on five properties specified in the Environment (Wales) Act: Diversity, Extent, Condition, Connectivity and Aspects of ecosystem resilience, or DECCA in short. The attributes provide a framework for considering the state of ecosystem resilience in Wales, and can be applied across different habitats, land uses and scale of development.

Ongoing changes to planning policy

- 6.122 In addition to the wider policy changes implemented via the planning system, changes to planning policy itself increase uncertainty for those engaging with the system. Some of the key changes to planning law, policy, and guidance **in England** over the past couple of decades include:
- (a) **The Town and Country Planning Act 1990:** is the main planning legislation in England setting out many components of the current framework and has since been amended significantly on multiple occasions by subsequent Acts, which are addressed below.
 - (b) **The Planning and Compulsory Purchase Act 2004:** which scrapped local plans and replaced them with a local development framework system which was intended to be more flexible. The frameworks were made up of local development documents setting out an LPA's planned use of land. They had to fit into a regional spatial strategy prepared by the Secretary of State.
 - (c) **The Planning Act 2008:** created a new system of development for nationally significant infrastructure projects covering certain types of energy, transport, water, wastewater and waste projects. The act established the Infrastructure Planning Commission and made provisions about the imposition of a Community Infrastructure Levy (CIL).
 - (d) **2011 Localism Act:** abolished regional planning, reintroduced local plans and introduced a comprehensive system of Neighbourhood Plans subject to public consultation and independent examination.
 - (e) **2012 NPPF introduced:** introduced sanctions to incentivise local planning authorities to adopt up-to-date local plans and gave developers the opportunity to secure permissions through appeals. The NPPF introduced a presumption that 'speculative' applications would be approved if they were sustainable, and if the local plan was not up-to date or a land supply sufficient for 5 years of housing need could not be demonstrated. It also introduced the concept of viability whereby required developer contributions could be challenged on the basis of the economic viability of a site. As shown below, three versions of the NPPF have been issued since 2012.
 - (f) **The Housing and Planning Act 2016:** contains widespread provisions on new homes, landlords and property agents, abandoned premises, social housing, planning (eg the provision of starter homes through planning permission).
 - (g) **The Neighbourhood Planning Act 2017:** strengthens neighbourhood planning by ensuring that planning decision makers take account of well-

advanced neighbourhood development plans and by giving these plans full legal effect at an earlier stage.

- (h) **2017 Planning White Paper and 2018 updated NPPF:** introduced the centralised Standard Method (SM) as the baseline for assessing local housing need (previously this was based on a local 'objective' assessment). Also introduced the Housing Delivery Test where the presumption of sustainable development would apply to speculative applications where an LPA was not delivering more than 75% of its housing need target.
- (i) **2020 Reform of the Standard Method:** essentially largely retained the existing standard method but introduced a new 'urban uplift' designed to incentivise brownfield development.
- (j) **2020 Planning White Paper:** proposed radical reform of the planning system with a move to a more rules-based or zonal planning policy based on the classifications of land into one of four types of zones. Introduction of a nationally set target of 300,000 homes per annum, with 'binding' targets for local authorities which factor in land constraints.
- (k) **2022 and 2023 Levelling up and Regeneration Act and proposed changes to the NPPF:** plans for a zonal system were dropped in favour of attempts to incentivise the production of more up-to-date local plans. Whilst commitment to 300,000 new homes a year remains, the 'binding' targets for LAs have been dropped, with it being made clear that the SM is advisory. In relation to Green Belt, the new NPPF explains that there is now no requirement for its boundaries to be reviewed or changed when plans are being prepared and that LPAs can choose to review or alter Green Belt boundaries only in exceptional circumstances, with changes made through the plan-making process⁴²⁶.
- (l) **February 2024 announcements** - The UK government announced new planning and housing changes focused on encouraging brownfield development⁴²⁷. It included a new consultation on changes to the NPPF including the introduction of a presumption in favour of brownfield residential development where a LPA's housing delivery test result is below 95% and it is one of the 20 LPAs in receipt of the 35% uplift to the Standard Method⁴²⁸. Other changes included consultation on a change to the NPPF (paragraph 129c) that would expect all LPAs to give significant weight to the benefits of delivering as many homes as possible, and to be flexible in applying policies or guidance on the internal layout of developments especially for proposals

⁴²⁶ DLUHC, National Planning Policy Framework (December 2023); paragraph 145.

⁴²⁷ DLUHC, [Press Release 13 February 2024](#)

⁴²⁸ DLUHC, [Consultation - Strengthening planning policy for brownfield development, 13 February 2024](#)

on brownfield land, further Permitted Development rights⁴²⁹ and a £3bn loan guarantee scheme for affordable housing⁴³⁰.

6.123 **In Scotland**, the Scottish Government has been progressing a programme of planning reform since 2015. Key legislative and guidance developments since then include:

- (a) **2015: Independent review panel appointed:** An independent panel was appointed to carry out a review of **Scotland's planning system in 2015**.
- (b) **June 2019: The Planning (Scotland) Act 2019** – introduced a stated '*purpose of planning*' (to manage the development and use of land in the long-term public interest) and made changes to planning processes. The Act also determines the future structure of the modernised planning system and included changes including making the National Planning Framework part of each development plan, introducing local place plans, and introducing the power to bring in an infrastructure levy.
- (c) **December 2020: Clarification of the 5-year effective housing supply.** Clarification that the required 'effective' available local land supply should be an average of the land requirement over the 5-year period rather than, as some LPAs had been doing, adjusting the required supply to take account of over or under supply in previous years.
- (d) **December 2020 – February 2023: Amendments to the presumption in favour of sustainable development.** In July 2020, the Scottish Government launched a consultation on proposed interim changes to the Scottish Planning Policy, among which the Scottish Government had proposed removing the reference to a presumption in favour of sustainable development.⁴³¹ In December 2020, as a result of the consultation, the Scottish Government decided to instead retain a reworded version of the presumption, and amend paragraphs from the Scottish Planning Policy to avoid giving material weight to the presumption in some situations, for example when an LPA does not have in place up-to-date plans, or has not identified sufficient land supply. The policy aim behind the amendment was to ensure that LPAs understand that the Scottish Government focusses on sustainable development, rather than any development which may not be sustainable.⁴³² The amendments were subsequently reduced by a 2021 judgement of the Court of Session.⁴³³ However, in the end the presumption

⁴²⁹ DLUHC, [Consultation - Changes to various permitted development rights 13 February 2024](#)

⁴³⁰ DLUHC, [Press Release: 3 billion affordable housing boost to deliver 20000 new homes 13 February 2024](#)

⁴³¹ See Section 2, [Scottish Planning Policy – finalised amendments: December 2020](#)

⁴³² See Section 1, [Scottish Planning Policy - finalised amendments: impact assessments – December 2020](#)

⁴³³ See: [Graham's The Family Dairy \(Property\) v Scottish Ministers \[2021\] CSOH 74 \(scotcourts.gov.uk\)](#).

was no longer retained in Policy 16 of the NPF4 when it superseded the Scottish Planning Policy (February 2023).⁴³⁴

- (e) **February 2023: Fourth National Planning Framework (NPF4) published.** It became the long-term plan for Scotland up until 2045 that sets out where development and infrastructure is needed. It replaced NPF3⁴³⁵ and Scottish Planning Policy.

6.124 **In Wales**, some of the key changes to planning law, policy and guidance include:

- (a) The Town and Country Planning Act 1990 was the main planning legislation in Wales; however, its application to Wales has since been amended significantly, resulting in major differences between the Welsh and English planning systems, which are addressed below.
- (b) 2002: Planning Policy Wales (PPW) was originally published: It sets out the Welsh Government's planning policies, under which LPAs prepare their Local Development Plans (LDPs).
- (c) The Planning and Compulsory Purchase Act 2004: inter alia, Part 6 of the Act covers the application of the planning framework to Wales and provided for the preparation of development plans in Wales.
- (d) The Planning Act 2008: Part 10 of the 2008 Act adds certain matters within the field of town and country planning to the legislative competence of the National Assembly for Wales. The Welsh Ministers are given order-making powers to give effect in Wales to provisions in Part 9 which would otherwise have effect only in England.
- (e) The Planning (Wales) Act 2015: inter alia, sets out an overarching statutory purpose to carry out sustainable development. The 2015 Act requires the preparation of strategic development plans in certain regions⁴³⁶, introduces a mandatory process of pre-application consultation for certain types of

⁴³⁴ See: [Transitional arrangements for National Planning Framework 4: Chief Planner letter - February 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/transitional-arrangements-for-national-planning-framework-4/chief-planner-letter-february-2023/pages/1-100.aspx).

⁴³⁵ NPF3 was the spatial expression of the Scottish Government's economic strategy and plans for infrastructure investment. It was a strategy for all of Scotland that aimed to champion the countries successful places, supported change in areas where there had been decline, and also highlighted opportunities for rural development and investment in coastal areas and islands. Additionally, it brought together economic development, regeneration, energy, environment, climate change, transport, and digital infrastructure plans.

⁴³⁶ See sections 4-6 of the Planning (Wales) Act 2015 as originally enacted. Provisions in the Local Government and Elections (Wales) Act 2021 repealed the relevant sections of the Planning Act on regional planning so that responsibility for preparing SDPs resides with Corporate Joint Committees (CJCs) and not Strategic Planning Panels (SPPs). See also: <https://www.legislation.gov.uk/asc/2021/1/notes/division/3/8> and [planning-wales-act-2015-implementation-update-march-2021.pdf \(gov.wales\)](https://www.gov.wales/publications/planning-wales-act-2015-implementation-update-march-2021)

planning applications, and seeks to modernise planning enforcement (eg via the introduction of enforcement warning notices).

- (f) 2018: PPW was significantly restructured to take account of the Well-being of Future Generations (Wales) Act 2015 [FGW Act] and to support the implementation of the Environment (Wales) Act 2016. The FGW Act set out a legally binding common purposes in the form of seven wellbeing goals⁴³⁷ for national government, local government, local health boards and other specified public bodies to achieve. It also required that the 48 public bodies in Wales covered by the FGW Act use sustainable development principles, to address the long-term impact of their plans and policies, and work better with people, communities, and each other, in order to address problems including poverty, health inequalities, and climate change.
- (g) 2020: Revocation of Technical Advice Note 1 (TAN1: Joint Housing Land Availability Studies) Changes to the planning system followed a rationale that all new development should be identified through the Local Plan process, with only limited scope for windfall sites⁴³⁸. These changes included the removal of the requirement for a five-year supply of housing land.
- (h) February 2021: PPW (Edition 11) was published. This version of PPW was updated to reflect publication of Future Wales: The National Plan 2040.
- (i) February 2024: The latest version of PPW (Edition 12)⁴³⁹ was published. This included changes to Chapter 6 (Distinctive and Natural Places) in order that the Welsh Governments duty to maintain and enhance biodiversity and the resilience of ecosystems in Wales is met. Additionally, it made minor changes in regard to transport, retail and commercial development, community facilities, electronic communications, and relevantly housing policy. Here it included wording to emphasise that LPAs need to consider the prevalence of second homes and short-term holiday lets in their area when assessing housing needs and determining their housing requirement. Additional text also recognised that community-led housing can contribute to the provision of affordable homes. The PPW now extends to 187 pages and is supplemented by a further Technical Advice Notes, circulars and policy clarification letters. It is also intended to be read alongside Future Wales: The National Plan 2040.

6.125 Across all three nations, continuous and frequent planning policy reform can create uncertainty within the relevant planning system, which in turn materially

⁴³⁷ A prosperous Wales; a resilient Wales; a healthier Wales; a more equal Wales; a Wales of cohesive communities; a Wales of vibrant culture and thriving Welsh language; and, a globally responsible Wales

⁴³⁸ Sites not specifically identified in the development plan.

⁴³⁹ Welsh Government; [Planning Policy Wales; Edition 12; February 2024](#)

affects how it operates. One of the clearest examples of this is the impact that policy changes can have on LPA plan-making.

- 6.126 Research by the HBF⁴⁴⁰ indicates that policy uncertainty since the White Paper was published in 2020, and particularly between September 2022 and September 2023, has slowed local plan-making significantly. They report that a ministerial statement on planning⁴⁴¹ and publication of the NPPF consultation⁴⁴² at the end of 2022 had a knock-on impact on both the number of local plans that were adopted throughout the year, and on the number of local plan consultations. It reported that, as of 11 September 2023, 62 LPAs had delayed or withdrawn their local plan.
- 6.127 Under the reforms to the plan-making process in England⁴⁴³, the proposed new plan-making system will not be implemented until autumn 2024. With the new system proposing a recommended 30-month timeline⁴⁴⁴ from start to finish for the plan making process many LPAs without an up-to-date plan in place, may not have one in place before 2027.⁴⁴⁵
- 6.128 The Scottish Government told us that they were aware that a number of LPAs had held back on preparing new plans given there were significant changes made through the 2019 Planning Act to procedures for plan making. They wanted to see the regulations and guidance in place, which came into force/were published in May 2023, before undertaking a plan review.
- 6.129 Housebuilders' internal documents reveal their concerns about how uncertainty over policy is impacting the planning system, and particularly the effect on LPA plan-making. For example:
- (a) One housebuilder in a strategy paper presented to its Board in October 2022 discussed how planning policy uncertainty has led to 'inertia' in the local plan-making process:
- The major cause of this [national uncertainty] has been the government's position in relation to planning reform.... All this uncertainty has done nothing to encourage LP progression indeed it has caused inertia in new Plan progression and existing Plan review.'
- (b) In its Executive Planning Report in December 2022, one housebuilder highlighted how in its view, the current political uncertainty in England was

⁴⁴⁰ See: [Delayed local plans \(hbf.co.uk\)](https://www.hbf.co.uk)

⁴⁴¹ [Written statements - Written questions, answers and statements - UK Parliament](#)

⁴⁴² [Levelling-up and Regeneration Bill: reforms to national planning policy - GOV.UK \(www.gov.uk\)](#)

⁴⁴³ [Plan-making reforms: consultation on implementation - GOV.UK \(www.gov.uk\)](#)

⁴⁴⁴ [Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms - GOV.UK \(www.gov.uk\)](#)

⁴⁴⁵ Although, LPAs who wish to progress a plan under the current legal framework do have the option to submit a plan for examination until 30 June 2025.

contributing to a fall in the number of planning permissions that have been granted:

‘This data [showing a fall in the number of major planning applications to its lowest level in a decade] is not a surprise given the resourcing issues being experienced by local authorities and delays caused by politically driven inertia in councils and lack of clarity in government policy around housing numbers’

- (c) In a report on planning reform prepared for its Board, one housebuilder sets out its view that some LPAs are using the current reform process as a reason not to update their local plans:

‘the principal planning risk is that LPAs use the continued uncertainty and lack of detail as a reason defer decision making on both local plan making and development management decisions.’

Lack of up-to-date local plans

- 6.130 As we set out in the Background section above, the GB planning systems are ‘plan-led’ and the local plan is a crucial document for identifying housing need and sites for development in a local area. Where an LPA does not have in place an up-to-date plan then the context within which planning decisions are made and housebuilders make decisions on investment in sites for development will be inherently less certain.
- 6.131 Our analysis of data on LPA housing delivery (as proxied by HDT scores) and the status of their local plan indicates that there is a link between the two. Table 6.5 shows that, as of 31 December 2021, only 40% of LPAs had updated their plans in the last 5 years whilst 22% had not adopted a plan for more than 10 years or had no plan in place. LPAs that have not updated their local plan in more than 10 years, or that do not have a local plan in place at all, have also tended to undershoot their HDT. This analysis indicates that an up-to-date local plan may support higher levels of housing delivery relative to need (although this analysis of itself cannot be taken to prove causality). Below, we consider evidence from housebuilders and LPAs on the importance of an up-to-date local plan for housing delivery.

Table 6.5 Relationship between age of LPA local plan and HDT score

Age of LPA plan	No. LPAs with plan in this age range at 31 December 2021	Median HDT Score 2021
Less than 5 years old	128 (40%)	138%
Between 5 and 10 years old	111(34%)	138%
More than 10 years old	53 (16%)	91%
No plan adopted	21 (6%)	68%
N/A ⁴⁴⁶	9 (3%)	N/A
Total LPAs included in analysis	313	133%

Source: CMA analysis of Planning Inspectorate data [Local Plan: monitoring progress - GOV.UK \(www.gov.uk\)](http://www.gov.uk); and HDT data: [Housing Delivery Test: 2021 measurement - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

6.132 Evidence that we have gathered from housebuilders and LPAs supports the view that an up-to date local plan may support higher levels of housing delivery relative to need.

6.133 Housebuilders use existing and emerging local plans to help them identify sites. For example, one housebuilder in a presentation to a Board strategy meeting covering site identification notes 'Land teams utilise these Local Plans to identify potential sites. Teams also try and shape emerging local plans for the next plan period – this aids in identification of future strategic opportunities.'

6.134 Consequently, a lack of an up-to-date local plan results in a more uncertain context for housebuilders, and therefore can reduce the flow of land into the planning system and, subsequently, planning permissions and housing delivery. Housebuilders consider the absence of an up-to-date local plan as a constraint on the land supply. For example, in a paper on the political climate presented to its board, one housebuilder states:

'Delays to plan making and a failure by councils to allocate sufficient land in areas to meet market demand has a direct impact on the land market, with a lack of supply driving up competition, land values and land-owner expectations.

6.135 Similarly in a presentation to its Board one housebuilder observed that 'Local plan delays – only 39% of LPA's have adopted a plan in the last five years.....lead[s] to reduced supply of quality sites with planning permission'.

6.136 A number of LPAs also commented on the importance of having in place a local plan. For example, one LPA told us an up-to-date plan gives everyone some clarity on where you want development to be and helps to deliver it. It also gives the housebuilders the certainty that they look for and that enables them to make their investment decisions.

⁴⁴⁶ Includes LPAs that do not need to produce a local plan such as development corporations and newly formed authorities that have not had the chance to produce a plan as of the time covered by the analysis.

- 6.137 However, one LPA told us that despite having an up-to-date, well-evidenced local plan they were struggling to meet their housing need because two large strategic sites included in the plan had not delivered sufficient housing. This was mainly due to specific issues with viability at these sites despite extensive viability assessment of them at the plan making stage.
- 6.138 Where there is no up-to-date local plan in place in England the presumption of sustainable development will apply. This in theory gives housebuilders an avenue to bring forward off-plan developments to help meet housing need. However, the presumption is not a perfect substitute for an up-to-date plan. Off-plan development does not give the kind of clarity for local communities that LPAs highlighted as being important. Neither does the presumption apply in all cases where there is no up-to-date plan. In particular, it does not apply to development on footnote 7 land afforded protection by the NPPF.
- 6.139 In England, reviews of local plans at least every five years are a legal requirement⁴⁴⁷ and the NPPF states strategic policies in local plans should be updated at least every 5 years if local housing need has changed significantly. However, less than 40% of LPAs had updated their plans within the last 5 years (as of 1 May 2023).⁴⁴⁸
- 6.140 Updating a plan is a complex and lengthy process. DLUHC estimates suggest that the average time taken to produce a local plan is 7 years.⁴⁴⁹ Our discussions with LPAs also indicated that developing a local plan takes substantial time and resources. One LPA said that producing the local plan had required up to 40% of their planning resources plus consultancy input over several years.
- 6.141 A further LPA told us that preparing a local plan is not a cheap or easy endeavour and they have a significant budget for theirs. Even once a local plan has been produced, as we discuss further in the following sub-section 6.152, getting public and political agreement to adopt it can be far from straightforward.
- 6.142 We have also sought to understand how many LPAs in Scotland and Wales have up-to-date plans. We have, to the extent possible, made inferences about how up-to-date plans in these nations contribute to housing delivery.
- 6.143 In Scotland, prior to the introduction of NPF4 there was a statutory requirement to prepare plans at intervals of no more than 5 years. This was a slightly stronger requirement than in England, where the requirement is to review and, if necessary, update a plan every 5 years. Since NPF4 came into force, the statutory period for

⁴⁴⁷ Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012.

⁴⁴⁸ CMA analysis of Planning Inspectorate data.

⁴⁴⁹ See paragraph 38 of [Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms](https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill) - GOV.UK (www.gov.uk).

plan preparation is now 10 years.⁴⁵⁰ Guidance is that plans should not take 10 years to prepare; it instead suggests a 3-4 year period allowing more time for a focus on delivery of the plan.⁴⁵¹ With the switch to the 10 year plan review period, current guidance suggests that amendment to legislation to allow plans to be updated in the interim will be introduced ‘in due course’.⁴⁵²

6.144 Table 6.6 shows that 22 out of 35 (63%) Scottish LPAs have a plan that is less than five years old as of 31 March 2023. This is a much higher proportion than for England. It may be that the slightly stronger plan preparation requirements that were in place in Scotland prior to NPF4 contributed to this.

6.145 There is some indication that Scottish LPAs with more recently adopted plans achieve higher levels of housing delivery. Of the 22 LPAs with a plan of less than 5 years old, the median ratio of housing delivery to MATHLR for 2018-19 to 2022-23 was 112% compared to 94% from the 13 LPAs with plans of older than 5 years.⁴⁵³ However, given the relatively small number of Scottish LPAs and the significant difference between the circumstances they face we cannot attribute direct causality to this. It is also possible that having more recently adopted plans than in England contributes to the finding that a relatively low proportion of Scottish LPAs’ housing delivery has significantly undershot their MATHLR over the past 5 years (see Table 6.2). However, many other aspects of the planning system and other market factors will contribute to this, so again it is difficult to attribute direct causality.

Table 6.6 Age of LPA local plans in Scotland

<i>Age in years of local plan at 31 March 2023</i>	<i>No. LPAs</i>
Less than 5	22
5 to 8	10
8 to 10	1
10 or greater	2
Total	35

Source: CMA analysis of data provided by the Scottish government

6.146 In Wales, the local plan sets out an LPA’s proposals and land-use policies for the future development of land in its area over a fifteen-year period. There is no requirement to formally update the plan within this period, but the local plan must be reviewed by an LPA at least every four years from the date the plan was adopted and produce a review report.⁴⁵⁴ Since the Planning Act Wales (2015) came into force, local plans have been required to specify an end date after which it will no longer be extant – with the intention to encourage timely review. However,

⁴⁵⁰ See: Section 16.1.a.ii. [Town and Country Planning \(Scotland\) Act 1997 \(legislation.gov.uk\)](https://legislation.gov.uk).

⁴⁵¹ See: [Local development planning guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁴⁵² See: [Local development planning guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot)

⁴⁵³ CMA analysis of data provided by the Scottish Government.

⁴⁵⁴ See: [Development Plans Community Guide \(gov.wales\)](https://gov.wales).

this only applies to plans adopted after this came into effect with the first plan end date not being until 1 July 2026.⁴⁵⁵

- 6.147 As Table 6.7 shows, all but one of the 24 Welsh LPAs (96%) has adopted a local plan; however, data provided to us by the Welsh government shows that thirteen LPA plans lapsed in either 2021 or 2022.⁴⁵⁶ Five (21%) of plans were adopted in the last 5 years with a further five being adopted more than 10 years ago.
- 6.148 In Wales, in comparison to Scotland and England, a higher proportion of plans are more than 5 years old, and a high proportion of the plans that have been adopted have lapsed. This may, in part, be a consequence of how the plan system operates in Wales, given that unlike in England and (until recently) Scotland there is no requirement to review, and if necessary, update a plan every 5 years. In addition, because plans produced before 2015 did not have an end date a number of plans may have been allowed to lapse. In addition, the Welsh government has informed us that delays in the process to date have largely been attributed to Covid-19 and the ability to engage in the plan-making process and the failing phosphorous standards identified by Natural Resources Wales (NRW) in riverine Special Areas of Conservation (SAC) waterbodies.
- 6.149 It is possible that the older age of plans, and the fact that many plans have lapsed, contributes to the finding that no Welsh LPA has delivered housing at a rate that exceeds its plan target over the past 5 years (see Table 6.3). However, many other aspects of the planning system and other market factors will contribute to this, so it is difficult to attribute any direct causality.

Table 6.7 Age of LPA local plans in Wales

Age of local plan at 31 March 2023	No. LPAs
Less than 5	5
5 to 8	5
8 to 10	8
10 or greater	5
No plan	1
Total	24

Source: CMA analysis of data provided by the Welsh Government

Political and public attitudes to development

- 6.150 Although England, Scotland and Wales all set out national planning policies, ultimately planning decisions are made at the local level by elected representatives and planning officers in the context of locally agreed local plans and policies. Where local decision makers have discretion, they will have strong

⁴⁵⁵ [Local Development Plan \(LDP\) end dates: letter to local authorities \[HTML\] | GOV.WALES.](#)

⁴⁵⁶ For example, when the specified period covered by the plan has ended.

incentives to deliver developments in line with the preferences of the incumbent local population. In papers presented to its board, one housebuilder set out how they consider that local discretion can influence planning decisions:

‘Lobbying is a normal part of the planning process.....The decision maker must act reasonably and exercise their planning judgement in making their decision... In practice, this affords elected councillors who form the planning committee significant scope to approve or reject a scheme, even where it is recommended for approval by head of planning. Planning committees are therefore politically influenced, with individual members looking to make decisions that garner public support, or fulfil their promises made to the local electorate’

- 6.151 Indeed, the planning systems are in large part designed to ensure that local preferences are incorporated into decision making. However, this does not necessarily lead to consistent decision making at a local level. It may also not encourage optimum outcomes at a national level; in particular, local-level preferences are unlikely to take account of any negative externalities they may impose outside their local area by choosing to provide fewer homes. This creates a significant tension between delivering housing that both meet national housing need and also reflect local preferences.
- 6.152 A high level of local objection to development can make it more difficult for an LPA to successfully draw up and implement a local plan – the foundation of local planning decisions, as discussed above. Some LPAs told us that they had difficulty getting plans adopted for political reasons, especially where the plan might require the release of green belt land to meet housing need. For example, one LPA told us that they had been trying to review their plan for a couple of years, but it was politically sensitive because the plan was likely to call for an increase in residential development. Another LPA told us that getting the local plan adopted took an extraordinary amount of effort and persuasion, with the plan only being adopted in 2020 following a process begun 10 years earlier. Some other LPAs told us that the process of agreeing a plan could be more complicated if it requires the release of greenbelt land.
- 6.153 It is notable from analysis presented in Table 6.8 that the LPAs with either a significantly outdated plan, or no plan at all, typically have much higher percentages of greenbelt land within their boundaries. This could, at least in part, be a consequence of the political sensitivities around agreeing plans that require the release of greenbelt land. Up-to-date local plans can be particularly important to facilitate the supply of land for development in high greenbelt LPAs because the presumption of sustainable development does not apply to green belt land.

Table 6.8 Relationship between age of LPA local plan and greenbelt land

Age of LPA plan	No. LPAs with plan in this age range at 31 December 2021	Median % greenbelt in LPA
Less than 5 years old	128 (40%)	0.1%
Between 5 and 10 years old	111(34%)	2.9%
More than 10 years old	53 (16%)	18.0%
No plan adopted	21 (6%)	53%
N/A ⁴⁵⁷	9 (3%)	N/A
Total LPAs	313	3.0%

Source: CMA analysis of Planning Inspectorate data [Local Plan: monitoring progress - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/local-plan-monitoring-progress); and land use data: [Land use statistics: England 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/land-use-statistics-england-2022)

- 6.154 However, not all LPAs faced very significant political resistance to getting plans adopted. One LPA told us that the process of getting the plan adopted was relatively smooth as the local administration was keen on facilitating growth in the area in the face of quite severe land supply constraints. Another LPA told us that whilst there was some resistance, attitudes within the area were broadly pro-growth which eased the plan making and adoption process.
- 6.155 As well as making it more difficult to adopt a local plan, local attitudes to development can influence decision making for individual planning applications. Several of the LPA planning officers we spoke to mentioned the high level of political engagement in decision making. Some expressed a view that the number of decisions that were considered by planning committees (as opposed to delegated to planning officers) was perhaps too high. In addition, some LPAs recounted examples of decisions overturned by committees against planning officer advice. However, it was observed by a number of LPAs that in a democratically accountable system it was inevitable that there would, and indeed should, be a high level of political engagement with planning decisions.
- 6.156 Housebuilders also observe that decisions on individual planning applications can be politically influenced. For example, in an internal paper on ‘Guidance on Current Planning Trends’ written in Jan 2022, one housebuilder stated ‘LPAs are not only less resourced than ever before but are continuously allowing local politicians to wield greater non policy based influence at the decision making stage.’ Similarly, in papers for its July 2022 Board, one housebuilder noted that ‘We also have more sites going to appeal due to local politics, particularly changes in control following the May elections.’
- 6.157 Areas where local attitudes are less receptive to residential development may become less attractive places for housebuilders to pursue development opportunities. Evidence from housebuilder documents indicates that local attitudes towards development may influence whether they choose to pursue development in an area. For example, in a land strategy document presented to its board, one housebuilder states ‘local politics can materially impact the outcome and timing of

⁴⁵⁷ Includes LPAs that do not need to produce a local plan such as development corporations and newly formed authorities that have not had the chance to produce a plan as of the time covered by the analysis.

planning and increase the attractiveness or risk associated with acquiring land within particular local planning authority areas’.

- 6.158 Political and public opposition to development can also increase the time taken to decide an application. In addition, it can increase the likelihood of an appeal, where an application in line with the local plans and policies is refused (with consequential cost and timing implications). In a document on land strategy provided to its board, one housebuilder said that following 10 years of work an application at a site which had been allocated in a local plan had been turned down because of local politics, leaving it no choice but to appeal the decision, causing an 18-month delay. In a paper on the political climate presented to its board, one housebuilder made reference to the possibility that ‘Councillors may also look to defer making decisions as a delaying tactic’.
- 6.159 There is no consistent metric available to compare local attitudes to development against outcomes. We therefore cannot directly demonstrate the extent to which political and public objection to development leads to lower housing delivery. However, it seems likely that planning outcomes and housing delivery would reflect, at least in part, local attitudes towards development. We would expect LPAs which are less receptive to development to have planning outcomes that reflect this, and that this in turn would result in lower levels of housing delivery.

The views of respondents to our Planning Working Paper

- 6.160 In our Planning Working Paper, we sought stakeholder views on the analysis presented above.
- 6.161 More specifically, we asked whether stakeholders:
- (a) Agree that planning risk is a key issue for the planning system;
 - (b) agree with our analysis of the causes of the uncertainty in the planning systems and how they contribute to under delivery of housing;
 - (c) think there are any other factors the CMA could consider; and
 - (d) consider that there is any significant difference in the level of planning uncertainty between England, Scotland and Wales.
- 6.162 Overall, people agreed with our assessment of planning risk and uncertainty in the planning systems as set out in the section above. We will consider each of the four questions above in turn below.

Planning risk is a key issue for the planning systems

- 6.163 All the responses agree with the CMA's analysis that planning risk is a key issue for the planning systems. Overall, these indicate that the impact of planning risk on the planning systems has been a significant barrier, or even the biggest barrier, to delivering new homes. In addition, one respondent indicated that they identify planning risk as one of their "principal risks and uncertainties" as defined by section 414C of the Companies Act 2006.
- 6.164 Several housebuilders have shared their experience of facing planning risk. One respondent indicated that 'it is not uncommon for schemes to progress through the planning system and to either require significant alterations (which can affect the viability of the scheme), or fail to secure planning permission, due to changes in policy or a change in political control of the local council'.
- 6.165 A large proportion of responses indicated that planning risk disproportionately affects SME housebuilders, which tend to have less flexibility to develop alternative sites in cases of planning delays. For example, the FMB noted that in its 2023 House Builder's Survey the majority of FMB house building members said that small sites opportunities are decreasing and that the process to obtain planning for them is getting worse. One respondent told us that they "actively steer clear of LPAs and sites where [they] consider the planning risk to be unacceptably high. Working in a relatively small geographic area this makes finding and securing suitable development sites very hard work". Multiple respondents indicate that this has increased concentration of larger housebuilders.
- 6.166 Several responses indicated that planning risk varies by type of development. Brownfield development is seen as being less risky than greenfield due to being less impacted by political changes and overall being more policy consistent. We have been told that there is limited risk differential by size of site – a smaller greenfield investment faces the same challenges as a larger greenfield site. One respondent indicated that planning risk is higher in the case of residential development because of the increased politicisation of the planning process.
- 6.167 Overall, the majority of responses would prefer a system with increased clarity, consistency of process and policy application, certainty and simplicity.

Respondents' views of the causes of planning uncertainty identified in the CMA's Planning Working Paper and how they contribute to under delivery of housing

- 6.168 Overall, the responses we analysed tend to agree with our analysis of the causes of the uncertainty in the planning systems and how they contribute to under delivery of housing, in particular:

- (a) The lack of up-to-date local plans, or plans which contain out-of-date policies, can cause uncertainty for councils, communities and developers alike. For example, one respondent indicated that Lichfields' analysis⁴⁵⁸ found that in England currently 67% of local plans are out-of-date (over five years old) and this will have risen to over 75% by the end 2025 if current policy conditions continue. In addition, 38% of LPAs will have a local plan that is more than 10 years old by the end of 2025. These figures appear similar to the findings highlighted by the CMA earlier in this section. Another respondent indicated that according to their internal analysis they have seen over 60 local authorities delay local plans in the last year. In turn, this can lead to lower levels of planning applications and delivery.
- (b) Ongoing policy changes to the planning process.
- (c) The politicisation of the planning process, which in turn can increase planning uncertainty and impact housing delivery, which was a point raised in multiple responses we analysed.
- (d) Nitrate neutrality challenges in England have been raised as an issue which contributes the under delivery of housing by several parties.
- (e) Resourcing issues in LPAs, with one study indicating that 76% of SME housebuilders believe local authority staffing shortages are the main cause of delays in the process.

Additional causes of planning uncertainty

- 6.169 The majority of respondents agree that the main causes of uncertainty in planning are those outlined in the CMA's Planning Working paper. Namely policies that impact the planning process and the delivery of housing, the continuous revision of the planning process, the lack of up-to-date local plans and political and public attitudes to development.
- 6.170 Other causes that have been highlighted include:
- (a) The absence of a strategic tier, and of a national spatial plan, in England.
 - (b) Signs of concentration at housebuilder level, with multiple respondents indicating a reduction in the number of small housebuilders.
 - (c) The lack of local plan coverage.
 - (d) Negative public attitude towards development.

⁴⁵⁸ [Timed out - A projection of future local plan coverage in 2025 under prevailing policy conditions \[2023\] \(lichfields.uk\)](#)

- (e) Uncertainty relating to the discharge of planning conditions, especially when conditions are attached to permission late in the process with little scope for developers to challenge them.
- (f) Several factors of political uncertainty, such as: the role of councillors in planning committees, which one respondent found sometimes make decisions contrary to the recommendations of their own planning officers; the short-term political process, with many LPA's facing an election in three of every four years; and local politicians being able to object to or revisit the principle of development on sites that are allocated in adopted local plans.
- (g) Limited use of sanctions against LPAs as a consequence of poor planning performance.
- (h) The lack of a consistent approach between LPAs.

The differences in the level of planning uncertainty between England, Scotland and Wales

- 6.171 We have asked for views on whether there is any significant difference in the level of planning uncertainty between Scotland, Wales and England. A number of responses from stakeholders with experience in Scotland and Wales provided comments on the two nations specifically. Several responses indicated that they do not have strong enough involvement with planning outside of England to give a view on this question.
- 6.172 The overall position from the responses we analysed suggests that there is inconsistency in the systems operating in each GB nation, and uncertainty appears to cause a particularly significant impact on the planning systems in Scotland and Wales as a result of specific issues relating to the planning frameworks in these two nations. This was highlighted by several responses analysing the difference in uncertainty between either Scotland or Wales and England, whereas only one housebuilder with its main activity in England and some activity in Wales indicated their experience across both territories has been similar.
- 6.173 The following issues have been outlined in responses as causing delays in Scotland:
- (a) Length of the planning process. For example, applicants for major planning applications are required to undertake a minimum 2 rounds of public engagement over a 12 week period prior to submitting a planning application and this can lead to public consultation 'fatigue'. One respondent told us that the Scottish planning system is lengthy and complex with high associated

costs including statutory pre-application advice (minimum requirement of 12 weeks), planning applications and local plan submissions.

- (b) A different approach to community-based plans between Scotland and England (ie Local Place Plans and Neighbourhood Plans) and their different status and relationship to the Development Plan.
- (c) The absence of a presumption in favour of sustainable development.
- (d) The absence of a national housing target, while the setting of housing targets for local plans is ambiguous.
- (e) The absence of primary research in assessing housing need at the local authority and housing market area level.
- (f) A lack of consistency between local planning authorities and Scottish Government nationally within its objectives and targets.

6.174 The following issues have been outlined in responses as causing additional delays in Wales:

- (a) Length of the planning process, including plan preparation timetable, creating uncertainty for housebuilders who should be prepared to risk significant up front expenditure to promote a site through the LDP system with little certainty about prospects of success.
- (b) The absence of a national housing target, while the setting of housing targets for local plans is ambiguous.
- (c) Two respondents consider that the disapplication of paragraph 6.2 of the Technical Advice Note 1 (TAN1) by the Welsh Government (which gives considerable weight to the supply of new housing when dealing with planning applications in areas with a housing land supply of less than 5 years; the so called 'tilted balance') means that the Welsh planning system is currently wholly reliant on the plan led approach to deliver new residential development, which risks being exposed to significant delays and lack of up-to-date local plans.

Our overall view

6.175 The CMA's overall finding that planning decision-making lacks predictability and consistency is supported by the responses to our working paper. Responses to the working paper agreed with the CMA's analysis that planning risk is a key issue for the planning system, with several responses indicating that planning risk significantly impacts the delivery of new homes and disproportionately affects SME housebuilders and specific types of development such as greenfield.

Housebuilders confirmed that they incur a number of upfront sunk costs prior to planning permission being granted and agreed with the key causes we set out regarding the uncertainty in planning decision making, and the evidence on how this affects the willingness of housebuilders to bring forward planning applications and the delivery of housing.

- 6.176 There are several factors which make the planning systems significantly less certain and consistent, notably:
- (a) **The implementation of a range of new policies that impact the planning process and the delivery of housing.** These significant policy changes have impacted the planning process in England, Scotland and Wales, and reflect other societal priorities besides housing supply, such as environmental and safety issues (including nutrient neutrality, housing targets and building safety and homes standard challenges).
 - (b) **The continuous and frequent revision of the planning process across all three nations.** This creates uncertainty within the planning system, which in turn materially affects how it operates (for example, significantly slowing down local plan-making), with many changes proposed to be rolled out gradually on a 'test and learn' basis.
 - (c) **Lack of up-to-date local plans:** As shown above, the LPA's local plan is a key factor in determining which land is allocated for development and therefore likely to get planning permission. In England, as of 31 December 2021, only 40% of LPAs had updated their plans in the last 5 years whilst 22% had not adopted a plan for more than 10 years or had no plan in place. We have, to the extent possible, made inferences about how up-to-date plans in Scotland and Wales contribute to housing delivery. In Scotland, 63% of LPAs have a plan that is less than five years old as of 31 March 2023. There is some indication that Scottish LPAs with more recently-adopted plans achieve higher levels of housing delivery. In Wales, in comparison to Scotland and England, a higher proportion of plans are more than 5 years old, and a high proportion of the plans that have been adopted have lapsed. This may, in part, be a consequence of how the plan system operates in Wales, given the lack of a requirement to review and update a plan every 5 years.
 - (d) **Political and public attitudes to development expressed through the planning process:** We found that residential development is increasingly politically-contested and attitudes to development vary significantly by area, with the release of greenbelt land being particularly controversial. The CMA's Planning Working Paper responses analysed by the CMA confirm that there is a high level of political engagement in decision making and an increased politicisation of the process as a whole. Planning outcomes and

housebuilding vary significantly across LPAs, with some inconsistent decision making at a local level. Political and public opposition to development can also increase the time taken to decide an application and increase the likelihood of an appeal.

- 6.177 The stakeholder responses to the CMA's Planning Working Paper that we analysed tend to agree that the factors listed are the main causes of uncertainty in the planning systems leading to under delivery of housing. In particular the lack of up-to-date local plans, ongoing policy changes, resourcing issues in LPAs, the increased politicisation of the planning process, and nitrate neutrality challenges in England. Additional causes that have been highlighted in responses include the lack of local plan coverage, uncertainty relating to the discharge of planning conditions and the limited use of sanctions against LPAs.
- 6.178 While relatively few responses commented on differences in the level of planning uncertainty between England, Scotland and Wales, the overall position from those who did is that uncertainty impacts the planning systems in the three nations differently as a result of inconsistency in the frameworks operating across nations. These responses seem to suggest that, compared to England, uncertainty impacts the planning system more significantly in Scotland and Wales respectively. These responses also add more detail about the differences between nations, such as a different approach to community-based plans, a lengthier planning process, the absence of a presumption in favour of sustainable development and the absence of a national housing target in Scotland and Wales.

Length, cost and complexity

- 6.179 A concern raised with us by the large housebuilders in particular was that the planning process is long, complex and costly, and is becoming increasingly so.
- 6.180 Higher costs of engaging in the planning and development process could threaten the viability of development at some sites. This is likely to deter planning applications, as well as slowing the delivery of homes. In addition, a longer planning process requires housebuilders to hold on to a larger quantum of land for a longer period of time than they would otherwise. It also requires them to manage a longer period between funding and paying the upfront costs associated with initiating a development and realising the returns from their investment.

Cost and complexity of the planning and development process

- 6.181 The planning process has become increasingly costly and complex to negotiate. In addition, there are substantial and increasing policy related costs involved in the development process which could threaten the financial viability of development at some sites.

- 6.182 Recent analysis by Lichfields suggests that since 1990 the volume of evidence that is required to support a planning application has increased dramatically, as has the cost associated with making a planning application.⁴⁵⁹ This was attributed largely to the increased policy requirements and evolution of technical and professional practices and also to increasingly risk averse LPAs who have lost expertise and experience from their planning departments.
- 6.183 We have undertaken our own analysis of data on direct external planning costs (LPA planning fees and consultancy costs – not including internal staff costs) provided by the largest five housebuilders. This analysis, set out in Table 6.9, shows that these costs can be substantial particularly for smaller sites when estimated on a per plot basis.

Table 6.9 Average direct external planning costs of the 5 largest housebuilders⁴⁶⁰

	Number of plots per application:				All applications
	0-50	51-100	101-500	>500	
Average direct cost per application	102,000	186,000	341,000	890,000	304,000
Average direct cost per plot	3,500	2,400	1,500	900	1,500

Source: CMA analysis of responses of housebuilder to question 59 of RFI data 23 March 2023.

- 6.184 The direct costs associated with making planning applications can be substantial ranging from around £100,000 per application to around £900,000 per application depending on the size of a site. On top of these costs there will be substantial internal staff resources that are devoted to progressing a planning application. These costs can represent a substantial upfront cost that needs to be funded by housebuilders throughout the development process on top of, as we explain below, large and increasing local and national policy related costs.
- 6.185 As we set out in Appendix J the planning systems seek to capture a share of the uplift in land value when a site is given planning permission. These ‘developer contributions’ fund infrastructure that is needed to support new residential development. In England these contributions came to a value of £7bn in 2018-19 (approx. £21k per plot given planning permission in England⁴⁶¹) and in Scotland the value of these contributions was £490m in 2019-20 (approx. £13k per plot given planning permission in Scotland⁴⁶²).
- 6.186 We have discussed the large number of policy changes which have impacted, and will continue to impact the planning systems and the housebuilding market more

⁴⁵⁹ [CL16160-04 LPDF Report - Sept23.indd \(lichfields.uk\)](#).

⁴⁶⁰ LPA planning fees and consultancy costs incurred during the planning application process.

⁴⁶¹ CMA analysis of data from: [Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study \(publishing.service.gov.uk\)](#); and [DLUHC Open Data : Units granted planning permission on all sites, England \(opendatacommunities.org\)](#).

⁴⁶² CMA analysis of data from: [6. The Value of Developer Contributions - Planning - the value, incidence and impact of developer contributions: research - gov.scot \(www.gov.scot\)](#); and [Housing Pipeline Report \(hbf.co.uk\)](#).

generally already in this Section. These changes can impose large costs on housebuilders, which can make it less desirable for them to bring forward land through the planning process. Using UK government impact assessments, the HBF has estimated the impact of a number of the recent and forthcoming policy changes.⁴⁶³ The HBF estimated the annual cost was around £4.5bn or approx. £19K to £23K per plot.

6.187 Land for residential development is typically valued on a residual value basis in accordance with Royal Institute of Chartered Surveyors (RICS) guidance.⁴⁶⁴ Under this methodology, the cost of developing a site including all costs of complying with a relevant policy are deducted from a site's gross development value (essentially the expected income from a site) to arrive at the land value. In accordance with this, the government typically assumes that the majority of the costs imposed by its policies will be passed on to landowners in the form of lower land prices.⁴⁶⁵ However, in its response to our Statement of Scope, the HBF contested this view arguing that the scale of new policy and tax requirements would threaten the financial viability of developing some sites as these costs would push the price of land below the level that landowners were willing to accept. They argue this will lead to fewer homes being built over the coming decade.⁴⁶⁶

6.188 Housebuilders' internal documents reveal some concern on their part that increasing regulatory costs might threaten the viability of some sites. For example, in a paper on the political climate presented to its to its board one housebuilder stated that:

‘The additional development costs incurred by continued regulatory reform in particular, raises potential viability concerns which could in turn threaten overall housing delivery and associated investment in skills and infrastructure over the longer-term’.

6.189 Similarly, in a paper presented to its Board in November 2021 one housebuilder stated that:

⁴⁶³ Energy conservation: Part L, Accessibility: Part M, Future Homes Standard, Future Buildings Standard, Residential Property Developer Tax, Red diesel rebate removal, Biodiversity Net Gain, Nutrient Neutrality, Water Neutrality, and Electric Vehicle charging: Part S. See: [HBF Report - Building Homes in a Changing Business Environment](#).

⁴⁶⁴ See Section 6.1: [Valuation of development property \(rics.org\)](#).

⁴⁶⁵ In the impact assessment for the biodiversity net gain policy it states ‘The estimated direct cost is £199.0m per year (2017 prices). This falls to £19.9m, once a 90% pass-through of costs to landowners through land prices has been considered – as is anticipated on the basis of industry evidence and economic theory’, see: [Net gain impact assessment \(publishing.service.gov.uk\)](#).

⁴⁶⁶ See Page 17, Home Builders Federation Response to the CMA's Statement of Scope in relation to the Housebuilding market study Submitted March 2023: [Home_Builders_Federation.pdf \(publishing.service.gov.uk\)](#)

‘the cost of these additional [environmental] regulations ... threaten the viability of development in areas of the country the Government are targeting for ‘levelling up’.

- 6.190 At some point, increases in policy and similar regulatory costs could result in some sites that would otherwise be viable not being developed, if they rise to levels that means that sites do not provide a sufficient return to the housebuilder or landowner. The extent to which this is currently happening is difficult to determine, as it will depend on the specific circumstances in place at a given site (local market conditions, site characteristics, etc). However, it appears that the per plot costs can be significant in the context of the margins that housebuilders typically require to develop a site. Typically, housebuilders expect to achieve margins in the range of 15% to 25% on residential development sites.⁴⁶⁷ This equates to approximately £46,000 to £77,000 per plot at average house prices; so, for example, an additional £20,000 per plot regulatory cost would represent between 25% and 43% of typical housebuilder margins.
- 6.191 As we note above, the wider policy and regulatory choices made by government and their desirability in a wider societal context go beyond the scope the CMA set for this market study. However, there will be an inevitable tension between the costs that these policies impose on residential development and the viability of some residential sites and hence the supply of land.

Length of time taken to make planning decisions

- 6.192 In all three nations of GB, the length of time taken to make planning decisions is substantial and is increasing.
- 6.193 In England, fewer planning applications are being determined within the statutory time limit. The statutory time limit for a major planning application decision is 13 weeks, but longer can be taken if it is subject to a planning performance agreement (PPA), extension of time (EoT)⁴⁶⁸ or environmental impact assessment (EIA).⁴⁶⁹ Our analysis of the planning application data for England, set out in Figure 6.7, shows that the percentage of major dwelling planning decisions that

⁴⁶⁷ See Section 3 RICS (2019): [performance-metrics-required-returns-and-achieved-returns-for-uk-real-estate-development.pdf](#).

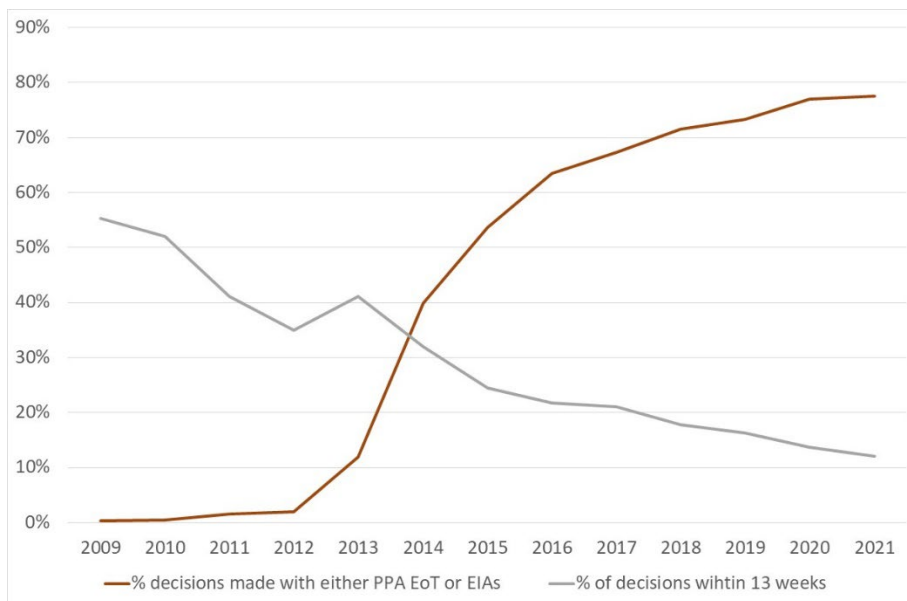
⁴⁶⁸ Where it is clear that an extended period will be necessary to process an application the local planning authority and the applicant should consider entering into a PPA before the application is submitted. If application is already being considered and it becomes clear that more time required, then the local planning authority should ask the applicant to consider an agreed EoT. Where EIA is required then a decision should be made withing 16 weeks. See: [Determining a planning application - GOV.UK \(www.gov.uk\)](#).

⁴⁶⁹ An Environmental Impact Assessment (EIA) is required in England for certain types of development projects and is used to ensure that the local planning authority has full knowledge of the likely significant effects on the environment before deciding whether to grant planning permission for a project. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 implement the European Union’s EIA Directive in England. Similar regulations apply in Wales, Scotland, and Northern Ireland. However, while in England this will be required only for certain types of applications, according to [Natural Resources Wales](#), an environmental assessment is required for most planning applications in Wales.

were made within the statutory 13-week deadline fell significantly between 2009 and 2021, from more than 50% to close to 10%.

6.194 An increasing number of planning applications are being determined with a PPA, EoT or EIA to which the statutory deadline does not apply. However, this switch to determining more applications with a PPA, EoT or EIA is not the cause of increasing delay within the planning system, but rather the mechanism through which these delays are manifested. We discuss the fundamental causes of delay within the planning system below. We note that PPAs were introduced with the intention of providing greater certainty for housebuilders. However, the views of housebuilders on their effectiveness are mixed due in large part to the inconsistency in how they operate across LPAs.

Figure 6.7 Major residential planning decision statistics 2009 to 2021



Source: DLUHC District planning application statistics (PS2): [Live tables on planning application statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

6.195 Our analysis of construction data as well as evidence from large housebuilders suggests that planning applications can take significantly longer than 13 weeks to determine. The average time taken to make an outline planning permission decision in England between 2020 and 2022 was well over a year. For a detailed or reserved matter application the average time taken was between 35 and 55 weeks.⁴⁷⁰

6.196 Scotland and Wales appear to have similar issues relating to the length of the planning process. In Scotland, the most recent annual figures (for 2022-23) show that major planning application decisions made took on average more than 39

⁴⁷⁰ CMA analysis of Glenigan data

weeks to make.^{471, 472} In Wales, work undertaken by Audit Wales shows that, in 2018-19, the average time taken to make a planning decision for a major planning application was more than 240 days (more than 34 weeks), up from 206 days (less than 30 weeks) in 2014-15.^{473, 474}

- 6.197 Planning delays can have a material impact on how housebuilders operate their businesses. For example, one housebuilder in July 2022 Board papers comments on how increasing planning delays (alongside other factors) require it to hold more land, but at the same time make it more difficult for it to maintain sales volumes (and hence receive a return from those land holdings). Several other housebuilders, make reference in their internal strategy and public investor documents to planning delays requiring them to hold more land. For example, one housebuilder, in an update to investors noted that: '[a] Frustrating planning environment, means [it's] beneficial to have a slightly longer landbank'.
- 6.198 The evidence that we have obtained from stakeholders indicates that a number of factors are driving up the length of the planning process. The main reasons identified were:
- (a) The increasing amount of regulation and policy impacting the planning systems leading to increased time to navigate the system;
 - (b) LPA resourcing constraints;
 - (c) Delays in receiving responses from statutory consultees;
 - (d) Increasing public and political engagement with the planning process; and
 - (e) The time taken to negotiate agreements between LPAs and housebuilders to secure developer contributions towards local infrastructure (see Appendix J)

LPA resourcing constraints

- 6.199 LPAs face increasing pressures on resources, both in terms of the funding of planning departments, and their ability to recruit qualified staff. This is a significant issue in all three nations of GB:

⁴⁷¹ See section 3.2 of: [Planning Applications Statistics 2022/2023: Annual and Quarterly \(October 2022 to March 2023\)](#) (www.gov.scot).

⁴⁷² In Scotland major planning applications should be determined within 4 months (see: Scottish Government: [What happens next?](#))

⁴⁷³ See: [The effectiveness of local planning authorities in Wales | Audit Wales](#).

⁴⁷⁴ In Wales Major planning applications should be determined within 8 weeks or 63 weeks if an environmental impact assessment is required, unless a PPA is entered into (where the decision can take longer), See paragraph 18 of: [planning-performance-framework-indicators-and-targets-in-detail.pdf](#) (gov.wales).

- (a) In England local authority expenditure on planning decreased by 43%⁴⁷⁵ over the past decade and there is a shortage of qualified planners⁴⁷⁶ as well as other relevant support professions.
- (b) RTPI analysis of Scottish Local Government Financial Statistics 2009-10 and 2020-21 shows that the gross expenditure of planning authorities decreased in real terms by 38% over the period, while staffing levels in planning departments had reduced by a quarter.⁴⁷⁷ In related research the RTPI has documented the shortage of qualified planners in Scotland.⁴⁷⁸
- (c) Audit Wales analysis shows that real net local authority expenditure on planning fell by 43% between 2008-09 and 2017-18.⁴⁷⁹

6.200 All of the 17 LPAs we met with as well as Heads of Planning Scotland and the Planning Officers Society emphasised that resourcing - both in terms of funding and recruitment of qualified planners and other supporting professions – was a key issue preventing faster processing of planning applications. All of the largest housebuilders argued that LPA resourcing was a problem in their response to CMA questions. They also noted that LPA resourcing was a problem in their internal documents. For example, in a strategy paper presented to its Board, one housebuilder states:

‘after a decade of austerity, we are left with the fewest resources / a shortage of skills necessary to do the job which has become increasing [sic] complex with regulatory burden, zero carbon, environmental requirements in a post Brexit / Covid world.’

6.201 In addition, in 2022 one housebuilder updated its 2018 Strategic Land Delivery Plan where it stated that one of the drivers for updating the plan was that:

‘The planning system has become increasingly dysfunctional as a result of the shift of LPA officers to working from home, lack of public sector resources, and Government inaction on promised planning reforms’

6.202 A survey of SME housebuilders undertaken by the HBF in March 2023 found that 75% of respondents believed that local authority staffing shortages are the main cause of delays in the process.⁴⁸⁰

⁴⁷⁵ In its report [Planning Agencies: Empowering Public Sector Planning, September 2022](#) the Royal Town Planning Institute (RTPI) analysed the changes in total expenditure for every Local Authority planning team throughout England. Nationally, local authority net expenditure on planning fell by 43%, from £844m in 2009/10 to £480m in 2020/21, when adjusted to 2021 prices.

⁴⁷⁶ See, for example, [RTPI | Local Authorities struggle as over a quarter of planners depart](#).

⁴⁷⁷ See: [RTPI | Resourcing the Planning Service: Key Trends and Findings 2022](#).

⁴⁷⁸ See, for example, the Heads of Planning Scotland and [the Royal Town Planners Future Planners Project Report \(June 2022\)](#) which discusses a shortage of planners in Scotland.

⁴⁷⁹ See: [The effectiveness of local planning authorities in Wales | Audit Wales](#).

⁴⁸⁰ See: [Planning delays and rising costs crippling SME housebuilders \(hbf.co.uk\)](#).

Delays in receiving responses from statutory consultees

- 6.203 Planning law prescribes circumstances where LPAs are required to consult specified bodies (statutory consultees) prior to a decision being made on an application.⁴⁸¹ There are wide range of statutory consultees and their exact identity will depend on the circumstances of the application.⁴⁸²
- 6.204 LPAs reported issues with getting statutory consultees to respond within the 21-day consultation period. Responses from statutory consultees were stated to commonly be late and, in many cases, returned well in excess of the required 21-day period. This was largely attributed to resourcing issues within the statutory consultee organisations.

The views of respondents to our Planning Working Paper

- 6.205 In our Planning Working Paper, we asked whether stakeholders:
- (a) Agree that the current level of planning, policy and regulatory costs could threaten the viability of development at some sites, and if so, to what extent and which sites and areas are more at risk;
 - (b) Agree with our analysis that shows the length and complexity of the planning systems may contribute to under delivery of housing;
 - (c) Agree that we have identified the key causes of delays in the planning systems and whether there any other factors that we should consider;
 - (d) Considered that there is any significant difference in the level of planning uncertainty between England, Scotland and Wales.
- 6.206 Overall, parties agreed with our assessment of these issues in the working paper. We consider each of the four questions in turn.

Planning, policy and regulatory costs

- 6.207 Overall, the majority of responses agreed that the current level of planning, policy and regulatory costs could threaten the viability of development at some sites.

⁴⁸¹ See: [Consultation and pre-decision matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/consultation-and-pre-decision-matters).

⁴⁸² Such consultees include the Canal and Rivers Trust, Coal Authority, Environment Agency, Forestry Commission, HSE, Relevant Highways Authority, Flood Authority, National Parks, Natural England, Rail Authorities, Sport England and Water and Sewerage undertakers. See table 2 of: <https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Statutory-consultees-on-applications> for more detail.

- 6.208 Several parties indicated that levels of costs associated with the planning process have greatly increased, both for housebuilders and LPAs.⁴⁸³ One response mentioned that this increase is especially challenging in current market conditions characterised by high inflation.
- 6.209 Several parties stated that costs are disproportionately higher for SME housebuilders, resulting in barriers to entry.
- 6.210 Parties also indicated that increased costs will disproportionately impact certain types of sites. Several responses indicated that tight, small urban sites and rural sites and lower value areas are less able to absorb such costs. This includes sites brought forward by SME housebuilders. However, one party told us that large scale brownfield regeneration sites in urban areas may also be rendered unviable by increasing costs associated with making planning applications, since they are frequently at the margins of viability.
- 6.211 In addition, multiple parties indicated that the length and complexity of the planning process has been steadily increasing over time. Another respondent indicated that the consistent increase in policy and regulatory costs over recent years has occurred at unprecedented pace and scale, while another indicated that planning has never been more difficult to achieve.
- 6.212 We have also been told by one large housebuilder that a number of expected regulatory changes are likely to have an impact on development viability, including Biodiversity Net Gain, Future Homes Standard, Nutrient Neutrality and Alternative Natural Recreational Greenspace.

The length and complexity of the planning systems may contribute to under delivery of housing

- 6.213 The majority of responses we analysed agreed with the CMA's analysis showing trends of reduced numbers of planning applications and decisions, and offered observations by way of expansion on the working paper.
- 6.214 Several respondents have highlighted the political complexities associated with plan-making as the main reason for planning delays, and the necessity of building more certainty into the planning process. Responses also highlighted the significantly large volume of material that must be prepared as part of the validation requirements for registering a planning application.
- 6.215 In terms of timelines, we have been told that larger applications often take well over a year from submission to determination, with one housebuilder indicating that larger applications now take between 2 to 3 years from submission to

⁴⁸³ These costs include promotion costs, increasing planning fee base, increasing regulatory costs around net zero transition in build/energy supply costs, meeting EV charging policy requirements.

determination. In Scotland, one respondent stated the latest Scottish Government statistics show the inability to meet statutory timescales for major development applications by a considerable margin. We have also been told that delays occur at every stage of the planning process, including the outline stage, the detailed stage or discharge of conditions stage. One large housebuilder drew attention to the importance of ensuring that any proposed changes to the timeframes do not negatively impact crucial elements of the decision-making process, such as independent assessment and democratic accountability.

The key causes of delays in the planning system

6.216 The majority of respondents agreed that the reasons outlined in the CMA's Planning Working paper are the main causes of delay in the planning systems delivery.

6.217 Other causes that have been highlighted include:

- (a) Resourcing issues and increasing pressures on budgetary resources in LPAs, including planning officers and legal resources such as solicitors negotiating section 106 agreements, which has on multiple occasions been cited as the primary cause of delays in the planning process. One housebuilder indicated that LPAs do not have the expertise or political buy-in to apply for additional funding offered by developers and site promoters through schemes such as Planning Performance Agreements. One party indicated that a practical consequence of resourcing issues within LPAs is that a high turnover of case officers dealing with an application brings with it a different approach on key issues which further accentuates uncertainty. One large housebuilder told us that delays are not limited to statutory consultees, and can often extend to Local Authority departments, such as highways, landscape and heritage.
- (b) Resourcing issues in organisations other than LPAs.
- (c) Politicisation of decision-making.
- (d) Planning delays associated with the discharge of planning application conditions.
- (e) Post-consent negotiations on conditions precedent, especially on section 106 agreements (section 75 in Scotland).
- (f) Lack of up-to-date local plans for development and housing targets, and constant amendments to existing planning policy.
- (g) Legal challenges: Several respondents told us that delays are sometimes caused by lengthy appeals being brought forward for political reasons. One

response indicated that appeals are often brought forward when applications have been refused by committee councillors against the recommendation of planning officers, and suggested that a mediation service could be introduced to reduce unnecessary appeals. The CMA also notes that analysis based on data from the Planning Inspectorate⁴⁸⁴ shows that there has been an increase in the number of judicial review cases since 2020, with more than half originating in challenges of LPA decisions to grant planning permission, for example by owners of adjacent sites objecting to the scheme.⁴⁸⁵ In a speech on 19 December 2023, the DLUHC SoS highlighted that overturning of a recommendation made by a professional and specialist officer should be rare and infrequent, and if no reasonable grounds for the committee having overturned the officer's recommendation can be found, the Planning Inspectorate should consider awarding costs to the appellant.⁴⁸⁶

The differences in length and cost of the planning system between England, Scotland and Wales

- 6.218 We asked for views on whether there is any significant difference between England, Scotland and Wales in the extent to which the planning policies and costs threaten the viability at some sites, and the causes and extent of planning delays and their impact on delivery of housing. A number of responses from stakeholders with experience in Scotland and Wales provided comments specifically on these two nations. Several responses indicated that they do not have strong enough involvement with planning outside of England to opine on this question.
- 6.219 The overall position from the responses we analysed suggests that there is inconsistency in the systems operating across nations, and length and cost appear to cause a particularly significant impact on the planning system in Scotland and Wales as a result of specific issues relating to the planning frameworks in these two nations. This was highlighted by several responses analysing the difference in length and cost between either Scotland or Wales and England, whereas only one housebuilder with its main activity in England and some activity in Wales indicated their experience across both territories has been similar.
- 6.220 The following issues have been outlined in responses as causing delays or costs in Scotland:

⁴⁸⁴ See the [Planning Inspectorate Database](#)

⁴⁸⁵ [Planning Court Case Explorer - Town Legal](#). This analysis records cases which have been heard in the Planning Court (and subsequently in the Court of Appeal and Supreme Court) since its inception in 2014 up to 31 August 2023.

⁴⁸⁶ [Written statements - Written questions, answers and statements - UK Parliament](#). The DLUHC SoS also outlined that the Planning Inspectorate was asked to start reporting to DLHUC about cases where a successful appeal is made against a planning committee decision, and the final decision is the same as the original officer's recommendation.

- (a) Lower land values making the impact of costs associated with planning applications more prominent.
- (b) The statutory pre-application process extending the timescale for determining applications.
- (c) The absence of Local Development Plans within the remit of several local authorities, combined with a lag in Local Development Plan reviews.
- (d) One party indicated that while the level of grants available to social housing providers is higher than in England, which has in turn made it possible for section 75 negotiations between local authorities and developers to secure a wider range of affordable housing types, problems of integrating infrastructure requirements with planning policies and site-specific decisions still remain.
- (e) Viability assessment not being as advanced in Scotland.
- (f) The focus on affordable housing, such as the 25% affordable housing requirement.

6.221 The following issues have been outlined in responses as causing delays in Wales:

- (a) Lower land values making the impact of costs associated with planning applications more prominent.
- (b) The focus on affordable housing. One response we analysed indicated that the fact affordable homes are delivered by way of section 106 Agreements, which are not subject to any grant assistance, has a significant effect on the viability of schemes.
- (c) Increased groundwork costs, caused by a different policy approach in certain areas (for example sprinklers and sustainable urban drainage).
- (d) Viability assessment not being as advanced in Wales.
- (e) One party told us that its 2017 research shows that a significant gap has remained between delivery on sites with and without developer support at LDP adoption, which had more completions compared to sites promoted by a landowner, indicating that landowner-sponsored sites are not catching up.
- (f) One response indicated that the absence of the SDP in SE Wales (now anticipated 2029) has added an additional requirement for LPAs to collaborate sub-regionally.

Our overall view

- 6.222 The CMA's overall finding is that the planning process is costly, complex and long, and is becoming increasingly so. This threatens the viability of development at some sites, deters planning applications, and slows the delivery of homes.
- 6.223 **Costs and the overall complexity of the planning process:** analysis shows a significant increase in costs associated with the planning process, including:
- (a) Policy-related costs involved in the development process;
 - (b) the volume of evidence required for planning applications. Responses to the CMA's Planning Working Paper also highlighted the significantly large volume of material that must be prepared for registering a planning application;
 - (c) direct external planning costs associated with making a planning application, which seem to particularly impact smaller sites, as well as costs covering internal staff resources; and
 - (d) costs created by the impact of policy changes which will in turn impact the viability of some residential sites and hence the supply of land.
- 6.224 Our analysis throughout the market study was supported by the majority of responses to the CMA's Planning Working Paper, which agreed that the current level of planning, policy and regulatory costs could threaten the viability of development at some sites and indicated that increased costs will disproportionately impact SME housebuilders, small urban sites, rural sites and lower value areas. Multiple responses agreed that the consistent increase in costs over recent years has occurred at unprecedented pace and scale.
- 6.225 **The length of the planning process:** the length of time taken to make planning decisions is substantial and is increasing in all three nations of GB. In England, fewer planning applications are being determined within the statutory time limit. Our analysis shows that the percentage of major dwelling planning decisions that were made within the statutory 13-week deadline fell significantly between 2009 and 2021. In Scotland, the most recent annual figures (for 2022-23) show that major planning application decisions made took on average more than 39 weeks to make. In Wales, work undertaken by Audit Wales shows that, in 2018/19, the average time taken to make a planning decision for a major planning application was more than 240 days, up from 206 days in 2014-15.
- 6.226 The evidence obtained by the CMA from stakeholders highlights the main factors driving up the length of the planning process, such as the increasing amount of regulation and policy, LPA resourcing constraints, delays in receiving responses

from statutory consultees, increasing public and political engagement and the time taken to negotiate agreements between LPAs and housebuilders.

- 6.227 In particular, LPA resourcing constraints represent a significant issue preventing faster processing of planning applications in all three nations of GB. This is supported by analysis and evidence from England, Scotland and Wales, including national government statistics, statements made to the CMA by LPAs and housebuilders.
- 6.228 **The majority of responses to the CMA's Planning Working Paper agree with our findings** and offered further insights. Several respondents have highlighted the inability to meet statutory timescales for major development applications which can often take over a year to complete. In terms of the main reason for planning delays, Working Paper responses have often indicated either the political complexities associated with plan making or resourcing issues and increasing pressures on budgetary resources in LPAs, including planning officers and legal resources negotiating section 106 agreements. Other causes that have been highlighted as significant causes of delays include legal challenges (which are often brought forward when applications have been refused by committee councillors against the recommendation of planning officers), resourcing issues in organisations other than LPAs and the increased politicisation of decision-making.
- 6.229 The overall position of the responses which commented on the differences between England, Scotland and Wales is that length and cost of the planning systems impact housebuilding in the three nations differently as a result of inconsistency in the frameworks operating across nations. Several responses which commented on differences and which we analysed seem to suggest that, compared to England, length and cost impact the planning system more significantly in Scotland and Wales respectively. These responses also added more detail about the differences between nations, for example an extended statutory pre-application process in Scotland, increased groundwork costs in Wales caused by a different policy approach in certain areas such as sustainable urban drainage, and a focus on affordable housing and the existence of lower land values in both Scotland and Wales.

Insufficient clarity, consistency and strength of LPA targets, objectives and incentives to meet housing need

Local land supply and housing targets

- 6.230 Local land supply and housing targets drive how much land LPAs will need to allocate in plans and 5YHLS assessments for development. In a plan-led planning system, land that has been allocated within a local plan or a 5YHLS will be much more likely to achieve planning approval than land that has not. Consequently, how housing targets are set will significantly influence how many planning

applications get approved and how many homes are built. If these targets are not set consistently with underlying estimates of national and local housing need then the planning systems are unlikely to produce sufficient planning permissions to meet this need.

6.231 We set out in Section 2 the range of models and targets used across the three GB nations.

6.232 We have not undertaken a comprehensive review of the various methodologies used by the nations (or more widely) to assess housing need. However, our high-level analysis suggests that there are a number of design choices that determine the extent to which a national methodology reflects underlying local housing need and leads to the adoption of local land and housing targets by LPAs that reflect underlying housing need. Some of the most important design choices are:

- (a) **The range of factors considered in the assessment of housing need** – methodologies need to incorporate an appropriate range of factors which influence housing need to ensure a comprehensive assessment, whilst balancing the need to ensure that it can be to be applied and understood by market participants;
- (b) **The nature of the evidence that is used** – using out-of-date data results in outputs that are not reflective current levels of housing need;
- (c) **The frequency at which the estimate is updated** – infrequent updating of targets, leads to targets which are less reflective of current housing need;
- (d) **The extent to which adjustments to achieve policy aims are incorporated in estimates of need** –The incorporation of adjustments that are not solely based on housing need, whilst being a matter of government policy, will inevitably mean that targets will ultimately be less reflective of underlying housing need; and
- (e) **The extent to which LPAs have discretion to deviate from the accepted methodology** – where LPAs have discretion to deviate from these based on local circumstances around, for example, local planning constraints and local deliverability considerations, this will inevitably mean that local targets deviate from the assessment of underlying housing needs.

LPAs have to balance multiple and sometimes conflicting objectives

6.233 LPAs face a number of different, in some cases conflicting, objectives when formulating local plans and local planning polices, as well as when making planning decisions. These objectives, and how LPAs balance them, will inevitably influence the build-out rate, type of residential development, and extent of development that is encouraged within an area.

- 6.234 As we have noted previously the planning systems aim to meet a number of different objectives beyond meeting housing need. LPAs have told us that planning policies addressing climate change matters and environmental protection have become more important and prevalent, and that the need to provide affordable housing has become more acute over time. These types of objectives can, to some extent, conflict with meeting overall housing need. For example national environmental policies can increase costs for housebuilders and potentially reduce the number of development sites which would otherwise be viable.
- 6.235 The extent to which various objectives are given prominence differs between the nations of GB. For example, the recently introduced NPF4 and PPW edition 12 policy documents are strong in putting sustainability and climate issues at the heart of Scottish and Welsh planning policy and planning decision making,⁴⁸⁷ ⁴⁸⁸ to a degree that is not mirrored directly in current English planning policy (although the English planning system did introduce in February 2024 significant biodiversity net gain policy changes). In addition, unlike England, neither Scotland nor Wales have national all-tenure housing targets. However, both have national targets for the amount of affordable housing that is provided, which England does not.
- 6.236 Planning policy in each nation allows LPAs a degree of discretion in how they prioritise the different objectives and how they implement them at a local level. Each LPA will have different populations with different preferences as well as different housing markets, planning constraints and planning priorities. Our understanding is that LPAs in England are likely to have more discretion than those in Scotland and Wales in this regard given, as we discuss in the background section, the greater scope of national planning policy in these nations and its status as part of the local plan.
- 6.237 We had meetings with 17 LPAs across GB and they all mentioned meeting housing need as a key objective of their local plans and local policies. Sustainability and environmental considerations, and providing affordable housing were also frequently mentioned. Less commonly mentioned was placemaking or building beautiful homes. However, it was apparent that the priority given to these factors varied.
- 6.238 In a paper on the political climate presented to its board, one housebuilder noted that the way these objectives are balanced at all levels of decision making is fundamental to the land supply and how land is used, and is important for the security of their business:

⁴⁸⁷ [National Planning Framework 4 - gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁴⁸⁸ [Welsh Government; Planning Policy Wales; Edition 12; February 2024](#)

'The planning system is pivotal in delivering a wide variety of government policy objectives. Striking the balance between economic, social, and environmental objectives represents a key challenge given the differing and often competing or opposing private and political interests of communities, planning authorities, regional authorities, government, and Parliament. Planning is fundamental to the liberation and use of land to secure these objectives and is therefore of upmost importance to the future security of our business.'

- 6.239 How these various objectives are prioritised at the national and local level is largely a matter of political choice, and so beyond the CMA's focus in this market study. However, we note that the choices made at a national level and by LPAs when prioritising and balancing these objectives inevitably influences the build out rate, type of residential development, and extent of development that is encouraged in an area.

Incentive mechanisms to encourage LPAs to meet housing need

- 6.240 Incentive mechanisms can play a role in helping to ensure that LPAs maintain sufficient focus on meeting housing need.
- 6.241 In England the main incentive mechanism is the presumption of sustainable development ('the presumption'). We set out details of how and when the presumption applies in the Background section. The presumption works to boost housebuilding activity in two ways: it incentivises LPAs to have an up-to-date local plan and to meet housing targets to avoid the presumption applying, and if they do not, it opens up new avenues for development through speculative applications. As we described earlier, the presumption was introduced in England as part of the NPPF in 2012 and it is linked with an increase in planning permissions and housing delivery. One housebuilder described how the introduction of the NPPF and the presumption in favour of sustainable development created many new development opportunities outside of the local plans, something which benefited land promoters in particular:

'The introduction of NPPF in 2012, with the presumption-in-favour of development in areas with no local plan or 5YHLS, created the biggest shift in the strategic land market in the last 40 years. Moving the market from one dominated by housebuilders securing options, to one dominated by land promoters offering landowners a planning promotion agreement whereby they would secure planning permission and then sell the site on the open market to the highest bidding housebuilder. This new 'presumption' created many hundreds of new off plan planning opportunities in the period up to 2019.'

6.242 However, the incentive effects of the presumption are not the same for all LPAs. Speculative applications will usually not be granted on land afforded protections by the NPPF, such as green belt land or AONB. Therefore, for LPAs with a high proportion of this land within their boundaries the extent to which the presumption will 'bite' will be lower. Housebuilders' internal documents show they consider this will impact the incentives of LPAs to produce a plan as well as land supply and housing affordability. For example, in a paper presented to its board one housebuilder described how this affects the incentives of LPAs to prepare a local plan:

'Given this level of protection [for greenbelt] land, and limited use of sanctions against councils failing to review their development plans, there is little incentive for planning authorities to undertake plan reviews, particularly where this would involve a need to release land to meet local housing requirements.....The resultant impact is a significant shortfall of housing land supply in areas of high demand, fuelling the housing and affordability crisis, together with increasing land values due to lack of supply.'

6.243 Similarly in a strategy paper presented to its board one housebuilder states:

'some key LPA's [sic] have yet to put a plan in place at all protected by Greenbelt or other designations whilst many of those needing urgent review have high housing needs that are effectively 'locked up'. These areas are protected from the presumption in favour of development which is triggered if land supply is less than 5 years.'

6.244 In England, there is also a direct financial incentive for LPAs to build homes in the form of the New Homes Bonus scheme, which was introduced in 2011. This is a non-ringfenced grant paid by central government to local councils for adding homes to their council tax base. The New Homes Bonus is intended to:

'create an effective fiscal incentive to encourage local authorities to facilitate housing growth. It will ensure the economic benefits of growth are more visible within the local area, by matching the council tax raised on increases in effective stock. This will redress the imbalance in the local government finance system, whereby resources for growth areas did not keep pace with growth.'⁴⁸⁹

6.245 Grant payments form the New Homes Bonus across all LPAs for the period 2023/24 scheduled to be around £310m.⁴⁹⁰ For context, this compares to local government spending of £11.7bn in 2021 (the latest available data)⁴⁹¹ on housing

⁴⁸⁹ See, page 6: [The Empowerment Fund \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

⁴⁹⁰ See: [New Homes Bonus provisional allocations 2023 to 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

⁴⁹¹ See: [Local government annual expenditure: ESA Table 11 - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk).

(£3.6bn) and community development (£8.1bn), or alternatively spending of £7bn of spending by local government on infrastructure in 2021.⁴⁹² The overall aims and incentive effects of the scheme are relatively modest with the aim being to have provided an additional 140,000 homes over the first 10 years of its operation (although the NAO suggests that the actual figure should have been 108,000).⁴⁹³ For context a total of 108,000 new homes is approximately 7% of the total number of new build homes completed during the same period (approximately 1.63m).⁴⁹⁴ We are unaware of any definitive assessment of whether the aims of the scheme have been achieved.

- 6.246 In Wales and Scotland there are currently no sanctions equivalent to the presumption for LPAs that are not hitting specified targets. In Wales until March 2020 LPAs were required to attach ‘considerable’ weight to the lack of a 5-year housing land supply in determining planning applications for housing.⁴⁹⁵ However, this requirement was removed in March 2020 following a review, due in large part to the land supply situation in many Welsh LPAs⁴⁹⁶ meaning that they attracted a significant number of speculative applications. In Scotland, a similar provision in Scottish Planning Policy to give ‘material consideration’ in decision making to a lack of up-to-date local plans and/or land supply was removed in December 2020, in favour of more local control over development through the local plan.⁴⁹⁷ Although this was originally quashed by a subsequent court decision⁴⁹⁸ the decision to remove a reference to the presumption in favour of sustainable development was effectively reinstated when Policy 16 of NPF came into effect, which did not retain the presumption.⁴⁹⁹ Our understanding is that there are no directly equivalent reward schemes to the New Homes Bonus operating in Scotland or Wales.
- 6.247 Incentive mechanisms, such as the presumption, can play a role in helping to ensure that LPAs maintain sufficient focus on meeting housing need. However, such mechanisms come with trade-offs since they lead to reduced local control over housing development by facilitating speculative applications. The changes to

⁴⁹² \$£6.7bn, see: [Infrastructure in the UK, investment and net stocks - Office for National Statistics \(ons.gov.uk\)](#).

⁴⁹³ See: [10122-001-New-Homes-Bonus_HC-1047.pdf \(nao.org.uk\)](#)

⁴⁹⁴ CMA analysis of DLUHC data on net additional dwellings: [Housing supply: net additional dwellings - GOV.UK \(www.gov.uk\)](#).

⁴⁹⁵ See: [Technical Advice Note \(TAN\) 1: Temporary dis-application of paragraph 6.2 | GOV.WALES](#).

⁴⁹⁶ The latest published data shows that in 2018/19 19 out of 25 Welsh LPAs could not demonstrate a five year land supply. See figure 8: [planning-services-annual-performance-report-2018-to-2019_0.pdf \(gov.wales\)](#).

⁴⁹⁷ See: [7. Conclusion: Policy Changes - Scottish Planning Policy - finalised amendments: December 2020 - gov.scot \(www.gov.scot\)](#).

⁴⁹⁸ See: [Graham's The Family Dairy \(Property\) v Scottish Ministers \[2021\] CSOH 74 \(scotcourts.gov.uk\)](#).

⁴⁹⁹ See: [Transitional arrangements for National Planning Framework 4: Chief Planner letter - February 2023 - gov.scot \(www.gov.scot\)](#).

policies in Scotland and Wales mentioned above were a response to a reduction in local control.

Local planning constraints

- 6.248 In LPAs with an acute shortage of viable sites for residential development meeting housing need can be a huge challenge. From our discussions with LPAs this is particularly likely where an LPA area includes a large proportion of NPPF footnote 7 land which has some protections from development. Urban areas experience similar challenges but for different reasons: being densely populated they tend to have fewer sites available for development, while the developable sites they do have are often complex and costly to develop.⁵⁰⁰ We spoke to a number of LPAs who said they face severe land supply constraints due, at least in part, to significant urbanisation and the presence of greenbelt land. In the case of one LPA, being both mainly urban and bounded by coastline limits the supply of land. Other factors such as the presence of land with flood risk and protected landscapes will influence the availability of land for development. Some other LPAs we spoke to with different characteristics were less likely to report significant issues with land supply in their areas.
- 6.249 Inevitably housebuilders will target areas they see as offering the best opportunities. One feature they may take into account when deciding which areas to target is local constraints on land supply. This is reflected in housebuilders' internal documents, for example in an internal memo on its approach to strategic land searches, one housebuilder stated:
- 'There will also be Districts which are very heavily constrained for one reason or another e.g. Green Belt, AONB, SPA's etc, or where the housing requirements have historically always been low. While these areas should not be discounted, they should fall into the lower priority category to allow the focus to be on those Districts where there are higher levels of housing requirements and/or are less constrained.'
- 6.250 Similarly in its Group Land Policies and Procedures, one housebuilder states:
- 'Land Departments should be aware of local and national policies that will affect the criteria of potential opportunities such as AONBs, Green Belt, Conservation Areas, Character Assessment, Neighbourhood plans, Natural England guidance (e.g. nutrients), etc.'
- 6.251 As Table 6.10 shows the LPAs that deliver least well against the HDT tend to have a significantly higher proportion of greenbelt land within their boundaries and/or a higher portion of land that is already developed. This may indicate that LPAs with

⁵⁰⁰ Brownfield sites may be difficult to development due to factors such as demolition and remediation costs, difficult ground conditions and contaminated land.

high levels of greenbelt and/or urbanisation face constraints on land supply that make it more difficult for them to deliver housing.⁵⁰¹ However, this finding may also be linked to LPAs with higher levels of greenbelt tending to be less likely to have an up-to-date local plan.

Table 6.10 HDT performance and proportion of greenbelt and developed land by LPA

2021 HDT test score	Median % greenbelt land	Median % developed land	Median % Greenbelt land + developed land
0% to 75%	46%	23%	73%
75% to 95%	2%	23%	54%
95% to 150%	0%	10%	38%
150% to 200%	6%	9%	23%
200%	4%	13%	30%

Sources: CMA analysis is HDT and land uses data: [Housing Delivery Test: 2021 measurement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/housing-delivery-test-2021-measurement); [Land use statistics: England 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/land-use-statistics-england-2022)

6.252 An additional local issue raised by some LPAs and stakeholders in Scotland and Wales was that it can be difficult getting housebuilders, especially the larger ones, to develop homes in these areas. This is especially the case in rural areas where the cost of development is higher, and the scale of developments are relatively small.

The views of respondents to our Planning Working Paper

6.253 In our Planning Working Paper, we asked respondents the following questions:

- (a) Do you agree with our analysis that in some cases local targets may not accurately reflect underlying housing needs and the reasons for this? What impact do you consider this has on housing delivery?
- (b) Do you agree that in some respects the planning systems lacks internal consistency within its objectives, meaning that LPAs may be insufficiently focused on meeting housing need?
- (c) Are there any other issues relating to targets, incentives of planning constraints that we should consider?
- (d) Do you consider there to be any significant differences between England, Scotland and Wales in either how targets are set, the balance of incentives faced by LPAs and the extent of local planning constraints? If so, how do you think they impact housing delivery?

6.254 The respondents largely concurred with the CMA's analysis that local targets did not consistently mirror the true housing requirements in certain situations. Different perspectives on the housing situation and planning were presented for either a

⁵⁰¹ We discuss the availability of land, including in more land constrained areas, in Section 9

single nation or all three GB nations under review. Respondents also generally acknowledged the challenges in identifying housing needs.

6.255 Below we detail the responses received from respondents to our working paper regarding the aforementioned questions.

Comments on general current use of national and local targets

6.256 Many respondents agreed with our assessment that in some cases current housing targets may not reflect local housing need. One stated that the national target of 300,000 homes with no disaggregation has not achieved sufficient supply.

6.257 Another respondent suggested housing targets do not take sufficient account of the fact that many permissions do not proceed and hence meeting agreed need requires a much larger number of permissions.

6.258 Several respondents considered targets were associated with LPAs allocating sites in areas of low demand or leading to inappropriate housing or locations coming forward.

6.259 A respondent also noted that cross-border issues can raise challenges for individual LPA targets, in the absence of regional and sub-regional bodies.

6.260 Another respondent stated that turning national targets within a country into local ones is inherently political, and there is no one right way to do this.

Comments on data and assumptions in the standard method in England

6.261 A range of perspectives were presented by respondents on the standard method introduced in 2018.

6.262 Two respondents highlight positive initial intentions behind the use of the standard method. One noted that the standard method was introduced with the aim of expediting processes, aiming to mitigate delays caused by debates surrounding housing needs. The other told us that it was initially widely accepted as a progressive step for setting housing targets because the system it replaced, required to assess housing need in individual LPAs, resulted in inconsistencies in approach and without a national target.

6.263 Another respondent said they support the use of the standard method for assessing housing need, providing the base census figures are updated. They considered that use of the standard method removes many of the contentious arguments in previous approaches.

6.264 Furthermore, one of the respondents highlighted the need to take into consideration the impact of net migration on population growth. This was

supported by another respondent who stated that housing need has not taken into consideration population growth.

- 6.265 A number of respondents were in favour of revising the standard method used to determine housing requirements in local plans. The Standard Method faces additional challenges, such as artificially capped affordability adjustments and an urban uplift adjustment that appears to be based on an arbitrary figure.

Respondents' views on CMA's analysis on internal inconsistencies within planning systems

- 6.266 Many respondents concurred with our analysis that GB planning systems lack consistency within their objectives, meaning that LPAs may be insufficiently focused on meeting housing need.

6.267 More specifically:

- (a) Another pointed out that the planning system encompasses more than just providing housing; consequently, there will inevitably be conflicting agendas within it.
- (b) One respondent noted that these factors directly hindered housing delivery, affecting investment decisions and land availability.

6.268 A lack of accountability for underperformance was also mentioned by several respondents:

- (a) One respondent said there seems to be minimal accountability for non-performance when local planning authorities fail to meet housing targets. The removal of shortfalls elements in undersupply could further contribute to a lack of urgency in addressing housing needs in cases of underperformance.
- (b) Another respondent stated that there are no clear incentives or sanctions to meeting or failing to meet housing need in full.
- (c) However, another respondent stated that the influx and changes in the planning system have generated an environment where the incentives and expectations on LPAs, especially regarding housing targets, are unclear, thereby impeding housing delivery.

6.269 However, one respondent did assert that the purposed incentives are ample to motivate the majority of LPAs to embrace a proactive stance toward housing delivery.

Differences between England, Scotland and Wales in how targets are set, the balance of incentives faced by LPAs and extent of local planning constraints.

- 6.270 There was a limited response to this question as most respondents were based in England and lacked information on house building planning in Wales or Scotland. The few who did respond were primarily from Scotland or Wales including some English based organisations operating in other GB nations under review.
- 6.271 From a Scottish context, respondents stated that the Scottish Planning services lacked incentives for good performance. One respondent expressed concerns that the removal of the presumption, 5-year supply and release of land in the event of a shortfall will have a negative impact on house delivery in Scotland.
- 6.272 One view provided from a Scottish context stated that there has been under-reporting of housing need through the HDNA process. The respondent indicated that this had the effect of suppressing required housing land support provisions across many, particularly in prime market locations, for a considerable length of time.
- 6.273 It was stated that the Welsh National Plan outlines estimated housing needs from 2021-2029, however this is not a set target. While there is a separate goal for 20,000 affordable homes by 2026, the actual housing level is set by the LDP, aligning with the National Plan and growth areas.
- 6.274 One respondent considered that housing under delivery is more acute in Wales.

Our overall view

- 6.275 We have noted that GB nations vary in how they set targets for housing delivery, with England having the clearest national housing target.
- 6.276 GB nations use a number of different models for doing so. While we have heard a number of criticisms of some of these models, some of which we have set out, for example about the data and assumptions used, we do not consider it is for us to form strong views on them, and have instead noted some of the dimensions in which such models can vary.
- 6.277 We have noted the conflicting policy objectives that LPAs have to balance, including around housing delivery, and other wider objectives such as sustainability. These vary in emphasis between the GB nations, and there is a degree of discretion for individual LPAs in this regard as well.
- 6.278 Incentives are important for ensuring housing need is met. The strongest incentives in place which we have found relate to the presumption in favour of sustainable development in England, which comes not effect if targets are not met and gives housebuilders greater rights to have applications approved. We note that this incentive has limits, however, due to not applying on greenbelt land.

6.279 On a related note, we also set out how some LPAs have constraints in terms of available land which is not protected from development, as well as some urban sites being more challenging to develop.

The impact of the planning systems on SME housebuilders

6.280 Other studies have found that the number of SME housebuilders operating in the market and the number and proportion of homes built by them has declined markedly over the past few years⁵⁰² and that they state that the planning system is their biggest barrier to entry and expansion.⁵⁰³

6.281 Our analysis suggests that issues in the planning process have a significant impact on smaller housebuilders. The uncertainty and complexity of the planning system, coupled with the length of time taken to obtain approval, particularly affects them in the following ways:

- (a) The complexity and cost associated with making a planning application tends to be similar regardless of site size, meaning they are disproportionately large for SME housebuilders, since they tend to develop smaller sites.
- (b) SME housebuilders are less able to mitigate uncertainty, risk and delay in the planning systems by having multiple sites in various locations in their development pipeline, as large builders do.
- (c) The time taken to make planning decisions can adversely affect the finance terms available to SME housebuilders. This is exacerbated where there is uncertainty about whether a planning application will be approved.

6.282 We describe recent analysis by Lichfields which suggests that since 1990 the volume of evidence that is required to support a planning application has increased dramatically, as has the cost associated with making a planning application in para 6.182.⁵⁰⁴ We also have undertaken our own analysis of data on direct external planning costs (mainly LPA planning fees and consultancy costs – not including internal staff costs) provided by the largest five housebuilders.

6.283 SME housebuilders will typically develop smaller sites. Our analysis, set out Table 6.9 above, shows that these costs are significantly greater for smaller sites on a per plot basis. On a per-plot basis sites of 50 plots or less tend to be significantly more expensive to take through the planning process (£3,500, compared with £1,500 for sites with 101-500 plots, and less than £1,000 for sites with more than 500 plots). Although this evidence is from the five largest builders and will not be

⁵⁰² See chapter 4: [House of Lords - Meeting housing demand - Built Environment Committee \(parliament.uk\)](#). Our analysis of the number and share of SMEs is set out in Section 10

⁵⁰³ See Annex I Barriers to entry and expansion

⁵⁰⁴ [Small builders, big burdens, Lichfields, September 2023](#).

directly representative of the costs incurred by SME housebuilders, the figures suggest that, plot for plot, smaller builders will likely pay more to take their sites through the planning process. Analysis from Lichfields, based on interviews with SME housebuilders, suggests that they typically rely heavily on consultants at the application stage, perhaps to an even greater degree than large housebuilders, as they have less in-house expertise to rely on.⁵⁰⁵ This is likely to add to their costs.

- 6.284 As part of our analysis, we have received information from 19 SME housebuilders located across GB (out of a total of 47 we contacted) to get an understanding of the key challenges they face. Ten of these responded that delays in the planning process were a big issue for their businesses, whilst nine respondents mentioned inconsistency and unpredictability in the planning system as an issue. In a recent report the HBF explained that SME housebuilders are more susceptible to unpredictable planning decisions and planning delays because of their smaller scale and geographical scope.⁵⁰⁶ SME housebuilders will typically depend on a small number of sites, therefore planning related delays or disruption to a site will have a significant impact upon their businesses.
- 6.285 Planning delays can also impact the cost or availability of finance for a project. Five respondents to our RFI said that the time taken to achieve planning permission affects the time debt is carried for, which can increase the cost of financing a project. In addition, the Federation of Master Builders states that many lenders will not provide finance until planning permission has been achieved. Any impact of planning delays on cost or availability of debt finance will disproportionately impact SME housebuilders who, in contrast to larger housebuilders, typically rely heavily on project specific debt finance.⁵⁰⁷
- 6.286 Data on the size of sites being submitted for planning permission is consistent with a trend of declining SME housebuilder activity. In 2022-23, 55,300 housing units (from 10,500 applications) were given planning permission on sites of fewer than 50 plots (25,500 units on sites of fewer than 10 plots and 29,800 on sites of 10 or more plots). This accounted for only 20% of the total number of units given permission, although sites of fewer than 50 plots accounted for 90% of total residential applications.⁵⁰⁸ The average size of sites given planning permission has also been increasing over time. CMA analysis of data published by the HBF suggests that in England, Scotland and Wales the average size of a residential site seeking planning permission has increased significantly on a per-plot basis over the past 7 years.⁵⁰⁹ Data presented in Figure 6.8 shows that the moving annual average number of plots per planning application has increased between

⁵⁰⁵ See page 17: [Small builders, big burdens, Lichfields, September 2023](#).

⁵⁰⁶ [HBF_Report_-_SME_report_2023v2.pdf](#).

⁵⁰⁷ HBF response to RFI dated 31 August 2023

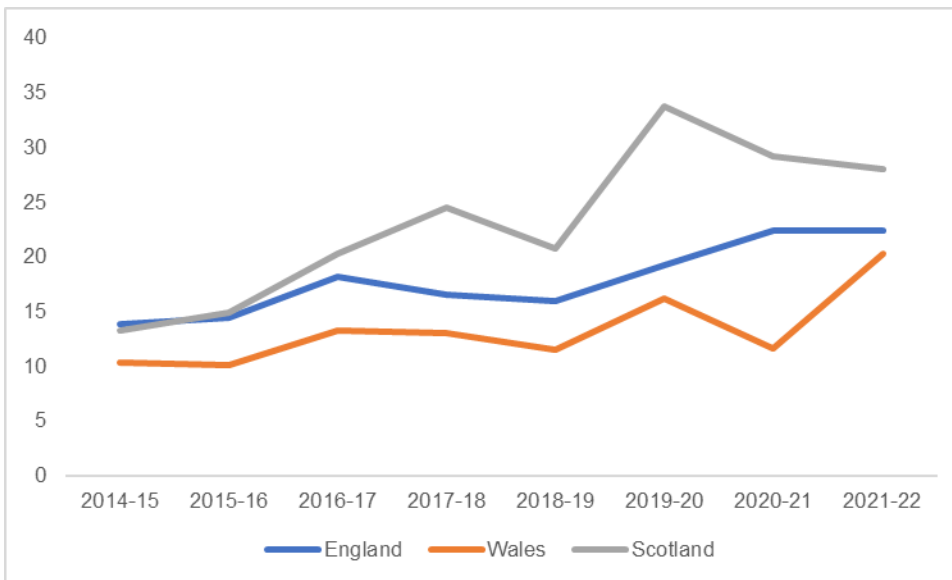
⁵⁰⁸ See table 4 of: [Planning applications in England: January to March 2023 - statistical release - GOV.UK \(www.gov.uk\)](#).

⁵⁰⁹ CMA analysis of data published by the HBF: [Housing pipeline report, Q3 2022](#)

the second quarter of 2015 and the second quarter of 2022 from: 13 to 22 in England; 13 to 28 in Scotland; and 10 to 20 in Wales.

6.287 In addition to this potentially being indicative of a challenging environment for SME housebuilders, it could be a result of LPAs favouring larger sites given the economies of scale for them associated with processing larger-site applications, and the resource challenges they face. Several studies suggest the planning system favours larger sites⁵¹⁰, with the Institute for Public Policy Research (IPPR) finding that 'smaller applications are somewhat less likely to be granted planning permission (according to DCLG data for the year ending 31 December 2016, 86 per cent of major and 82.8 per cent of minor applications were approved)'.⁵¹¹ Analysis of LPA local plans by Savills suggests that between 2012 and 2021, just 3% of potential homes in newly allocated sites were on small sites (sites of 1 hectare or less). They found the situation had worsened since the introduction of the NPPF. In 2011, 6% of potential homes were on new allocations of 1 hectare or less, a level that was only matched once since, in 2013.⁵¹²

Figure 6.8 Average number of plots per residential planning application in England, Scotland and Wales between 2014-15 and 2021-22



Source: CMA analysis of data published by the HBF: [HPL REPORT 2022 Q3 HG DRAFT 3.pdf \(hbf.co.uk\)](#)

6.288 Several of the responses that we received to the statement of scope argued that the planning system presented a particular barrier to the delivery of custom and

⁵¹⁰ See Annex I Barriers to entry and expansion

⁵¹¹ [Think small, build big: Lessons from SME housebuilding in Germany | IPPR](#)

⁵¹² See: [Savills UK | Is the planning system delivering the volume and mix of sites to increase delivery in England?](#)

self-build homes, which are typically built by small and medium sized housebuilders.⁵¹³

6.289 The custom and self-build market was the subject of a recent government-commissioned, independent review which was published in August 2021.⁵¹⁴ This review identified the planning system as a key barrier to greater provision of custom and self-build housing in the UK.

(a) It identified a number of barriers to self-build and custom housing provision, such as planning delays, planning complexity and planning risk which overlapped with the issues for SME housebuilders set out above.

(b) It also identified specific issues with how the planning system deals with 'serviced plots'⁵¹⁵ as being a key barrier that prevented more custom and self-build housing being built.⁵¹⁶

6.290 We note that in Scotland and Wales, in many LPA areas there is likely to be a greater representation of SME housebuilders compared to many English LPAs for the reasons that we set out in paragraph 6.252. However, SME housebuilders in these areas will face similar barriers to their growth arising from the planning systems in those nations such as those set out in this section.

The views of respondents to our Planning Working Paper

Question asked: Do you agree with our analysis of how the planning system may be having a disproportionate impact on SME housebuilders?

6.291 There was strong support for the contention of the CMA's analysis that the planning systems are having a disproportionate impact on SME housebuilders. All six small housebuilders who replied agreed with the CMA's view, as did two of the three large housebuilders who also commented (the other did not feel it was right to comment as they were not an SME builder). Similarly, ten other interested parties who replied also concurred with the CMA's analysis.

⁵¹³ See: [Custom_Build_Homes.pdf](#) ([publishing.service.gov.uk](#)); [National_Custom_and_Self_Build_Association.pdf](#) ([publishing.service.gov.uk](#)); [Richard_Bacon_MP.pdf](#) ([publishing.service.gov.uk](#)); [Richard_Bacon_MP.pdf](#) ([publishing.service.gov.uk](#))

⁵¹⁴ See: [Self-build and custom housebuilding independent review](#) ([publishing.service.gov.uk](#))

⁵¹⁵ A plot that is ready to build on with all the infrastructure needed to start building a home already in place. It will already have the utility connections – water, gas, electricity, and mains sewage, broadband and telephone – as well as access from the highway.

⁵¹⁶ The review concluded that 'the UK planning system makes running a private land development business selling serviced plots difficult given planning permission is closely linked to what is actually built'. This means that separate planning permissions must be sought for each new building on a site providing serviced plots (separate to any permissions attached to the site itself).

6.292 Of those agreeing with the disproportionate impact on SMEs position outlined by the CMA, they also added the following on the reasons the numbers of SMEs are reducing:

- (a) Costs involved in making a planning application.
- (b) Level of information required to make an application.
- (c) Complexity of the planning system.
- (d) Level of expertise required / lack of resources in SMEs to make an application.
- (e) Delays / timescales involved in getting a decision on a planning application.
- (f) Lack of LPA resources to determine an application quickly.
- (g) The risk and uncertainty in making a planning application.
- (h) Inconsistent policy decisions / politics involved in decision making leading to unpredictability and uncertainty in decision making.
- (i) Nutrient neutrality issues.
- (j) Lack of finance for SMEs developing schemes.

6.293 They also noted that the planning system has:

- (a) Made it easier to get approval for speculative applications.
- (b) Increased the trend for LPAs to release large sites.
- (c) Resulted in failure to bring forward suitable small sites.
- (d) Added to uncertainty.
- (e) Resulted in lack of plan preparation.

6.294 Two further points were raised by respondents.

6.295 First, the Chartered Planners in Academic Practice group felt that SME decline has as much to do with wider macro-economic circumstances than the costs of dealing with planning. They continued that, although the planning system may at present have a disproportionate impact on SME builders, the planning system must be even-handed in terms of the standards that are expected of any developer.

6.296 Second, "A Social Democratic Future" considered that in a well-functioning market, under-supply accompanied by fast rising prices would normally attract more supply

to the market, so dampening price increases. However, across the English, Scottish and Welsh housebuilding markets this has not happened over recent decades. Indeed, far from experiencing entry and expansion, the industry has seen a decline in the number of suppliers, especially SME enterprises. The 2013 Help to Buy scheme, which underpinned the growth of profit, dividend, and director remuneration packages of large housebuilders during the ensuing decade, further aggravated market failure.

Question asked: Do you agree that we have identified the key issues faced by SMEs due to the planning system?

- 6.297 All 17 respondents who answered this question felt that the CMA had correctly identified the key issues faced by SMEs. There was strong support for the CMA's ideas around the cost and complexity of making a planning application, and risk, uncertainty, and delays in the planning process. The CMA received no comments that disagreed with these views.
- 6.298 In addition, respondents raised the following additional points on the detrimental issues faced by SMEs.
- 6.299 Concerning Local Plan issues, respondents stated:
- (a) SMEs are detrimentally affected by the lack of local plan preparation.
 - (b) There is a focus within local plans on larger sites.
 - (c) There is a lack of more permissive policies within local plans for smaller developments.
 - (d) There is a focus on the smaller element of SMEs (sites under 10 dwellings) without due regard to medium sized housebuilders operating on sites of up to 100 dwellings.
 - (e) LPAs have a propensity to propose housing allocations on a smaller number of larger development sites that SMEs cannot develop due to resource constraints.
- 6.300 Concerning finance, risk, and resources respondents stated:
- (a) Due to a lack of a development pipeline comparable to larger housebuilders, SMEs are less able to mitigate uncertainty, risk, and delay in the planning system.
 - (b) Delays have more financial (cost and cashflow issues), risk and resource implications for SMEs.

- (c) The costs of promoting a site through the local plan process and then submitting planning applications are disproportionately higher for an SME with smaller sites.
- (d) SMEs are disproportionately impacted by the complexity and cost associated with making a planning application, which has increased significantly since the 1990's and tends to be similar regardless of site size.
- (e) Lack of finance is not a key barrier for SMEs. The cost, complexity, and timescales to obtaining planning for small sites is.
- (f) SME housebuilders viability is marginal at best due to rising costs.

6.301 Concerning planning officers, respondents felt:

- (a) The CMA have not considered the effectiveness of planning officers – which may well be caused by resourcing issues.
- (b) Poor communication from planning officers is an issue.
- (c) Planning officers should be spending more time with SME housebuilders, to help them overcome the challenges they face using the planning system.

6.302 Concerning planning process issues, they considered:

- (a) There needs to be a redefinition of what is meant by 'small sites,' 'small builders' and 'SMEs.' Small builders and SMEs should not be viewed as one in the same.
- (b) An additional application type between 'minor' (less than ten dwellings) and 'major' (10 or more dwellings) applications would be helpful. Sites of 10-30 units was suggested.

Question asked: Do you consider that the current planning system is incentivised to deliver housing on larger sites? If so, what are the implications of this for the housing delivery?

6.303 From the replies we received, there was a general consensus that the planning systems incentivised the delivery of houses on larger sites, with only one comment against this and one partly disagreeing with this view.

6.304 Of those in favour of this view, respondents made the following points in relation to why large sites are allocated:

- (a) There has been a growing shift of emphasis in adopted local plans in recent years towards larger scale site allocations. This shift has been driven by:

- (i) Political motivation;
 - (ii) LPA resource management;
 - (iii) infrastructure delivery, and
 - (iv) national policy direction.
- (b) There is a movement towards larger housing development sites, driven by factors such as land-market dynamics and planning considerations.
- (c) Speculative land promoters and PLC's house builders now focus their strategic resource on large sites.

6.305 In relation to political motivation, respondents felt:

- (a) Local political calculations play a part in a growing reliance on larger sites to meet local housing requirements. Communities that are resistant to new development can, for political expediency, lead to fewer, but larger site allocations. It may be more palatable for local politicians to accept hundreds of objections to a 1000 home urban extension, than thousands of objections in total to 20 sites of 50 homes or 10 sites of 100 homes.
- (b) Large strategic sites, delivering significant social infrastructure (eg, schools), receive closer attention from LPAs when delivering wider Council objectives beyond new housing.

6.306 Concerning finance / resources respondents stated:

- (a) At a time when LPA budgets have been / are squeezed, local authorities allocate more large sites than ever before. While this helps to satisfy the requirement for a five-year land supply, it will often fail to actually deliver and prevent access for most small firms. Furthermore, fixed costs (in the form of both money and time) differ little between a site of 20 units and one for 150 units.
- (b) Less LPA resources are required to analyse a smaller number of large-scale sites and to process the representations that are generated as a result of those allocations.
- (c) It may well be more resource-efficient for local authorities to focus on a smaller number of larger sites, though one respondent noted that they were not aware of any deliberate strategies to do so from their local authority members.

- (d) LPAs have prioritised development control resources for larger sites for many years, giving less attention to smaller and windfall developments. This has a disproportionate impact on SME housebuilders.
- (e) SMEs are restricted in terms of buyer power and economies of scale available to the larger developers. Combined with rising planning costs and technical documentation, this has resulted in the number of active SME housebuilder planning applications declining.

6.307 In relation to infrastructure, the respondents considered:

- (a) Sometimes, only by concentrating housing allocations on the largest sites, is there is any realistic prospect of provision of infrastructure.
- (b) However, on the contrary, others felt that the common perception that LPAs need to allocate large scale sites to ensure that they generate sufficient contributions to deliver key infrastructure in an area, is often misjudged. With an effective Community Infrastructure Levy in place, most developments would contribute to infrastructure provision, thus overcoming this perceived issue.
- (c) The trend towards larger sites is due to the policy stress on planning authorities negotiating contributions from developers to the cost of infrastructure and especially affordable housing.
- (d) There has been a shift towards the allocation of larger master planned sites, particularly in central Scotland where significant and related S75 infrastructure is provided (eg, new schools and facilities for the developing communities).

6.308 In relation to planning policy they noted:

- (a) Even with the broadly positive NPPF in place from 2012 in England, land was hard to come by for SME housebuilders.
- (b) New planning rules in 2012 led to an increase in the proportion of planning permissions for large greenfield sites.
- (c) The semi-judicial framework in which planning operates favours those with deep pockets and time – which inevitably equates to scale.
- (d) Local plans are required to allocate 10% of their housing need on smaller sites. However, there is not much evidence of this happening in practice.
- (e) LPAs tend to show bias towards allocating larger sites, as these have similar planning requirements as that of smaller sites but help LPAs meet their targets more efficiently.

6.309 In relation to expertise, they wrote that:

- (a) Local Plan policy teams, when consulting externally, will hear predominantly from companies that have the resource to allow them to respond, not SME housebuilders.
- (b) SME housebuilders are reliant upon their trade bodies to represent them in a policy capacity.

6.310 The consequences for housing delivery were felt to be as follows:

- (a) One respondent stated that the focus on large scale sites has led to a number of housing delivery consequences which would not occur if a greater number of smaller scale sites were allocated. Firstly, local plans which are overly focussed on large scale sites have lower housing delivery in the early years of the plan period. Secondly, if a local plan is heavily reliant upon a small number of large-scale sites and one or more of those sites encounter delivery issues, then a significant gap can occur in the delivery of new homes within that LPA as a result of less built-in flexibility to cope with such unforeseen circumstances.
- (b) Another respondent said that the gaining of planning consents requires both very deep pockets and the ability to bear significant risks over long periods of time. Furthermore, they said that over recent decades the planning system has played a significant role in hastening the concentration of the housebuilding sector. It has morphed from a service to the whole community into a source of competitive advantage for large housebuilders.

6.311 There were two respondents who disagreed to some degree with the general consensus that the planning system incentivised the delivery of houses on larger sites.

6.312 First, a housebuilder stated that, as a firm who bridges the gap between SME scale sites and those significantly in excess of this, they had experienced the same planning issues across all size of developments, as well as suffering the same delays. They added that, whilst there may be no specific intention to deliver housing on larger sites, there is a tendency for many LPAs to opt for fewer, larger allocations, than multiple smaller ones. This may be because, from an officer point of view, fewer sites mean less work (and therefore fewer resources being expended), or from a political point of view, fewer sites meaning fewer upset residents.

6.313 Second, a large housebuilder thought it was partly the case, noting that the Local Plan making process is sometimes influenced towards sites of scale because LPAs are looking for sites that make a more significant contribution to the housing requirement. Furthermore, politically, LPAs are likely to prefer allocating three sites

of 1,000 homes as opposed to 30 sites of 100 homes because it is likely to be opposed by fewer residents / electors. They argued that a balanced housing strategy identifying a proportion of the housing requirement to be accommodated on non-strategic sites does sometimes occur, but that it can take years to prepare following the adoption of the Local Plan. Moreover, small housing sites in Green Belt are difficult to obtain because you need a Local Plan review to achieve it, and the VSC argument needed to get a consent is a high bar to get over.

Question asked: Are there any other aspects of the planning system that have an impact on SME housebuilders that we should consider?

6.314 In answer to question about which other aspects the CMA should be considering re: the planning system and its impact on SMEs, respondents stated the following.

6.315 Concerning increased regulatory burdens, they felt:

- (a) The additional workload that has been placed on LPAs as a result of additional regulatory requirements, elongates response times and, more often than not, leads to protracted exchanges during the application process, which further drains available the LPA resources.
- (b) The introduction of new environmental regulations in various areas was specifically mentioned as an additional burden for SMEs. In particular, design and energy transition policies; the new February 2024 rules on biodiversity net gain; the deprioritising of housing delivery in favour of environmental considerations, such as nutrient neutrality; plus the risk that the introduction of new carbon reduction policies - for example through the Future Homes Standard or Scottish equivalent - were all raised as having the potential to add significant additional costs and burdens for SMEs.
- (c) FMB members reported that they have experienced delays when connecting to the electrical grid and around a third have had to request a reinforcement to the grid to support equipment required under new regulations (eg EV chargers and heat pumps).

6.316 In relation to planning policy issues respondents felt:

- (a) Greater enforcement of the NPPF paragraph 69 (small sites allocation) requirement is required.
- (b) There should be a renewed focus on sites below 100 dwellings to:
 - (i) Increase delivery by SME housebuilders.
- (c) To diversify the market, to increase the speed of delivery, and to ensure a focus on high quality design by:

- (i) Amending the definition of small sites to encompass sites of up to 100 dwellings.
 - (ii) Including positive and permissive wording in the PPG to ensure decision makers attach significant weight to the planning benefits of sites for under 100 dwellings in the planning balance.
 - (iii) Considering freezing (or reducing) planning fees for schemes below 100 dwellings and finding ways to minimise the supporting information requirements for these planning applications.
 - (iv) Encouraging LPAs to allocate a greater proportion of their housing requirement on small sites of up to 100 dwellings in their local plans.
- (d) Simple changes in current processes, such as driving standardisation by requiring all LPAs to use the same terminology and format styles for their planning policy documentation and websites, would go a long way to make the process clearer and easier to understand for all involved.
- (e) Requiring specific policies for custom and self-build and small sites and reporting performance in a standard regular way is an important part in ensuring a change towards increasing delivery.
- (f) The potential impact of LPPs on future site allocations in Scotland is still to be established. It is likely that any impact on proposed housing sites will be related to smaller sites put forward by SME home builders, rather than larger sites.

6.317 Other considerations raised by respondents were as follows:

- (a) Efforts should be placed on encouraging Housing Associations to play a greater role. Their ability to unlock funding is vital to boosting delivery.
- (b) Council-led development is a way in which land / work opportunities can be made available to SMEs.
- (c) The costs of planning applications are proportionally higher on smaller sites, which are more commonly developed by SMEs and that SMEs are less able to mitigate risk by having multiple sites in progress simultaneously. They may therefore be more vulnerable to cash flow difficulties.
- (d) The length of the appeal process is particularly challenging for SMEs so they would like to see timelines reduced.
- (e) Grant or equity support that does not affect their lending capacity could be considered to help SMEs carry the financial burden of the planning cost predevelopment.

- (f) If a national scheme of delegation were introduced with a threshold below which officers could make a professional decision, then this could speed up the decision-making process and also help SME's.
- (g) The planning system is the most significant barrier to entry for SMEs and complete reform is required to address this.
- (h) Undertaking the Letwin Review recommendations would enable greater opportunities for SMEs.

6.318 Appendix K Options for reforming the planning systems – responses to the CMA planning working paper also includes comments made to us to support SMEs engagement with the planning systems.

Do you consider there to be any difference between how the planning system impacts SMEs between England, Scotland, and Wales?

- 6.319 The majority of respondents replied that, because they operated only in one country, they did not feel qualified to do any comparison with the other planning systems. Others responded with a “no comment”.
- 6.320 Of those who did respond, one respondent commented that they felt there was no apparent difference and the other commented that their experience across England and Wales had been similar.
- 6.321 A respondent believed that the greatest differences between the nations arise from the relative mix between urban and rural housing. Those nations that deliver a greater number of smaller developments are, in turn, better equipped to benefit self-builders and SMEs. They also noted that custom and self-build legislation is specific to England only. Over the seven years these powers came into force, it has yet to produce any discernible difference in delivery in England compared to other nations.
- 6.322 The HBF suggested in England, Registered Social Landlords are prioritising improvements to existing housing stock whereas their Welsh counterparts are active in constructing new housing stock. This, they suggested, means that SMEs in Wales are subjected to more competition for small sites, but that issues affecting SME builders are the same in both England and Wales.
- 6.323 A large housebuilder considered that the key difference between the Welsh and Scottish systems and English planning systems are:
- (a) the focus on affordable housing, and
 - (b) the removal of the requirement to demonstrate a 5-year housing land supply and associated PFSD.

- 6.324 Additionally, they felt that, in respect of the requirement to deliver circa 50% affordable housing on all schemes across Wales, this is likely to significantly impact SME housebuilders to a greater degree than larger housebuilders.
- 6.325 They also suggested that the removal of the 5-year housing land supply required and associated presumption hinders the ability for SMEs to rectify under delivery in both Scotland and Wales. This is because it removes the ability for housebuilders to effectively 'step in' if housing delivery on allocated sites is not matching the envisaged trajectory and having to wait for the next review of the local plan to promote new sites, a process which causes delay and delivery issues. They noted that the impact of this policy decision in Wales can be seen in the decline in the number of consents since Technical Advice Note 1 was temporarily dis-applied in 2018 and completely revoked in 2020. In Scotland, the adoption of the National Planning Framework 4 in early 2023, similarly has removed the ability for developers to submit applications where the 5-year housing land supply test is not being met.

Our overall view

- 6.326 In summary, there was strong support for the CMA's contention that the planning systems are having a disproportionate impact on SME housebuilders. The costs and level of information involved in making a planning application; the complexity, risk and uncertainty of the planning system; the level of expertise required to navigate it; delays in getting a decision on a planning application, plus outside factors such as a lack of LPA resources to determine applications quickly; inconsistent policy decisions / politics involved in decisions; and, lack of finance for SMEs developing schemes, were all felt to have a negative impact on SMEs.
- 6.327 Respondents also noted that the planning systems have made it easier for LPAs to allocate large sites at the expense of suitable small sites, and that this had not helped plan preparation. It has also added to uncertainty to the market generally.
- 6.328 There was general agreement that the CMA had identified the key issues faced by SMEs due to the planning systems with respondents bringing out local plan development; finance, risk, and resource issues; LPA attitude concerns; and planning process issues, as key barriers to them.
- 6.329 On the specific issue of whether the current planning systems are incentivised to deliver housing on larger sites, there was a consensus that there has been a growing shift of emphasis in adopted local plans towards larger scale site allocations. This was caused by political motivation; LPA resource management; Infrastructure delivery concerns; and national policy direction. The consequence of this focus was lower housing delivery in the early years of a Local Plan. Furthermore, if large sites encountered delivery issues, then gaps occurred in LPA delivery of new homes as a result of less built-in flexibility to cope with such

unforeseen circumstances. Additionally, obtaining planning consents for such sites requires both significant financial resources and the ability to bear significant risks over long periods of time, resulting in the concentration of the housebuilding sector in those who have these resources, rather than SMEs.

- 6.330 Concerning aspects of the planning systems the CMA had not considered that impact on SME housebuilders, new regulatory burdens and planning policy barriers were raised by respondents.
- 6.331 In relation to three national planning systems the CMA looked at, we received little evidence of any concern about their differences in relation to SMEs.
- 6.332 Overall, we have concluded that the planning systems are having a negative impact on SMEs and therefore remedies should be considered to improve their operation in the housebuilding market.

Conclusion

- 6.333 We have seen evidence of three key concerns with the planning systems which we consider are limiting their ability to support the level of new housing that policymakers believe is needed:
- (a) Lack of predictability;
 - (b) Length, cost, and complexity of the planning process; and
 - (c) Insufficient clarity, consistency and strength of LPA targets, objectives and incentives to meet housing need.
- 6.334 We have also seen evidence that problems in the planning systems may be having a disproportionate impact on SME housebuilders.
- 6.335 Overall, our view is that, due to the factors set out above, the nature and operation of the planning system is exerting a significant downward pressure on the overall number of planning permissions that is being produced across the nations of GB. The number of planning permissions granted over the last 10 years across GB, and particularly in England, has been insufficient to support housebuilding at the level required to meet government targets and widely accepted measures of need.

7. The land market

7.1 Land is an essential input required by housebuilders to deliver homes. A well-functioning and competitive market for land will therefore contribute to a well-functioning housebuilding market functioning and competitive market for land will therefore contribute to a well-functioning housebuilding market.

Background

7.2 In this section, we discuss recent market developments, the role of land for housebuilders, descriptions of the different types of land, and methods of acquiring land. We also provide estimates of shares of supply for the key players in the land market.

Market developments

7.3 In this section we provide an analysis of trends for land and house prices. We note the following:

- (a) the trend of house and land prices at the local level may differ from the overall macroeconomic trends due to local factors. For example, in London there are more planning restrictions as well as higher demand for housing.⁵¹⁷
- (b) our desk research and information from several land agents find there is no comprehensive record of land sales for residential development. Although we have collected land sales data from 15 land agents, this does not provide a complete view of the market as there is an unknown number of land sales completed by other land agents at the local, regional and national level, and there may also be sales completed without agents. For this reason, we do not provide an analysis of land sales.

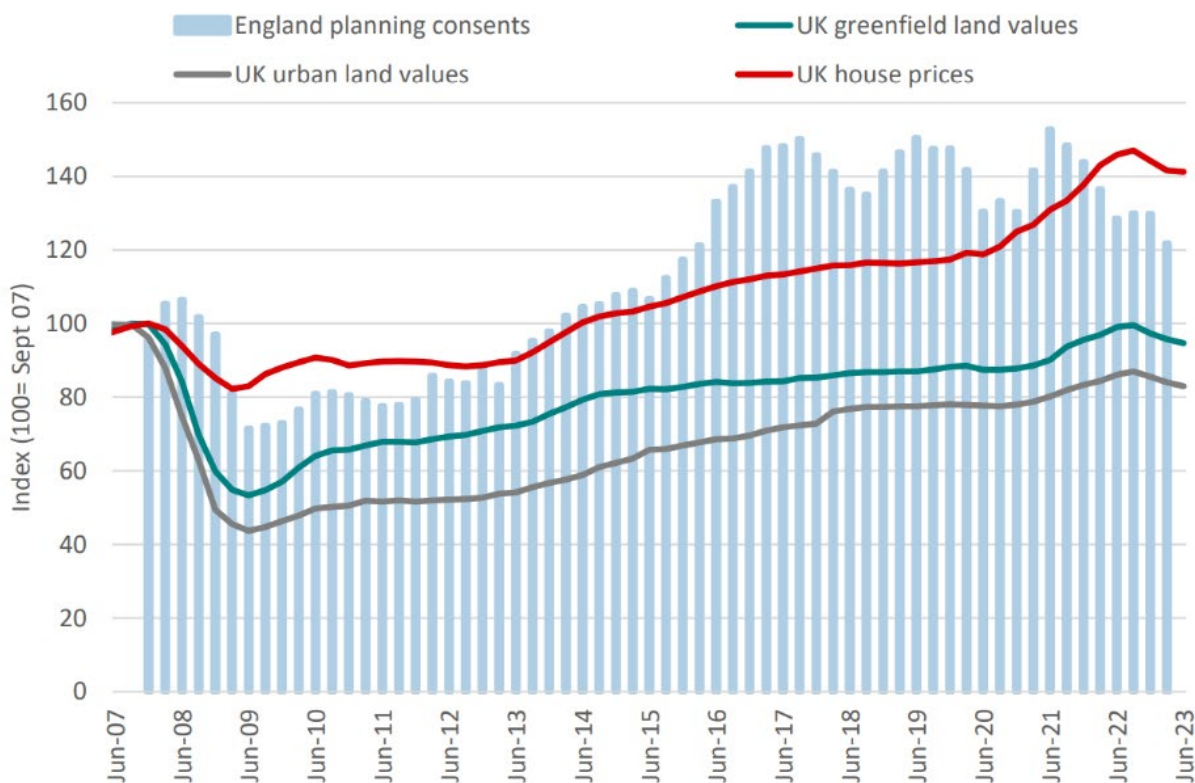
7.4 We use data provided by Savills to compare UK greenfield land prices, UK urban land prices, UK house prices, and number of planning consents. Figure 7.1 below shows that:

- (a) In the few years prior to the Global Financial Crisis (GFC) in 2008, land prices increased at a relatively similar rate to house prices.
- (b) House prices and land values fell significantly between 2007 and 2009 due to very limited demand for sites and homes as a result of the GFC. Land prices reduced significantly more than house prices.

⁵¹⁷ Savills (2018), [How far can land value capture be pushed?](#), government action section, 15 October 2018

- (c) The gap between greenfield land values and house prices reduced between 2010 and 2014. Savills have told us this is because of increased demand for land from housebuilders when the market recovered and limited supply of sites with fewer consents being granted.
- (d) House prices grew faster than land prices between 2014 and 2019. Savills have told us the reasons for this include an increase in the supply of land with consents, increases in developer contributions, and an increase in build costs.

Figure 7.1 – Index of UK house prices, UK greenfield land values, UK urban land values, and England planning consents



Source: HBF/Glenigan, Savills, Nationwide.

The role of land for housebuilders

7.5 Land is an essential input required by housebuilders to deliver homes. Housebuilders may purchase or control residential land with:

- (a) no planning permission (known as long-term or strategic land). For this type of land, a housebuilder must first obtain planning permission to begin construction of a residential development. This requires an application for

outline planning permission, followed by an application for reserved matters (or alternatively an application for full planning permission).⁵¹⁸

- (b) at least outline planning permission (known as short-term or permissioned land). For this type of land, construction may not be far from commencing (once it has received full planning permission or reserved matters approval).

7.6 Housebuilders use the RICS Red Book, voluntary guidance published by the Royal Institution of Chartered Surveyors (RICS), to value the land on which they plan to develop.⁵¹⁹ Land agents also provide land valuations to landowners, however, this is provided as a guide for marketing purposes.

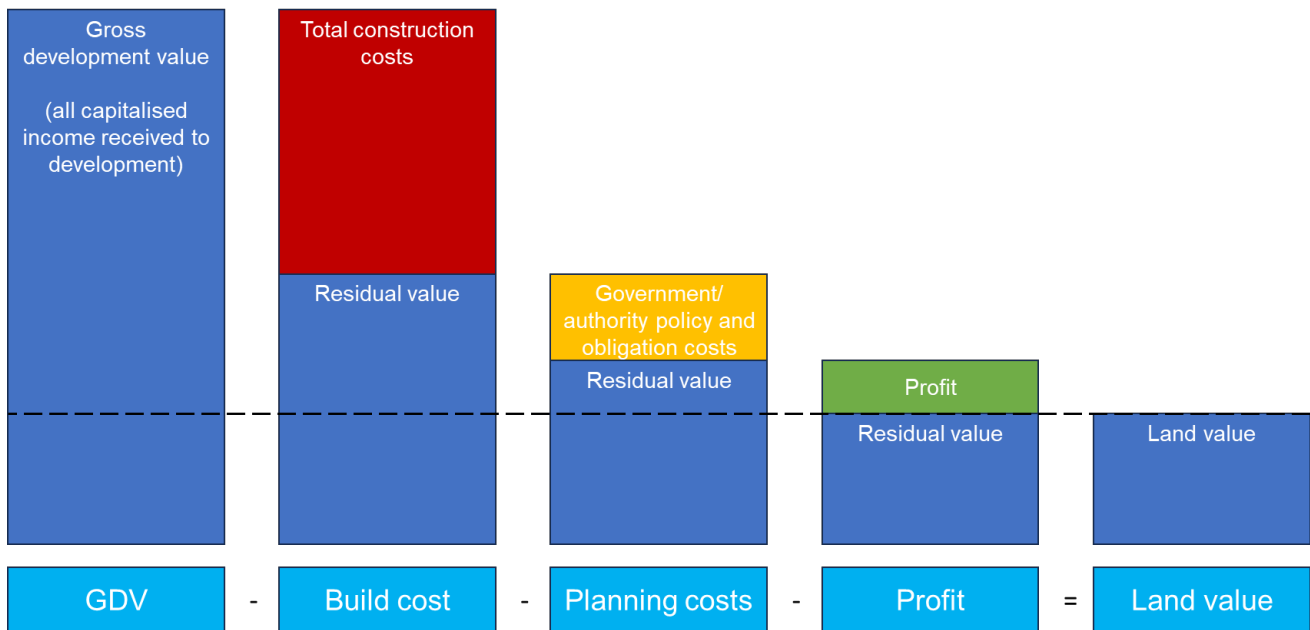
7.7 RICS said there are two main approaches in relation to valuing the land. These are:

- (a) The market approach. If the land that they plan to develop is sufficiently homogenous and frequently exchanged, data from recent sales can be used as a direct comparison. In most markets, the market approach may have limitations for larger or more complex sites.
- (b) The residual method. The land value (ie the 'residual') is the completed gross development value (how much the properties on the land would sell for) minus total development costs, government policy and obligation costs (for example S106 contributions) and developer's profit. The development costs include construction costs, marketing costs, finance costs, and legal/professional costs. Based on a review of internal documents, we find some housebuilders use the market approach to estimate the gross development value. Figure 7.2 below graphically illustrates how the residual value of land is calculated.

⁵¹⁸ Applications for planning permissions are typically submitted to a local planning authority. Applications for planning permission have two stages: (i) first an application for outline planning permission allows for a decision on the general principles of how a site can be developed. Information about the proposed use or uses, and the amount of development proposed for each use and the access points is required. (ii) second, following the approval of an outline planning application, a reserved matters application is submitted to address the details that were not specified in the original outline. These include detailed plans for the access, appearance, landscaping, layout, and scale of the development. Alternatively, a full planning application can be submitted following an outline planning application, for example, if revisions are required or supplementary information added to the outline planning application. (see DLUHC, [Guidance for making an application](#), 6 March 2014). For Scotland, the terminology for applications differs (see Improvement Service, [The Planning System in Scotland: An Introduction for Elected Members](#), February 2022, p26)

⁵¹⁹ RICS, [Red Book Global Standards](#), 31st January 2022, page 116 to 126

Figure 7.2 - Residual valuation of land value calculation



Source: RICS, *Valuation of development property*, October 2019, page 27

Type of land

7.8 There are two main types of land purchased by housebuilders:

- Brownfield land. Brownfield land is considered to be previously developed land.⁵²⁰ This includes old industrial or inner city sites that are cleared for new building development.
- Greenfield land. This is previously undeveloped land.⁵²¹ This often includes agricultural land that has not been previously developed in either an urban or rural area.

Methods of acquiring land

7.9 Land is typically marketed as follows:

- On market. This land is publicly advertised for sale.

⁵²⁰ This is defined in the National Planning Policy Framework (NPPF) as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. DLUHC, *NPPF, Annex 2: Glossary*, 27 March 2012

⁵²¹ There is no formal definition of a greenfield site in the NPPF.

- (b) Off market. These are private transactions concluded without public advertisement.⁵²²

7.10 The negotiation process between the seller and purchaser is typically one of the following:

- (a) Bilateral negotiation. This is a one-to-one negotiation between the buyer and the seller.
- (b) Limited tender. A select list of potential purchasers are invited by the landowner (and/or their appointed agent) to bid for the land.
- (c) Open market. Any bidder can bid for the land.

7.11 There are several different agreements that a housebuilder can use to purchase land from a landowner, including:

- (a) Unconditional. The developer agrees to purchase outright the freehold interest in the landowner's land holding.
- (b) Conditional. The developer agrees to purchase the landowner's land subject to specified conditions being met (generally planning consent which could be outline, full or reserved matters).
- (c) Option. The developer has the right to buy the landowner's land within a set period, conditional on securing planning permission.
- (d) Option hybrid. The developer secures the land via an option agreement (as described above). Once planning consent is secured, the option is exercised on a set proportion of the land and additional parcels of land are sold by the developer via the open market. The selling developer receives a set seller fee for the additional land sold.
- (e) Build licence. Landowner grants a lease to a developer to build on the site during the lease period. Once each unit is built, the landowner usually transfers the freehold title for each unit directly to the end buyer. The lease usually imposes planning, build and sales obligations on the developer which may require the developer to deliver homes within a specified period of time, and contain financial and other penalties if these time scales are not met. These agreements tend to be used for public land owners / Homes England.
- (f) Joint venture (JV). There are different types of JV agreements. One example is where the land owner inputs land and the developer builds and sells the homes. The profits are split according to a pre-agreed formula. This is

⁵²² Scottish Land Commission (2023) [Rural Land Market Insights Report](#), p12.

different from the usual agreement where the landowner is paid the market value of the land, and the housebuilder retains all profit from developing the land. Another example of a JV is for large sites, where multiple housebuilders may develop a site. This might be helpful if a single housebuilder does not want to purchase the entire site.

- 7.12 As part of these agreements, the developer and landowner may use the following conditions:
- (a) Exclusivity/lock-out agreement. The landowner agrees with a developer that it will not seek to sell the site to a third party for a short period of time (one to six months). This is typically used to provide a housebuilder the exclusive opportunity to negotiate with the landowner, carry out investigations into the title, complete due diligence and progress the transaction without competition from third parties.
 - (b) Pre-emption agreement. The developer has right of first or last refusal to purchase a site from a landowner prior to it being marketed or following the conclusion of the marketing process.
 - (c) Overage agreement. The developer agrees to pay the landowner in the event of an increase in the value of the land after the transaction is completed. This event may be a change to planning permission (which may increase plot numbers), change in sale revenues above pre-agreed threshold, or changes to the use of land (for example to commercial which made it more valuable). Payment to the landowner may be linked to sales revenue (above agreed threshold), a fixed sum per additional developable plot, share of uplift in land value etc.

Main actors in the market

- 7.13 There are intermediary actors in the market which support landowners with their holdings when they seek to sell or develop their land. Most commonly these are solicitors, land agents and land promoters. The interactions these actors have with landowners are usually dependent on what the owner wants to do with their land.
- 7.14 Land agents are individuals or firms who specialise in representing clients (buyers or sellers) in land transactions. They support the sale, purchase, or leasing of land.
- 7.15 Land promoters' main activity is promoting land through the planning system on behalf of landowners, with the objective of securing planning permission for residential development. Land promoters have been active in the long-term land market for decades, but the GFC is reported to have stimulated the expansion of this model since 2008.

7.16 We collected completed sales data between 2020 and 2022 (inclusive) from 15 land agents,⁵²³ top 11 housebuilders and 34 land promoters.⁵²⁴ We use this data to estimate the market structure for land agents and land promoters in the sub-section below.

Market shares for land agents

7.17 Our desk research and responses from several land agents indicates there is no comprehensive record of land sales for residential development.⁵²⁵ Also, although we have collected land sales data from 15 land agents, this does not provide a complete view of the market as there is an unknown number of land sales completed by other land agents at the local, regional and national level.

7.18 Based on the land agents' completed sales data, we calculated the shares of sales (based on number of plots expected to be built on the land and number of sites)⁵²⁶ via each of these land agents for the last three calendar years. As we do not have complete visibility of all land agents in the market, the shares are an overstatement. Table 7.1 below shows:

- (d) Savills was the largest land agent in each of these years with [X]% of sites, equivalent to [X]% of sites in 2022.
- (e) There are multiple land agents with more than 5% of sites and plots in 2022, including:
 - (i) [X].
 - (ii) [X]
- (f) Several other land agents had less than 5% of sites and plots.

Table 7.1 - Land agent sales shares in terms of sites and plots, 2020 - 2022

Entity	Share of sites			Share of plots		
	2020	2021	2022	2020	2021	2022
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]

⁵²³ These 15 agents were [X].

⁵²⁴ 28 of 34 land promoters provided sales data for the relevant period.

⁵²⁵ We note [X] told us 'there are multiple databases of land transactions for residential development such as Land Registry, Council Planning Portals etc. These will reflect the intention to use the land for development at the earliest opportunity as, at point of transaction, it is often not concluded that a plot of land will be used for residential purposes (it could be one option but may not be the favoured/viable option).' In addition, [X] told us there is no comprehensive record of market shares for land agency services for residential development.

⁵²⁶ A 'site' is a parcel of land on which a development could be constructed; a 'plot' is a housing unit built (or expected to be built) on the land.

✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂

Source: CMA analysis of Land Agents' completed sales data

7.19 To understand the extent to which the biggest housebuilders use specific land agents to buy land, we used the top 11 housebuilder completed purchases data to calculate land agent shares.⁵²⁷ We calculate the number of purchases via each agent (in terms of sites and plots).

7.20 We find that the top 11 housebuilders purchased [10-20]% of the sites they bought, equivalent to [10-20]% of plots, from Savills in 2022. These housebuilders also purchased from several other agents, each for less than 5% of instances. This suggests that the top 11 housebuilders work with a wide range of agents, rather than buying through one or two large agents. This may also indicate that our shares based on data from agents are likely to be overstated.

Market shares for land promoters

7.21 We note there is a large number of promoters with wide geographic coverage, in addition to smaller promoters at regional and local levels. As with agents, we do not have complete visibility of all promoters in the market. Where possible, we aimed to collect information on most promoters identified by the Land Promoters and Developers Federation (LPDF) in addition to competitors identified by promoters. However, there are likely to be a large number of promoters not captured by our data set (particularly those present only in certain local or regional areas).

7.22 We find that land promoters sold 68 sites, equivalent to approximately 14,000 plots, in 2022. Although relatively small compared to land agent transactions (around 630 sites, equivalent to 90,000 plots), promoters are a substantial land market participant.

7.23 We used the completed sales data to calculate the share of sales by promoter (based on number of sites and number of plots expected to be built on the land). As we do not have complete visibility of all land promoters in the market, the shares are an overstatement. Table 7.2 below shows Gladman was typically the largest promoter each year. Based on sites, the other promoters are smaller and

⁵²⁷ For each year between 2020 and 2022 (inclusive), we collected data from 11 housebuilders on each land purchase. For each site, the following information was provided (where available): number of plots purchased (completed), price paid for land by housebuilder, whether an agent represented the landowner and the identity of the agent, whether a promoter represented the landowner and the identity of the promoter, type of agreement (unconditional, conditional, option etc.), how the land was marketed (e.g. on-market, off-market), the negotiation process (bilateral, limited tender, open market), type of planning permission (if any), and type of land (e.g. greenfield, brownfield).

do not have a consistently high market share for each year. This indicates that sales from promoters may be volatile. Based on plots, there is more variation in the relative size of land promoters, which may be due to the sale of larger sites with more plots in particular years.

Table 7.2 – Land promoter sales shares in terms of sites and plots, 2020-2022

Entity	Share of sites			Share of plots		
	2020	2021	2022	2020	2021	2022
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂

Source: CMA analysis of land promoters' completed sales data

7.24 To understand the extent to which the biggest housebuilders use specific land promoters to buy land, we used the top 11 housebuilder completed purchases data to calculate land promoter shares. We calculate the number of purchases via each promoter (in terms of sites and plots).

7.25 Table 7.3 below shows that Gladman had a consistently higher share than other land promoters. Other land promoters' shares are not consistently more than 5%. This is broadly consistent with the land promoters' sales data.

Table 7.3 – Proportion of land purchased by top 11 housebuilders via different promoters

Entity	Share of sites			Share of plots		
	2020	2021	2022	2020	2021	2022
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂
✂	✂	✂	✂	✂	✂	✂

Source: CMA analysis of top 11 housebuilder data

7.26 Our analysis of the main actors in the market found:

- (a) the market for land agency services looks to be unconcentrated, with lots of competitors at the national level, in addition to several local and regional competitors.⁵²⁸
- (b) the market for land promotion services, which is smaller than agency services (but significant) is also unconcentrated, with a large number of small competitors.⁵²⁹
- (c) the biggest housebuilders acquire land via a range of methods, with no one relationship being significantly more important for them (except for perhaps Savills as a land agent and Gladman as a land promoter).

How well is the land market functioning

7.27 To examine how effectively the land market functions, we have gathered information from a subset of the larger participants in the land market (15 land agents, 11 housebuilders and 34 land promoters). We have also engaged with SME housebuilders, and drawn on publicly available data and reports. We have sought to understand whether:

- (a) **there is enough land available in the right places to develop into homes.** We investigate whether there is sufficient availability of potentially developable land in desirable locations for housebuilders to meet housing needs.
- (b) **the market facilitates access to land for all participants.** We investigate whether purchasers have fair access to land.
- (c) **there is sufficient competition for sites and how intermediaries facilitate this.**
- (d) **intermediaries (particularly promoters) have an incentive to prolong their part of the process, and delay the conversion of land into housing.** We investigate whether some actors are relatively slow at bringing land forward for development.

⁵²⁸ We calculated the Herfindahl-Hirschman Index (HHI) using shares based on land agents' completed sales data. HHI is a common measure of concentration, calculated as the sum of the squares of market shares of each firm in a market. Its value ranges from 0 to 10,000, with values less than 1500 considered to be unconcentrated, 1500 to 2500 indicating moderate concentration and values above 2500 indicating high concentration. In 2022, the HHI for land agency services was under 2000. This will be an overestimate, as the land agents' shares are overestimated.

⁵²⁹ We calculated the HHI using shares based on land promoters' completed sales data. In 2022, the HHI was around 1000. The HHI will be an overestimate, as the land promoter shares are overestimated.

- (e) **the recent trend for integration of promoters and housebuilders is concerning from a competition perspective.** We investigate this trend and its potential impact on competition.

Is enough land available in the right places to develop into homes?

- 7.28 In this section we review land use statistics to understand whether there is sufficient availability of potentially developable land in England and Wales. We note land use statistics for the combined land area that is protected from development are not readily available for Scotland in a single data set at this time, instead being available via separate data sets. For Scotland, we assess the availability of potentially developable land by conducting a visual analysis of protected and built-up land.
- 7.29 To investigate availability of land we identified the amount of land which is developed, protected against development, and located in a flood zone, and assumed the remainder of land is potentially developable.
- 7.30 There may be other reasons a housebuilder may not consider some of the land to be potentially developable, for example, technical constraints such as steep slopes. In addition, some portion of this land may be required to support the residential population, for example, agriculture or infrastructure. However, the aim of this analysis is to understand broadly how much land is potentially developable, appreciating it can only provide a starting point to understand how much land is available.

England

- 7.31 DLUHC publishes statistics on different ways land is used in England. We used these statistics to show the amount of land that is developed, protected against development or in flood zones. Figure 7.3 shows:⁵³⁰
- (a) 8.7% of England is developed.⁵³¹ This differs substantially across regions in England, for example, in London, 40.6% of the land is developed, while in other regions of England only 7% to 10% of land is developed.⁵³²
- (b) 37.4% of land in England is protected against development by one or more natural designations (for example Green Belt, National Parks, Areas of Outstanding Natural Beauty (AONBs) and Sites of Special Scientific Interest (SSSIs)). We note the proportion of protected land differs substantially by

⁵³⁰ DLUHC, [Land use statistics: England 2022](#), 27th October 2022

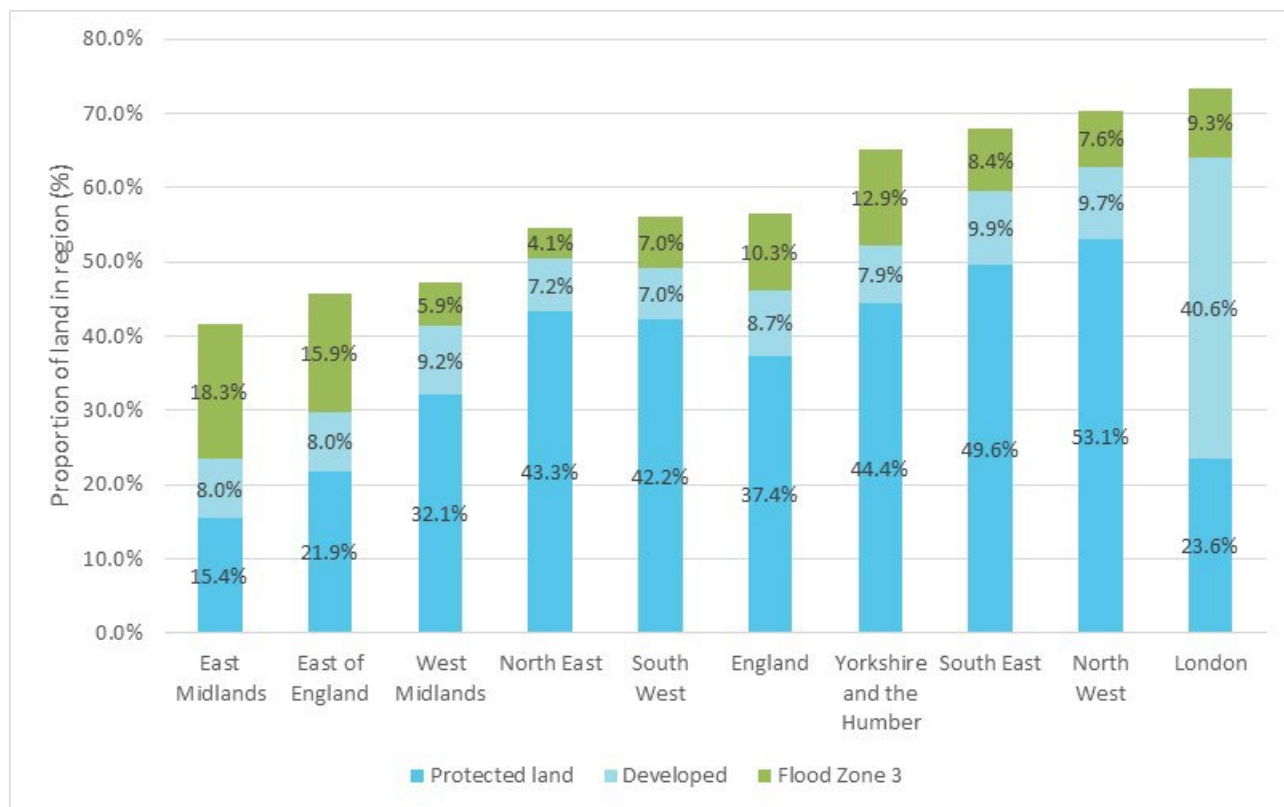
⁵³¹ See Land use statistics, [Table A1](#). The definition of developed land includes community services, defence buildings, industry and commerce, minerals and landfills, residential, transport and utilities, and other developed uses.

⁵³² DLUHC, [Land use in England, 2022](#), tab 'P400a'.

region in England.⁵³³ We note North West of England (53.1%) and South East of England (49.6%) have the highest proportion of protected land in England.

- (c) 10.3% of England’s land area is located within Flood Zone 3.^{534,535} This also varies by region in England. For example, East Midlands (18.3%) and East of England (15.9%) with substantially higher proportion of land in flood zones than the rest of England.

Figure 7.3 - Proportion of land that is protected, developed or at risk of flooding by region



Source: CMA analysis of [DLUHC Land use in England data \(2022\)](#) and [Green Belt statistics for England \(2021-2022\)](#).

7.32 The above evidence indicates approximately 43.6% of land in England is assumed to be potentially developable.⁵³⁶ This differs across regions in England, with London having the lowest proportion of potentially developable land (26.6%) and

⁵³³ DLUHC, [Local authority green belt statistics for England](#), 2021 to 2022 ('Land_designations_by_LA' tab). Protected land is considered to be Green belt, National Park, Area of Outstanding Natural Beauty, and a Site of Special Scientific Interest. Note this excludes several other protected land designations such as Special Area of Conservation (SACs), Special Protection Area (SPA), Ramsar Wetland, Marine Conservation Zone, local nature reserve. We do not expect this to have a substantial impact on our analysis.

⁵³⁴ Flood Zone 3 is an area defined as having a more than 1 in 100 risk of flooding from rivers each year and more than 1 in 200 risk of flooding from the sea each year. It does not consider any flood defences. Less than 0.6% of land within Flood Zone 3 is used for residential development compared to 1.3% outside of Flood Zone 3 areas. (see DHCLG, [Land Use in England, 2018](#), statistical release, page 6].

⁵³⁵ DLUHC, [Land use in England, 2022](#), tab 'P402a' and 'P403a'.

⁵³⁶ Note, our estimate of assumed potentially developable land assumes that protected, developed, and flood zone 3 land do not overlap. Where there is some overlap, our estimate of potentially developable land will be understated.

the East of England having the highest proportion of potentially developable land (58.3%). Except for London, developed land accounts for less than 10% of land in each region of England, so we would expect the remaining potentially developable land (more than 30% of land in each region of England) to be sufficient to meet future housing needs. However, although there may be sufficient land in most regions of England, there may be local areas with insufficient availability of developable land.

7.33 As London, North West of England, South East of England and Yorkshire and The Humber had substantially lower land availability compared to other regions, we conducted analysis at a more local level. For these regions of England, we analysed the DLUHC land use data at the local authority level, and found that most local authorities within these regions have less than 30% of land available. The reasons for the low availability of land differ across local authorities. We found:

- (a) In London, 19 of 33 (58%) local authorities had less than 30% of land available. Local authorities with the least amount of land available include Hammersmith and Fulham, Newham, Southwark, and City of London. A large proportion of these local authorities' land is developed or in flood zone areas.
- (b) In North West of England, 24 of 39 (62%) local authorities had less than 30% of land available. Local authorities with the least amount of land available include West Lancashire, South Ribble, Chorley and Warrington. This is because a large proportion of land in these local authorities is protected from development.
- (c) In South East of England, 35 of 64 local authorities (52%) local authorities had less than 30% of land available. The local authorities with the least amount of land available include Windsor and Maidenhead, Runnymede, Rother and Spelthorne. These local authorities have a large proportion of land which is protected from development.
- (d) In Yorkshire and The Humber, 14 of 21 (67%) local authorities had less than 30% of land available. The local authority with the least amount of land available is City of Kingston upon Hull where a large proportion of land is already developed. Other local authorities such as York, Doncaster, and Wakefield have a substantial share of land that is protected.

7.34 As most local authorities in London, North West of England, South East of England and Yorkshire and The Humber have land which is protected, developed, or at risk of flooding, we reviewed additional data on:

- (a) Type of land new houses are built upon. Where more homes are developed on previously developed land, this may mitigate some concerns regarding limited availability of previously undeveloped land. We review land use

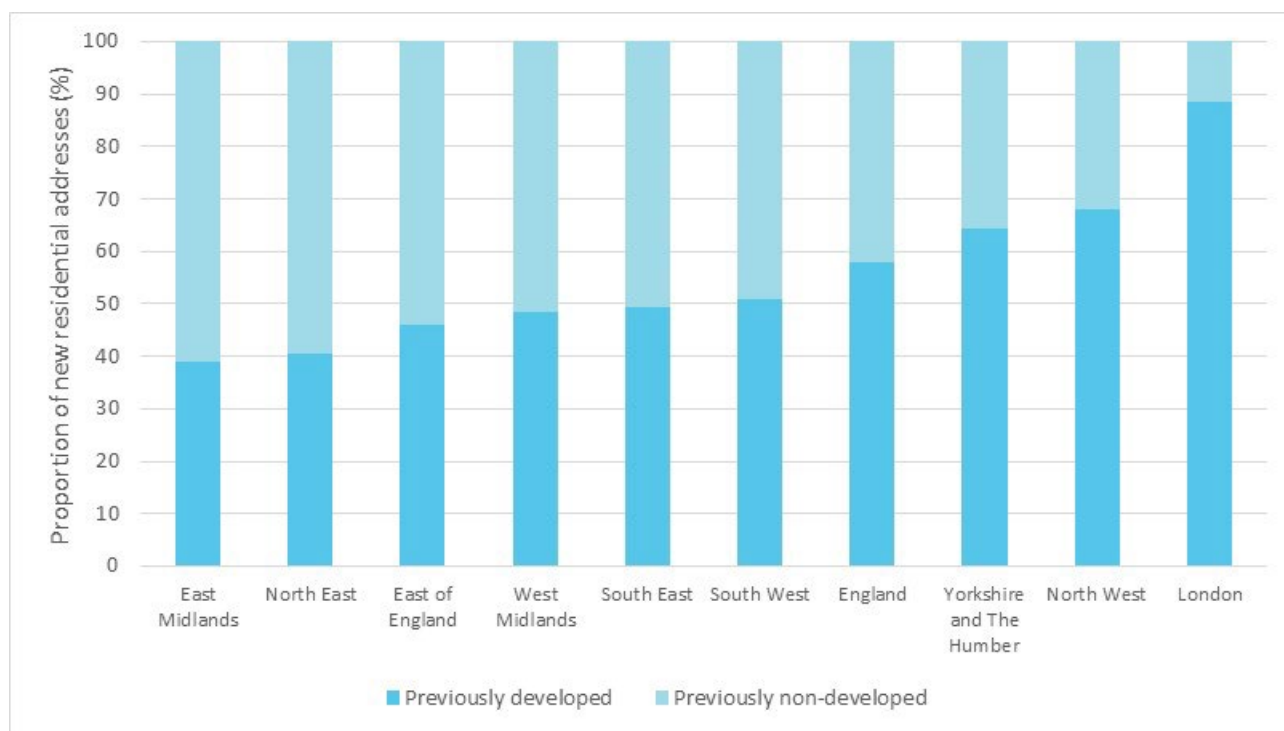
change data on new addresses by type of previous land use (previously developed and undeveloped) for each region of England.

- (b) How efficiently the land is used. Where more homes can be built per hectare, this may to some extent mitigate concerns regarding the limited availability of previously undeveloped land. For each region of England, we review the density of new addresses in the hectare surrounding newly created residential addresses for previously undeveloped and previously developed land.

7.35 We analyse land use change data to consider whether the low potentially developable land in some regions of England is a restriction on future development. Where more homes are developed on previously developed land, this may mitigate some concerns regarding lack of availability of previously undeveloped land. In England, since 2013, between 50% and 60% of new residential addresses created were on previously developed land with the rest on previously non-developed land.⁵³⁷ This varies substantially by region of England. Figure 7.4 shows that London had the highest share of new homes (89%) built on previously developed land. In contrast, in East Midlands this share is substantially lower (39%). This indicates that, where additional land for development is limited, a substantial proportion of new homes can be built on previously developed land, and this is especially the case in London, North West of England, and Yorkshire and The Humber (but to a less extent for the South East of England). It also suggests that the estimates of undeveloped land in other regions identified in Figure 7.3 above will underestimate the availability of developable land, since across all regions of England, land is often repurposed from a previous use to build new housing.

⁵³⁷ DLUHC, [Land use change: new residential addresses 2021 to 2022](#), 27 October 2022, [Table P300: Proportion of new residential addresses created on previously developed land](#)

Figure 7.4 – Proportion of new residential addresses created by type of previous developed use and region, 3-year average up to and including 2021-22

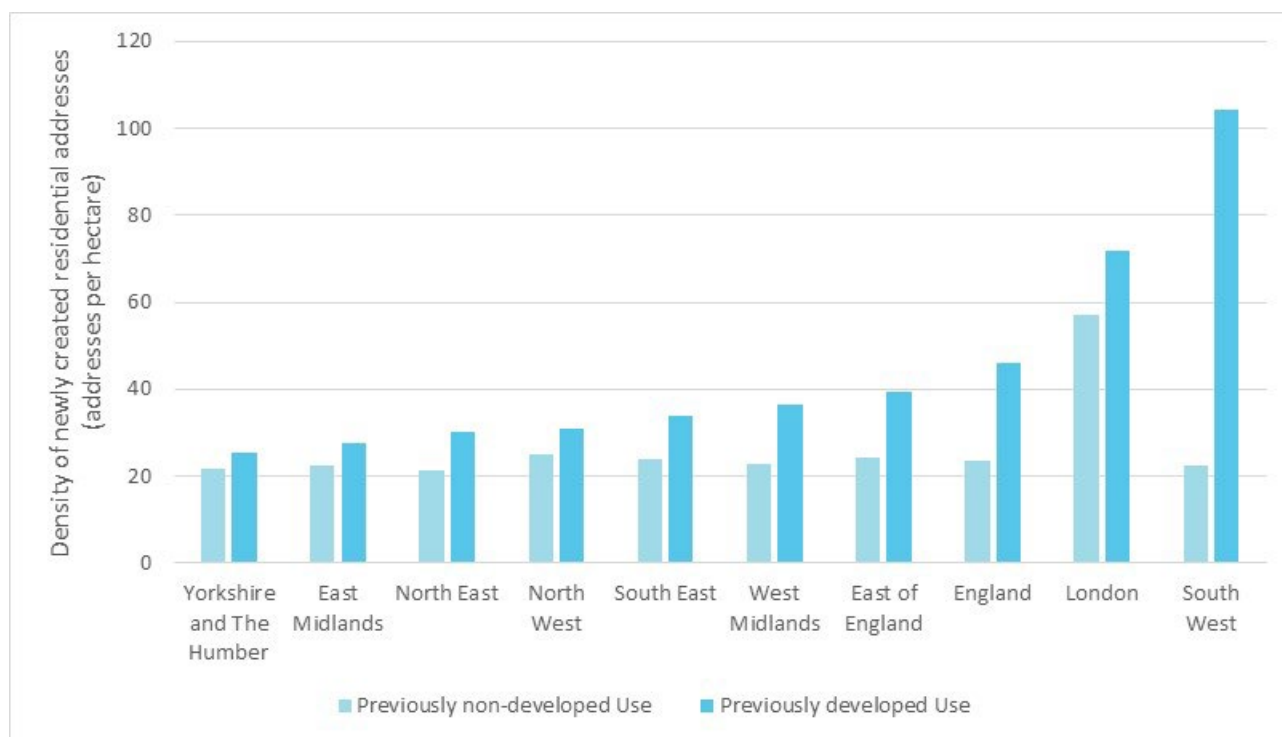


Source: DLUHC, *Land use change: new residential addresses 2021 to 2022*, 27 October 2022, [Table P302: Proportion of new residential addresses created on previously developed land](#)

7.36 We consider how efficiently the land is used in each region of England. We find that the average density of residential addresses surrounding newly created residential addresses is higher for homes built on previously developed land (46 addresses per hectare) than for non-previously developed land (24 addresses per hectare).⁵³⁸ This indicates that new homes built on previously developed land make more efficient use of the land (e.g. smaller homes or multi-storey flats). Figure 7.5 shows this is especially the case for London where new addresses per hectare is higher than all other regions (with the exception of the South West). Although this might mitigate concerns to some extent for London, the density of new houses is relatively low for North West of England, South East of England and Yorkshire and The Humber.

⁵³⁸ DLUHC, *Land use change: new residential addresses 2021 to 2022*, 27 October 2022, [Table P330: Average density of residential addresses surrounding newly created residential addresses](#)

Figure 7.5 - Average density of residential addresses in the hectare surrounding newly created residential addresses by previous land usage, 2019/20-2021/22



Source: DLUHC, *Land use change: new residential addresses 2021 to 2022*, 27 October 2022, Table P331: Proportion of new residential addresses created on previously developed land

- 7.37 Lichfields’ report on ‘Banking on brownfield’ considered whether brownfield land is sufficient in size, location and deliverability to meet the country’s housing needs.⁵³⁹ To understand whether brownfield land was of sufficient size, Lichfields compared brownfield capacity⁵⁴⁰ to housing need⁵⁴¹ at the national, regional and local level for a 15 year time horizon (the minimum plan period for any local plan under the NPPF). Lichfields found in its report that there is not enough brownfield land capacity in any region to meet housing needs.⁵⁴² This would indicate brownfield land may mitigate concerns in some regions of England only in the short-term.
- 7.38 We conclude that there is generally a substantial amount of potentially developable land across England at the regional level, with the exception of London. At the local level, there are several local authorities mostly located in London, the North West of England, the South East of England, Yorkshire and the Humber that have a shortage of potentially developable land. However, the above

⁵³⁹ Lichfields (2022), *Banking on brownfield*, page 2.

⁵⁴⁰ Lichfields estimate of brownfield land capacity is based on brownfield registers published by local authorities which include all land that the local authority considers to be suitable, available and achievable for residential development at some point in the next fifteen years. Lichfields said the data in the Brownfield Registers is often out of date and suffers from the apparent inclusion of a large number of duplicates and/or overlapping entries. Although cleaned of duplicates, the capacity may still be overstated. See Lichfields (2022), *Banking on brownfield*, page 6.

⁵⁴¹ Lichfields estimate housing need at the local level using the Government’s standard method for assessing Local Housing Need. Local housing needs are summed to estimate housing needs at wider geographies.

⁵⁴² Lichfields (2022), *Banking on brownfield*, page 22.

evidence indicates that homes will continue to be built on both previously developed and currently non-developed land, at a higher density in the case of previously developed land. Although planning and regulatory restrictions may currently prevent development in some regions, for example, London (due to height restrictions⁵⁴³, green belt⁵⁴⁴ etc) and demand for housing is relatively high, these factors can change over time to reflect the needs of the population and government policy.

Scotland

- 7.39 As indicated in paragraph 7.28, land use area statistics for the combined land area that is protected from development are not readily available for Scotland in a single data set, instead being available via separate data sets. Instead, we visually assess the availability of potentially developable land by reviewing built-up land and protected land (including green belt land). In addition, we review the availability of previously used land to continue to be used for residential development.
- 7.40 Figure 7.6 shows a map of Scotland with built-up land and several types of protected areas.⁵⁴⁵ The white areas are land that is unprotected and not already built-up and assumed to be potentially available for development. There are several overlaps between the different types of protected and built-up areas. The legend reflects the order that each area takes precedent.⁵⁴⁶

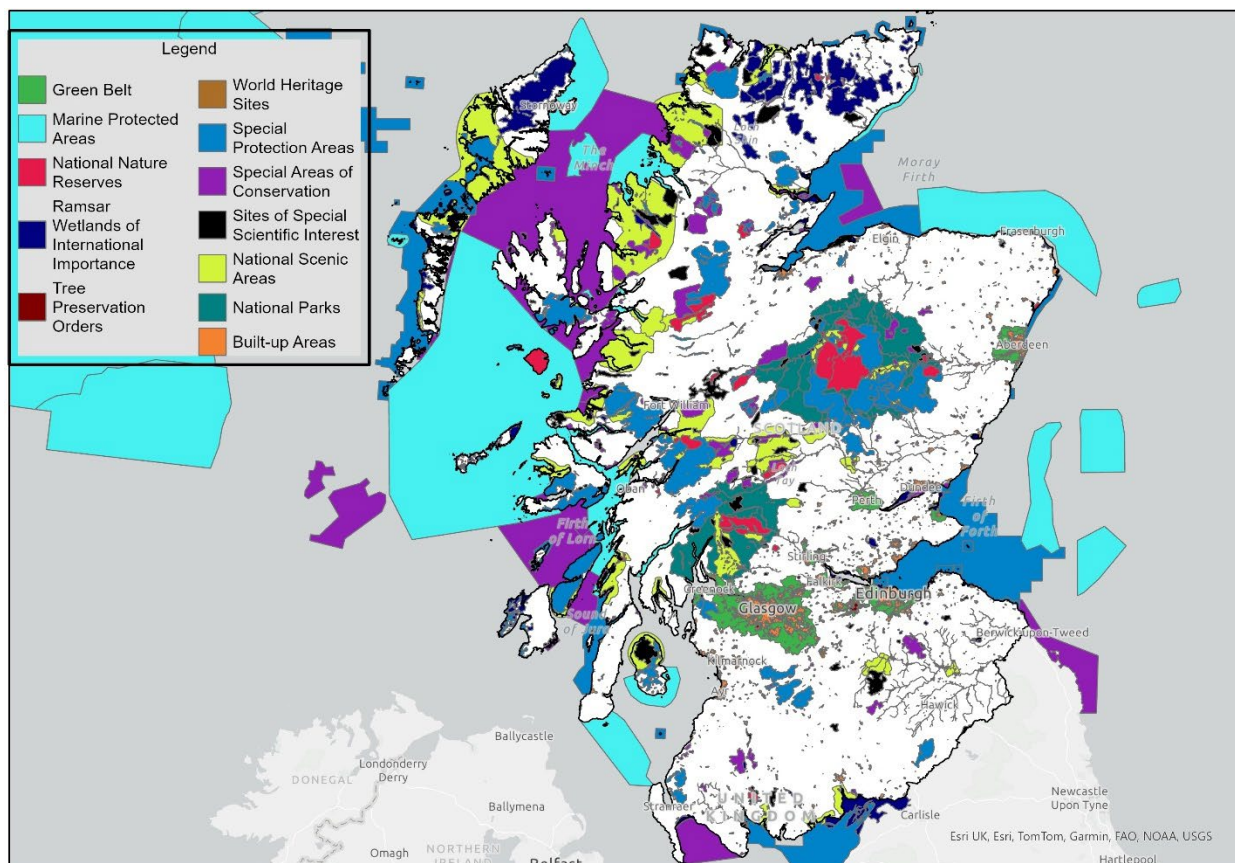
⁵⁴³ For example, views of St Paul's Cathedral, the Monument, the Tower of London and other landmarks on the City skyline are protected by planning controls. See City of London Corporation, [Protected views and tall buildings](#), 18 May 2023

⁵⁴⁴ DLUHC, [Local authority Green Belt statistics](#), 2022/23

⁵⁴⁵ The protected areas included are Green Belt, Marine Protected Areas (MPAs), National Nature Reserves (NNRs), Ramsar sites, Tree Preservation Orders (TPOs), World Heritage Sites, Special Protection Areas (SPAs), Special Areas of Conservation (SACs), Sites of Special Scientific Interest (SSSIs), National Scenic Areas (NSAs), National Parks.

⁵⁴⁶ For example, National Scenic Areas take precedent over National Parks, so where an area is both a National Scenic Area and a National Park, the map will show a National Scenic Area.

Figure 7.6 – Developed and protected areas, Scotland



Source: CMA analysis of ONS (Built-up areas⁵⁴⁷, National Park boundaries⁵⁴⁸), Scottish Government (National Scenic Areas)⁵⁴⁹, Scottish Natural Heritage/NatureScot (Special Protection Area⁵⁵⁰, Ramsar Wetland of International Importance⁵⁵¹, Sites of Special Scientific Interest⁵⁵², Special Area of Conservation⁵⁵³, National Nature Reserves⁵⁵⁴, Marine Protected Areas⁵⁵⁵), Historic Environment Scotland (World Heritage Sites)⁵⁵⁶, Improvement Service (Tree Preservation Orders⁵⁵⁷, Green Belt⁵⁵⁸) using ArcGIS pro.
 Note 1: Orkney and Shetland Islands excluded for presentational reasons.

7.41 We can see from the map that there is a substantial amount of potentially developable land. We also find that 68% of land in Scotland is used for agriculture.⁵⁵⁹ This suggests there is a substantial amount of rural land that may potentially be repurposed for residential development. However, we recognise that not all land is equally attractive for development, both in terms of potential

547 ONS, [Built Up Areas](#), 7 December 2022
 548 ONS, [National Parks](#), 26 August 2022
 549 Scottish Government, [National Scenic Areas](#), 8 February 2023
 550 Scottish Natural Heritage/NatureScot, [Special Protection Areas](#), 1 January 1997 (updated 29 August 2023)
 551 Scottish Natural Heritage/NatureScot, [Ramsar Wetland of International Importance](#), 22 August 2023
 552 Scottish Natural Heritage/NatureScot, [Sites of Special Scientific Interest](#), 1 January 1997 (updated 26 August 2022)
 553 Scottish Natural Heritage/NatureScot, [Special Areas of Conservation](#), 1 January 1997 (updated 29 August 2023)
 554 Scottish Natural Heritage/NatureScot, [National Nature Reserves](#), 1 January 1997 (updated 3 March 2022)
 555 Scottish Natural Heritage/NatureScot, [Marine Protected Areas](#), 1 July 2013 (revised 10 March 2021)
 556 Historic Environment Scotland, [World Heritage Sites](#), 4 November 2015
 557 Improvement Service, [Tree Preservation Orders](#), 31 October 2023
 558 Improvement Service, [Green Belt](#), 27 June 2023
 559 CMA analysis of Scottish Agricultural Census, [Key Points](#), June 2023 & [Standard Area Measurements for Administrative Areas in the United Kingdom](#), April 2023.

constraints on the ability to use the land (as discussed at paragraph 7.30) and also as demand is not evenly spread across the country. We note that in major built-up areas (for example Edinburgh, Glasgow, and Aberdeen) there may be concerns with finding additional unprotected land as the green belt restricts further residential development to some extent.

7.42 We use the Scottish Vacant and Derelict Land Survey to review previously developed land.⁵⁶⁰ In terms of previously used land, we find 44% of urban vacant and derelict land was converted into new residential units in 2022.⁵⁶¹ However, we note that the stock of this type of land has continued a downward trend, falling by 27% since 2016.⁵⁶² In the short-term, this land could potentially be used for residential development. In the medium to long-term, we expect a mixture of previously developed and undeveloped land would be required to meet housing needs.

Wales

7.43 We use land use area statistics at the national and local level provided by the Welsh government and publicly available mapping data to assess the availability of potentially developable land by reviewing developed, protected and flood zone land.

7.44 Our analysis of Wales land use statistics show that 4% of land is developed⁵⁶³, 34% of land is protected⁵⁶⁴, and 9% of land is within Flood Zone 3⁵⁶⁵. We find 53% of land is assumed to be potentially developable. This potentially developable land differs across local authorities. We find two local authorities (Cardiff and Newport)

⁵⁶⁰ The Scottish Vacant and Derelict Land Survey (SVDLS) is a data collection undertaken to establish the extent and state of vacant and derelict land in Scotland. The data is sourced from local authorities and the Loch Lomond and Trossachs National Park Authority. The survey identifies (i) urban vacant land - land unused for the purposes for which it is held and which is viewed as an appropriate site for development. This land must either have had prior development on it or preparatory work must have taken place in anticipation of future development. The survey covers vacant land that is located within settlements of over 2,000 in population; (ii) derelict land (and buildings) - land which has been so damaged by development, that it is incapable of development for beneficial use without rehabilitation. In addition the land must currently not be used for the purpose for which it is held or a use acceptable in the local plan. Land also qualifies as derelict if it has an un-remedied previous use which could limit future development. For both vacant and derelict land, site records must be at least 0.1 hectares in size to be included. See Scottish Derelict and Land Survey, [General Points to Note](#), 2022.

⁵⁶¹ Scottish Vacant and Derelict Land Survey (2022), [Derelict and Urban Vacant Land Reclaimed or Brought Back into Use](#).

⁵⁶² Scottish Vacant and Derelict Land Survey (2022), [Summary of Findings](#).

⁵⁶³ We consider developed land to be within built-up areas boundaries sourced from DataMapWales.

⁵⁶⁴ We consider protected land to be the combined area of Aggregates Resource Area, Ancient Woodland Inventory 2021, Area of Outstanding Natural Beauty (AONB), Conservation Area Boundaries, Historic Landfill Sites, Local Nature Reserves (LNR), National Nature Reserves (NNR), National Parks, Ramsar Wetlands of international importance, Scheduled Monuments, Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPA), World Heritage Sites in Wales, Marine Protected Areas in Welsh Waters sourced from DataMapWales.

⁵⁶⁵ Flood Zone 3 is an area defined as having a more than 1 in 100 risk of flooding from rivers each year, more than 1 in 200 risk of flooding from the sea each year and more than a 1 in 100 risk of flooding from surface water & small watercourses sourced from DataMapWales.

have a very low share of potentially developable land; however, we note this may be because of substantial overlaps between protected, developed, and floodzone areas.

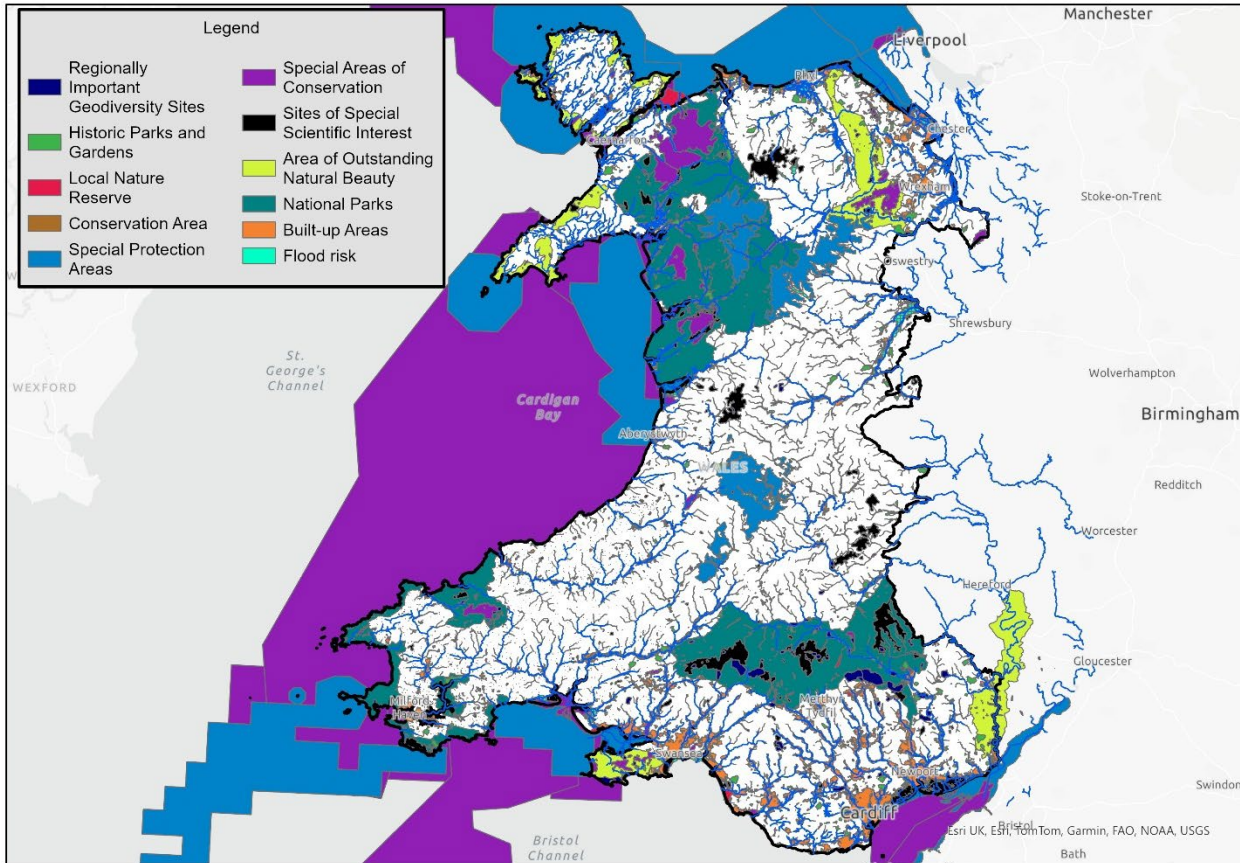
- 7.45 We also assessed potentially developable land in Wales by plotting built-up areas, protected areas⁵⁶⁶ and flood zone areas on a map. The white areas of land are unprotected, not already built-up and outside a flood zone, so are assumed to be potentially available for development. There are several overlaps between the different types of areas, and the legend reflects the order that each area takes precedent.⁵⁶⁷ Note, mapping data for green wedges, green belts, Sites of Importance in Nature Conservation (SINCs) were not readily available, so these are not shown on the map. We reviewed the size of green wedges and green belts based on a publication by the Welsh Government and these do not appear to be large (with the exception of the Newport Green Wedge).⁵⁶⁸
- 7.46 Figure 7.7 shows that areas near to major built-up areas have substantial amount of non-protected land available for potential residential development.

⁵⁶⁶ Note, we include National Nature Reserves and Ramsar sites within the category of SSSIs (see [DataMapWales \(2022\), National Nature Reserves](#) and [DataMapWales \(2022\) Ramsar Wetlands of international importance](#)).

⁵⁶⁷ For example, built-up areas take precedent over flood zone areas, so where an area is both built up and in a flood zone, the map will show a built-up area.

⁵⁶⁸ Welsh Government (2019) [Green Wedges and Environmental Designations](#).

Figure 7.7 - Developed, protected, and flood zone 3 areas, Wales



Source: CMA analysis of ONS (Built up area⁵⁶⁹, National Park⁵⁷⁰) and DataMapWales (Flood risk assessment⁵⁷¹, AONBs⁵⁷², SSSIs⁵⁷³, Special Areas of Conservation (SACs)⁵⁷⁴, Special Protection areas⁵⁷⁵, Conservation Areas⁵⁷⁶, Local Nature Reserves⁵⁷⁷, Regionally Important Geodiversity Sites (RIGS)⁵⁷⁸, Historic Parks and Gardens⁵⁷⁹) using ArcGIS pro.

7.47 We investigate Cardiff and Newport more closely as these had relatively low share of potentially developable land based on land use area statistics. Figure 7.8 shows there is a substantial amount of potentially developable land indicated by the white coloured area within the local authority boundaries of Cardiff and Newport.

⁵⁶⁹ ONS, [Built Up Areas](#), 7 December 2022

⁵⁷⁰ ONS, [National Parks](#), 26 August 2022

⁵⁷¹ DataMapWales, [Flood Risk Assessment Wales](#), 30 November 2023

⁵⁷² DataMapWales, [Area of Outstanding Natural Beauty \(AONB\)](#), 28 November 2022

⁵⁷³ DataMapWales, [Sites of Special Scientific Interest \(SSSI\)](#), 28 December 2023

⁵⁷⁴ DataMapWales, [Special Areas of Conservation \(SAC\)](#), 28 November 2022

⁵⁷⁵ DataMapWales, [Special Protection Areas \(SPA\)](#), 28 November 2022

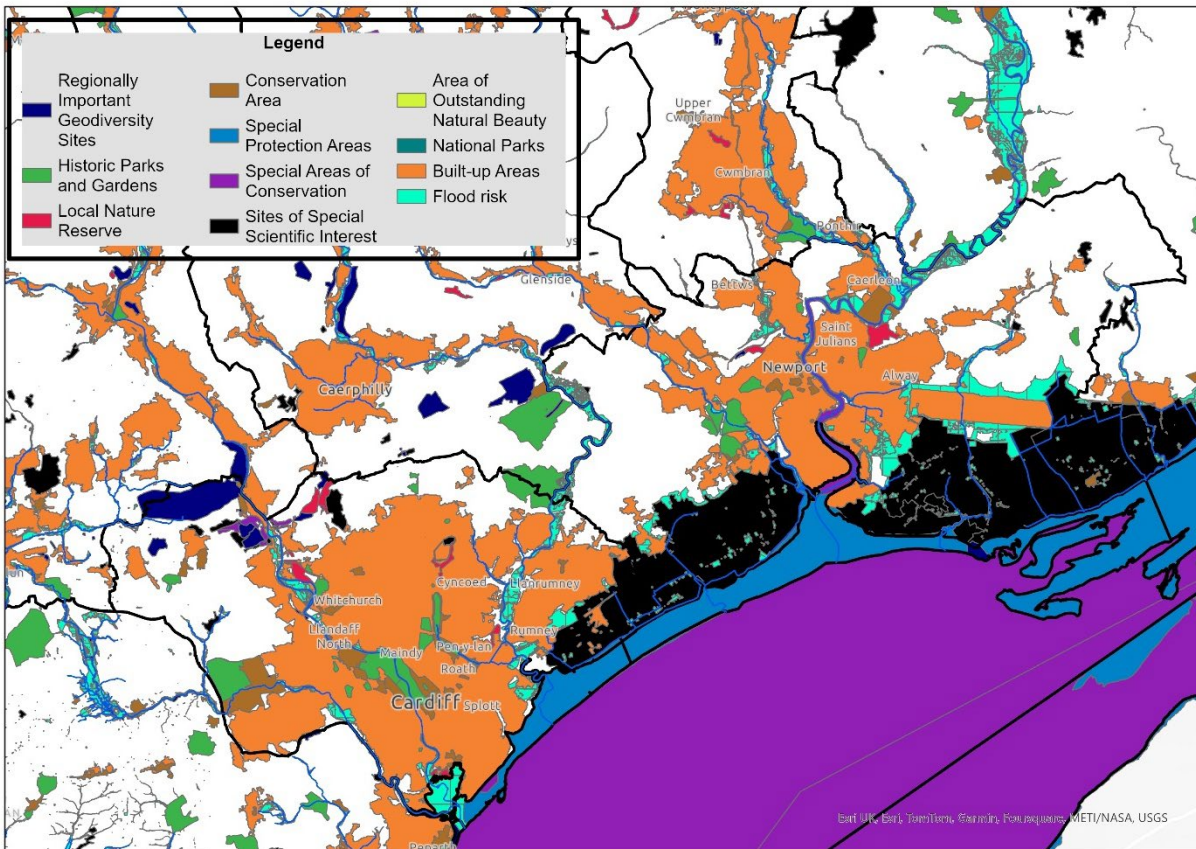
⁵⁷⁶ DataMapWales, [Conservation Area Boundaries](#), 30 September 2022

⁵⁷⁷ DataMapWales, [Local Nature Reserves \(LNR\)](#), 28 November 2022

⁵⁷⁸ DataMapWales, [Regionally Important Geodiversity Sites \(RIGS\)](#), 24 March 2022

⁵⁷⁹ DataMapWales, [Registered Historic Parks and Gardens](#), 1 February 2022

Figure 7.8 – Developed, protected areas, and flood zone 3 areas, Cardiff and Newport local authorities



Source: CMA analysis of ONS and DataMapWales using ArcGIS pro.

7.48 This contrasts with the conclusion based on land use area statistics as our analysis assumed protected, developed, and flood zone areas do not overlap. Where there is overlap, our land use area analysis will understate the amount of potentially developable land. This is the case for Cardiff and Newport where developed areas, protected areas (specifically Site of Special Scientific Interest) and flood zone 3 areas substantially overlap.

7.49 At the national and local level, we do not find evidence of a shortage of potentially developable land in Wales.

Landowner incentives to bring land forward

7.50 We note only a sub-set of this potentially developable land is available to purchase or control for residential development. In order for land to be brought to market for development, landowners need to be willing to sell or develop the land. As they can only sell the land once, landowners must determine whether their best strategy is to capitalise on what is (or is likely to be) offered for the land now or to hold onto the land and wait for better terms to be offered in future. This decision will be informed by expectations as to many different aspects of current and likely future market conditions, including in relation to:

- (a) Land prices, which are closely linked to house prices as discussed in paragraph 7.7;
- (b) Planning system requirements, including the overall likelihood of receiving planning permission, the number and types of homes likely to be granted permission and the conditions which are likely to be attached to any planning consents;
- (c) Costs and revenues of retaining land, including any revenue derived from its existing use, maintenance required on existing facilities (in the case of sites currently used for other purposes), and tax liabilities from owning land;
- (d) Level of competition which is likely to be generated for the land (which will influence eventual sales price); and
- (e) Number and relative attractiveness of other parcels of land which may be brought forward.

7.51 Changes to these and other aspects of market conditions, for example arising from changes in macroeconomic outlook or changes in relevant government policies, are likely to influence the incentives on landowners to bring land forward at any given time.

Does the market facilitate access to land for all participants?

7.52 To investigate whether land is accessible to all market participants we assess:

- (a) agents' and promoters' effectiveness at giving access to land to the different types of purchasers in the land market. We do this by reviewing evidence on the types of housebuilders (eg top 11 housebuilders vs other housebuilders) that agents and promoters sold land to.
- (b) top 11 housebuilder narrative responses to our information requests and more limited evidence from questionnaire responses from SME housebuilders to understand housebuilders' experiences of finding and purchasing land.
- (c) top 11 housebuilders' views on whether new legislation (LURA) that will increase transparency on who controls land will have a positive impact.

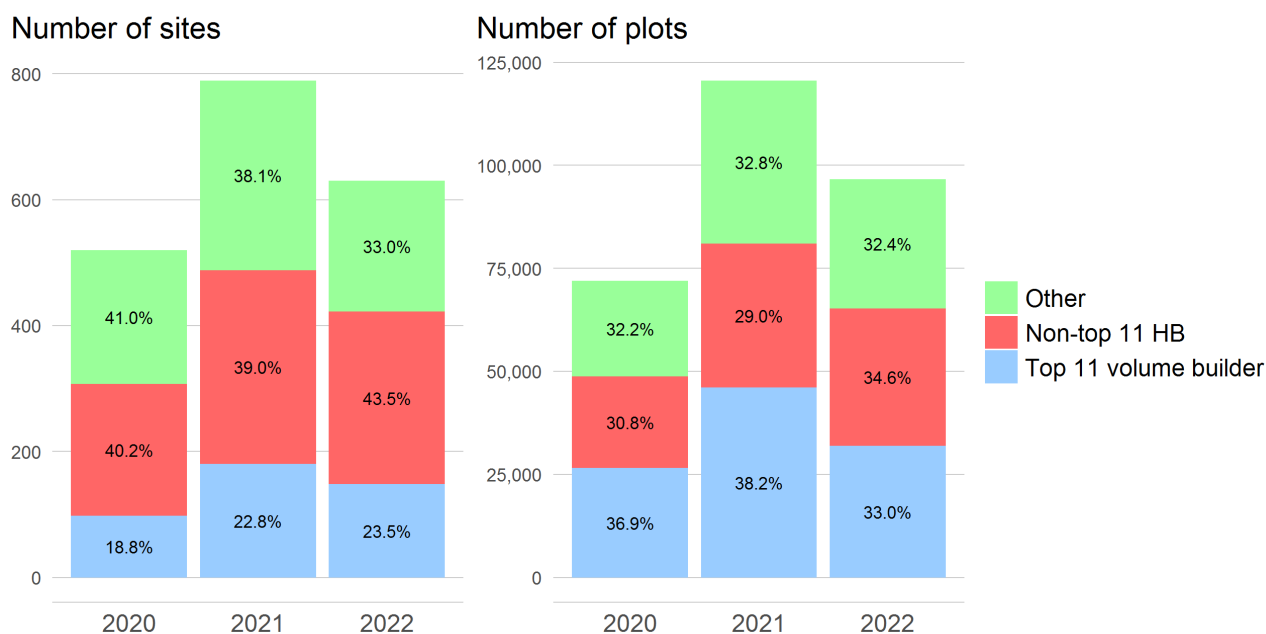
Who do land agents sell to?

7.53 Land agents are important intermediaries in connecting those selling developable land, and those who want to buy and develop it. The extent to which these intermediaries facilitate a competitive and open process for the sale of land has a

direct bearing on how easy it is for housebuilders of all sizes to find and purchase land to develop.

- 7.54 We used land agents' completed sales data to calculate the share of land sold to different purchasers. We allocated each purchaser to the following three broad categories based on the purchaser identity and purchaser type data:
- (a) Top 11 housebuilder. This includes the following housebuilders: Barratt, Bellway, Berkeley, Bloor Homes, Cala, Crest Nicolson, Miller Homes, Persimmon, Redrow, Taylor Wimpey, and Vistry.
 - (b) Non-top 11 housebuilder. These are all housebuilders except for those in the top 11 (stated above), some of which are SME housebuilders.
 - (c) Other. This includes several non-housebuilders including investors, private individuals, central government departments, local government, housing associations, charity and promoters.
- 7.55 Figure 7.9 below shows that in 2022:
- (d) 23.5% of sites and 33.0% of plots were sold to one of the top 11 housebuilders.
 - (e) 43.5% of sites and 34.6% of plots were sold to a non-top 11 housebuilder.
- 7.56 Land agents from whom we gathered information managed the sale of 388 sites (equivalent to approximately 65,000 plots) to housebuilders in 2022. 64.9% of these were sold to non-top 11 housebuilders and the remaining 35.1% were sold to the top 11 housebuilders. We note the non-top 11 housebuilders category includes 235 unique housebuilders in 2022, some of which are SME housebuilders.

Figure 7.9 - Amount of land purchased through land agents by type of buyer



Source: CMA analysis of land agents' completed sales data

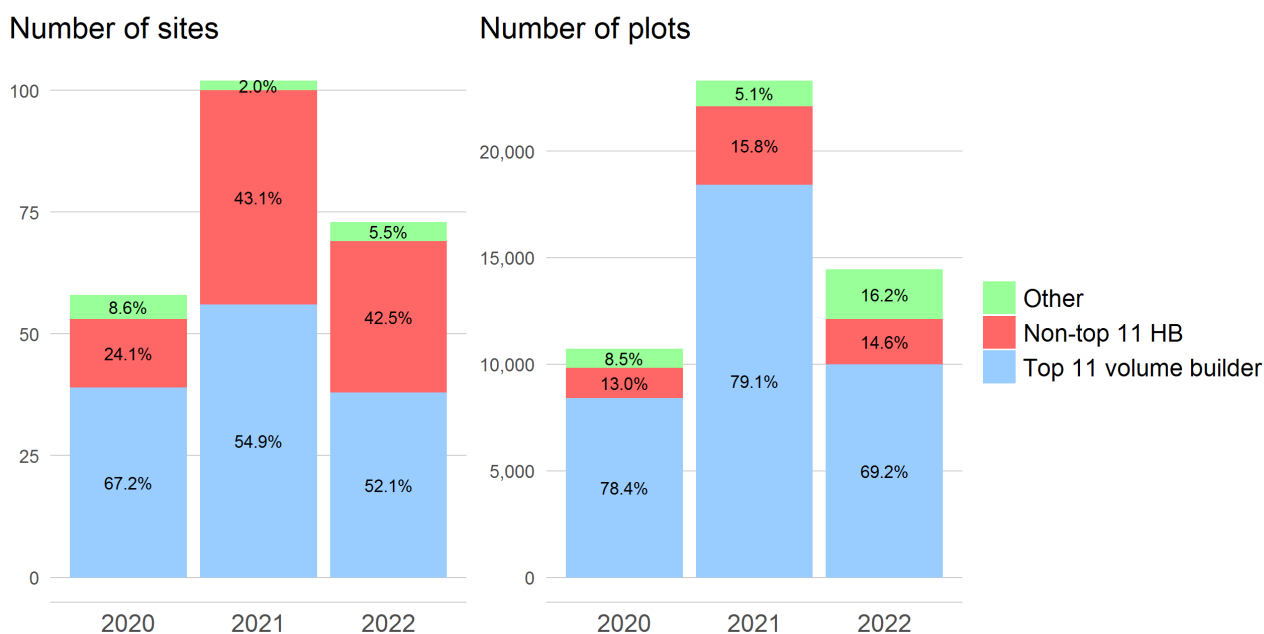
Who do land promoters sell to?

7.57 We used land promoter completed sales data to calculate the share of land sold to different purchasers via promoters. We allocated each purchaser to the same categories used for the land agents data set. Figure 7.10 below shows that 52.1% of sites and 69.2% of housing units were sold to the top 11 housebuilders in 2022, with the vast majority of the remainder sold to non-top 11 housebuilders.

7.58 Land promoters from whom we gathered information sold approximately 70 sites (equivalent to 12,000 plots) to housebuilders in 2022. 55.1% were sold to top 11 housebuilders and 44.9% of these were sold to non-top 11 housebuilders. We note the non-top 11 housebuilder category includes 24 unique housebuilders in 2022 and 36 in 2021 (some of which are SME housebuilders). Land promoters often sell their smaller sites (sites less than 50 plots) to non-top 11 housebuilders, although overall promoters sold relatively fewer smaller sites.⁵⁸⁰

⁵⁸⁰ CMA analysis of land promoter sites with less than 50 plots sold to housebuilders.

Figure 7.10 – Amount of land purchased through land promoters by type of buyer



Source: CMA analysis of land promoters' completed sales data

The role of Homes England in the land market

7.59 Homes England also plays a role in facilitating access to land for housebuilders. Homes England currently holds around 9000 hectares of land and sold 116 residential sites between 2020-21 and 2022-23, accounting for almost 16,000 homes. Over 100 individual organisations are signed up to Homes England's Dynamic Purchasing System (the platform on which they sell land), including 40 SME housebuilders.

What are top 11 housebuilders' experiences of purchasing land?

7.60 Top 11 housebuilders are important market participants and accessing land is a critical input for delivering houses.

7.61 The top 11 housebuilders typically have dedicated land teams that find land via intermediaries and local business networks, build relationships in local areas to keep informed of available sites, and search target areas for sites using public information such as land registry, publications such as Estates Gazettes and electronic platforms, such as LandInsight and LandStack.⁵⁸¹

7.62 For short-term land, top 11 housebuilders have not told us that the process of finding and securing land is a challenge. Top 11 housebuilders have similar behaviours and/or processes to ensure early identification of land opportunities

⁵⁸¹ CMA analysis of housebuilders' RFI responses. Land Insight was mentioned in one housebuilder's internal documents

and are able to participate in the process to purchase land (as discussed below). Housebuilders generally indicated the challenge for finding and securing land is the highly competitive land market with limited land available with planning permission.

- 7.63 For long-term land in particular, some top 11 housebuilders said a challenge with securing land was that deals are subject to achieving a minimum land price which may ultimately make the site economically non-viable, even if it is possible to secure planning permission. This is supported by one housebuilder's internal documents which indicate that land agents want high minimum prices to secure the option.

What are SME housebuilders' experiences of purchasing land?

- 7.64 We describe our approach to gathering information from SME housebuilders in Section 10 of the supporting evidence document.
- 7.65 SME housebuilders are also important market participants. We have sought SME housebuilders' views on how they access land and their concerns with the functioning of the market.
- 7.66 In order to explore SME housebuilders' experiences of purchasing land, we have requested information from 47 SME housebuilders and have received written responses from 19 housebuilders. Given the small number of responses, we give this information limited evidential weight, and have considered it in the round alongside evidence provided by land agents and land promoters on completed sales to housebuilders, additional calls with SME housebuilders, evidence from industry stakeholders, and findings from the existing literature (as set out in Appendix I on evidence regarding barriers to entry and expansion).
- 7.67 The SME housebuilders that responded to our questionnaire found land in several ways, including through intermediaries, contacts, and local knowledge. We found 16 of 19 SME respondents said they often or always purchased directly from a landowner or through an intermediary, and none said they often or always purchased from a developer. Where they purchased from intermediaries, 16 said they had purchased via land agents and five SME housebuilders said they had purchased via land promoters. This is consistent with top 11 housebuilders, where most ([80-90]%) transactions and plots purchased involve an intermediary.⁵⁸²

⁵⁸² Based on top 11 housebuilder completed purchases data.

What problems do SME housebuilders have with finding land?

- 7.68 There is some indication SME housebuilders can face issues finding land, although issues related to acquiring land were more prevalent than issues related to finding land.
- 7.69 There is some literature on issues faced by SME housebuilders with finding land. IPPR argues that the lack of transparency in the land market is an issue, with large housebuilders being better placed to establish relationships with landowners, which allows them to capture land before it reaches the open market.⁵⁸³ London Chamber of Commerce and Industry (LCCI) has claimed that a lack of transparency about who owns land creates a barrier for smaller developers.⁵⁸⁴
- 7.70 A few respondents (2 of 19) raised concerns about land agents only offering sites to companies on a shortlist, meaning they could miss opportunities (see paragraph 7.77(b)). However, there were mixed views on the significance of this issue. In addition, the majority of respondents (12 of 19) did not rank finding land as one of their top three barriers, with one SME housebuilder commenting that they have 'excellent visibility over land'.

What problems do SME housebuilders have securing land?

- 7.71 Existing evidence suggests that SME housebuilders face challenges securing land.⁵⁸⁵ Several studies find that SME housebuilders face issues related to the availability of land. Royal Institute of British Architects (RIBA) noted that given the costs and risk involved, many landowners prefer to work with 'established national companies' rather than SME housebuilders.⁵⁸⁶ In addition, some studies note that the cost of land can create challenges for SME housebuilders when acquiring land, particularly in more desirable locations.
- 7.72 Several explanations for these issues have been suggested, including:
- (a) Developer contributions limiting the number of sites available to SME housebuilders.
 - (b) Land being bought up by larger developers or investors.
 - (c) A lack of sites suitable for SME housebuilders (for example, smaller sites with fewer resource requirements).

⁵⁸³ IPPR, [We must fix it: Delivering reform of the building sector to meet the UK's housing and economic challenges, December 2011](#).

⁵⁸⁴ London Chamber of Commerce and Industry (LCCI), [Getting our house in order: The impact of housing undersupply on London businesses](#), May 2014, p19. Also see Appendix I on barriers to entry and expansion.

⁵⁸⁵ See Appendix I on barriers to entry and expansion.

⁵⁸⁶ [Improving Housing Quality - Royal Institute of British Architects \(yumpu.com\)](#)

- (d) The planning system favouring large sites (see Section 6 of the supporting evidence document for further discussion of the effect of the planning system on SME housebuilders).

- 7.73 The information we have gathered also suggests that SME housebuilders face challenges securing land, with most respondents (10 of 19) ranking acquiring land as one of their top 3 barriers and four ranking it as their top barrier. In particular, respondents mentioned that there are a lack of suitable sites for SME housebuilders, with five respondents mentioning that there is a shortage of low-risk sites to take through the planning process (e.g. allocated land) and/or land with planning permission. One developer also said that there are a lack of deliverable brownfield sites and another said that large sites with infrastructure requirements can stop SME housebuilders from bidding on sites.
- 7.74 The cost and level of competition for sites was also raised as an issue. Six of the SME housebuilders we spoke to referred to the cost of land as a barrier and four said the competition for land created difficulties. One SME housebuilder suggested non-residential developers bidding on land increases competition, whilst two suggested that competition has increased recently due to larger developers bidding on smaller sites.
- 7.75 We have also heard that the practices of land agents can sometimes act as a barrier to acquiring land, as discussed in paragraph 7.77.

Advantages and disadvantages of using intermediaries

- 7.76 SME housebuilders said the advantages of using intermediaries were the following:
- (a) Land agents provide knowledge and expertise. Five of the SME housebuilders stated that the advantages of land agents were that their knowledge and expertise help the purchaser and/or landowner with legal, technical, valuation and/or planning issues.
 - (b) Land agents increase efficiency. Three SME housebuilders said land agents reduced their workload and/or saved resources.
 - (c) Land promoters were thought to reduce the risk of acquiring land (as they obtain the planning permission before selling). One SME housebuilder stated that promoters take on all the planning risk which smaller developers would not be capable of taking on.
- 7.77 The disadvantages of using intermediaries were the following:
- (a) Greater competition for land. Five SME housebuilders stated that acquiring land through intermediaries can result in greater competition, which can push

up the price. One SME housebuilder said land brought to the market via agents is competitive and firms that can employ greater economies of scale in their bid push up land prices.

- (b) Land agents may favour large housebuilders. Two respondents raised concerns about land agents only offering sites to companies on a shortlist, meaning they could miss opportunities. However, there were mixed views on the significance of this issue. One SME housebuilder said that land agents favour particular developers because they pay fees to other business divisions (for example, new homes sales etc.) and are given the opportunity to improve their final bid before a decision is made.
- (c) Planning permission does not maximise value. One SME housebuilder said that it has been known for promoters to obtain a planning permission that doesn't maximise the site's development value, in the event of which the SME housebuilder may not find the site profitable to develop.

7.78 Most SME housebuilders who responded to our questionnaire used intermediaries to find land (for example via marketing by land agents), and a substantial minority use intermediaries to secure land (ie were successful purchasing the land). Some SME housebuilders indicated that land agents' knowledge, expertise, and ability to reduce workload were helpful. However, a small number of SME housebuilders commented that land agents made it hard for them to participate in the land market, for example by favouring large housebuilders. Land promoters may reduce the risk of acquiring land (as they do not have to obtain planning permission), although, one SME housebuilder said the planning permission may not maximise the land's value.

7.79 Overall, we have found that the land market, and the intermediaries active within it, facilitates access to land for different types of participants. Our analysis suggests that land agents and promoters provide access to land for the top 11 housebuilders and several other housebuilders (some of which are SME housebuilders). However, we note that SME housebuilders face issues that can make the land market more challenging for them.

Will the LURA legislation be helpful to SME housebuilders?

7.80 In this section, we explain the relevant changes brought about by new legislation aimed at increasing market transparency.

7.81 The Levelling up and Regeneration Act (LURA) will increase transparency of contractual arrangements to exercise control over land in England and Wales.⁵⁸⁷

⁵⁸⁷ [Levelling up and Regeneration Act](#), Part 11 (formally known as the Levelling up and Regeneration Bill, [HL Bill 142](#), 24th May 2023, Part 11).

Following this legislation, it will be possible to access information about the identity of the person or entity that has contractual control over a parcel of land (such as through an option agreement, rights of pre-emption, and conditional contract) and the terms of that contract. Previously, this information may not be readily accessible depending on how the interest had been protected, and even if accessible, there was no requirement for the housebuilder to provide key information such as the duration of the contract.⁵⁸⁸ Where the information was available, it could be difficult to access and interpret.⁵⁸⁹

- 7.82 We are aware that the new measures have not yet been introduced and so there remains uncertainty as to the effect it may have. We are also aware that the government is continuing to engage with the sector on these measures and so will have substantial information which will inform whether and how to introduce the measures. We have therefore not sought to undertake significant amounts of evidence gathering as to industry views on this area. In addition, given the relatively small number of SME housebuilders from whom we have been able to gather data, we did not consider we would be able to gather a sufficiently robust range of views to be representative. However, we did ask a small number of large housebuilders, and examine published documents by DLUHC to review the expected impact on the land market.
- 7.83 Where information on contracts agreed between landowners and housebuilders is not readily available, this may raise barriers to entry and expansion for SME housebuilders.⁵⁹⁰ Where this information is more easily accessible, it may increase SME housebuilders access to land, and hence competition in the land market. However, it may also increase competition for land controlled by SME housebuilders through contractual agreements, reducing the number of homes delivered by SME housebuilders and limiting consumer choice.
- 7.84 DLUHC's Call for Evidence on Data for Land Control (as part of its consultation on Transparency and Competition) said the LURB legislation (now LURA) will create transparency measures that would reduce barriers to entry for small builders and new market participants.⁵⁹¹ DLUHC said a new contractual controls data set would reduce the time and cost of site identification and assessment and assist SME housebuilders, while also lowering the barriers to entry for firms seeking to enter the residential construction market.⁵⁹² Other benefits of the transparency measures include helping local communities understand the likely path of development, improving development processes for planners and developers, and

⁵⁸⁸ DLUHC (2020) [Transparency and Competition](#), paragraph 5, 33 to 34.

⁵⁸⁹ DLUHC (2020) [Transparency and Competition](#), paragraph 43

⁵⁹⁰ DLUHC (2020) [Transparency and Competition](#), paragraph 9

⁵⁹¹ DLUHC (2020) [Transparency and Competition](#), paragraph 9

⁵⁹² DLUHC (2020) [Transparency and Competition](#), paragraph 46

streamline and simplify planning and development processes. As these are not specifically related to SME housebuilders, we do not discuss these further.⁵⁹³

- 7.85 We asked three top 11 housebuilders what impact these changes to the legislation will have on their land team's ability to find and secure land. One top 11 housebuilder said that the LURA Part 11 would have a net neutral impact as the changes would enable it to have full transparency in relation to its competitors' land interests and approach landowners when agreements expire, while also creating opportunities for its competitors to monitor its own interests. One top 11 housebuilder said in its response to our RFI that it could not provide an opinion on the impact of the LURA Part 11 as currently drafted but did not see an operational need for the provisions.
- 7.86 Two top 11 housebuilders provided their responses to DLUHC's call for evidence on data and land control, which showed both housebuilders were supportive of providing information such as the contractual owner/option holder. However, they believed disclosure of significant amounts of additional commercially sensitive data (for example, start and end date of the contract) would have several unintended detrimental effects, including:
- (a) creating a market place that favours larger developers who have the resources to gather information about other market participants' contracts and act upon it.
 - (b) contractual timescales will increase (e.g. longer option periods) in order to reduce the risk of predatory behaviour by others when contractual deadlines are tight.
 - (c) land transactions will be more complicated, expensive and time consuming. This is because:
 - (i) there will be the additional cost of complying with additional registration requirements.
 - (ii) a significant amount of data will be publicly available, and as land contracts are complicated, it is likely that specialist knowledge will be required to understand the terms and implications. For some parties this is likely to be a barrier to entry as it will incur substantial cost in analysing the market data by lawyers and land agents.
 - (iii) contractual arrangements covered by the legislation may become less attractive to developers. Developers with more resource may invest in complex legal structures, for example, funding landowners to pursue planning applications with security being provided. This would restrict

⁵⁹³ DLUHC (2020) [Transparency and Competition](#), paragraphs 9, 17, 22

participation in the market to those who can negotiate and resource this type of arrangement.

- (iv) to deal with the reduced availability of restrictions, parties will need to find alternative and potentially more complicated ways of protecting their interests. This is likely to make land purchases more complicated, favouring those with greater resources, and delays the availability of land for development.

7.87 We find these top 11 housebuilders concerns arise from the disclosure of additional commercially sensitive data (for example, the start and end date of the contract). We consider each concern with respect to how this impacts SME housebuilders:

- (a) We expect larger housebuilders will be able to gather and process more data given that they have specialist land teams. However, where SME housebuilders are present in relatively small areas, we expect them to have smaller data gathering requirements (and hence lower costs) than larger builders. We expect SME housebuilders may be less efficient (for example, higher data processing costs per site), however, innovation by new or existing companies specialising in processing this new information may help to reduce costs. This would allow SME housebuilders or a potential entrant to benefit from the increased transparency.
- (b) We are not aware of any evidence to indicate that timescales for option contracts would increase due to increased transparency. Although this might be a possibility, where there is substantial competition for land and information is readily available on length of contracts, housebuilders and promoters may be forced to offer competitive contract lengths. Even if contract lengths were to increase, it is unclear how SME housebuilders might be any worse off compared to if there was limited information on contracts that prevent any competition for land currently under contract.
- (c) We agree that there will be some additional costs to complying with registration requirements and analysing market data; however, it is unknown whether these would be substantial in comparison to the additional revenues earned by SME housebuilders from developing additional won sites. Without further information on ways housebuilders would protect their interests, and the more complicated legal structures they would invest in to avoid information disclosure, it is not clear whether this is a significant concern.

7.88 We expect that the LURA is likely to increase competition for land under contract near expiry. This can potentially have a positive impact for housebuilding. DLUHC and some top 11 housebuilders agree that SME housebuilders and new entrants will have the opportunity to compete for land where the contract is near expiry.

However, this benefit may be offset to some extent by additional competition faced by SME housebuilders for land under their own contractual arrangements, as well as the additional costs that arise from collecting and analysing the newly available data on contractual obligations. Overall, as SME housebuilders may be less likely to control land using contractual obligations, we expect the LURA legislation is likely to reduce barriers to entry or expansion.

Is there sufficient competition for sites and how do intermediaries facilitate this?

- 7.89 In this section we review internal documents and bidding data to investigate whether there is sufficient competition for land, and how intermediaries facilitate this.
- 7.90 Competition for land involves several parameters that depend on the type of land and agreement offered.
- (a) For short-term land, an unconditional or conditional agreement is typically offered for a parcel of land. Potential purchasers compete primarily on the offer price, but they may also try to offer an attractive payment profile or offer conditions, as well as competing on their funding methods, track record and experience, level of due diligence undertaken, expedience in obtaining main board approval, flexibility, resources, and overage.
 - (b) For long-term land, unconditional, conditional, option and promotion agreements may (in principle) be offered for a parcel of land. Where option and promotion agreements are offered, bidders compete to control the land (rather than to purchase the land). Housebuilders typically bid to enter into an option agreement with the landowner. If successful, once planning permission is secured, the housebuilder would have the option to purchase the land at a discounted percentage of the market price. In contrast a promoter would typically bid to enter into a promotion agreement with the landowner. If successful, once planning permission is secured, the promoter would sell the land on behalf of the landowner on the open market and receive a percentage of the land value. We expect more competition between bidders would reduce the percentage discount offered in the option agreement bid and the percentage of the land value offered in the promotion agreement bid, so the landowner retains a greater proportion of the land value. Other elements of the offer that bidders might compete on to control the land include the non-refundable fee paid to the landowner on entering the agreement,⁵⁹⁴ contract length, and minimum purchase price⁵⁹⁵ in addition to the non-price parameters noted for short-term land.

⁵⁹⁴ For the promotion agreement, this fee is recouped from the proceeds of the land sale

⁵⁹⁵ CMA analysis of land agents' RFI responses

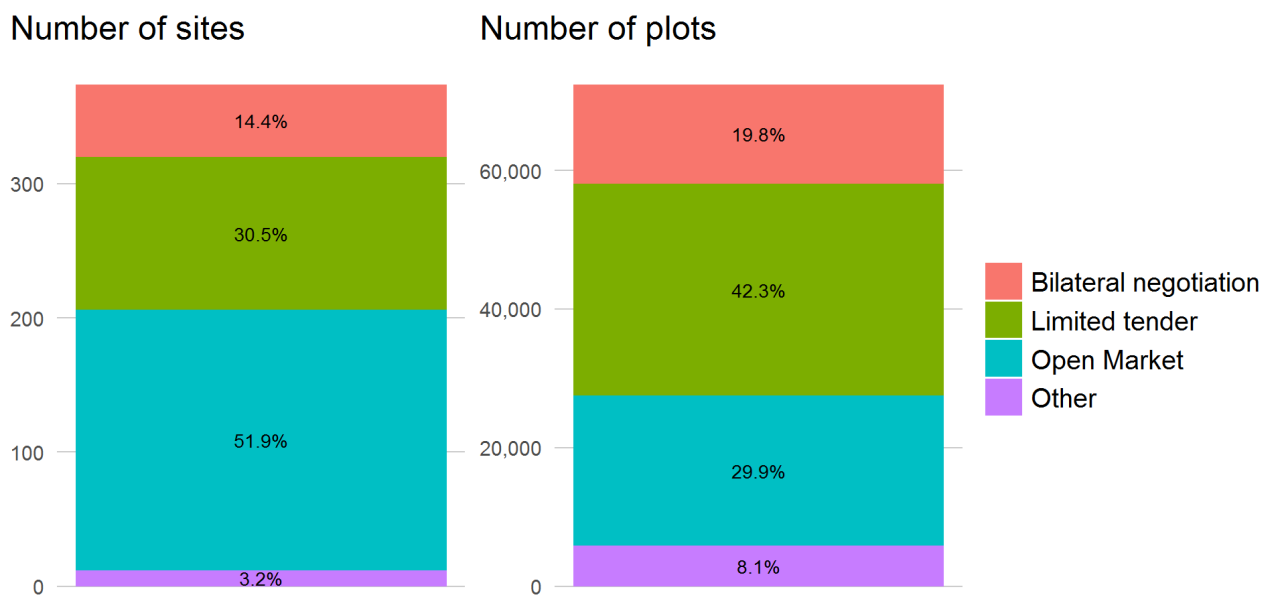
- 7.91 We collected bidding data from the three largest land agents [X]. Overall, they provided bidding information on 379 completed site sales (equivalent to approximately 70,000 plots) in 2022. For each site they included information on: site name, size of site, invited bidders, bidders who submitted bids, type of bidding process, final bid price offered, and type of agreement offered. The bidding data includes 10 of the top 11 housebuilders in addition to other bidders. We provide an analysis of this data below.
- 7.92 This analysis only reviews a single year of bidding data from three land agents. As such, it does not capture changes in the activity of housebuilders over time. For example, [X]. It also does not capture sales by other land agents. Nevertheless, this analysis provides an indicative view of competition in the land market.
- 7.93 Furthermore, we have not analysed bidding data separately for each type of agreement due to small sample sizes for option, option hybrid and promotion agreements;⁵⁹⁶ instead, we include all agreements in our analysis. However, this may reflect competition for short-term land rather than long-term land (for which option and promotion agreements are typically used). We review internal strategy documents from top 11 housebuilders to understand the extent of competition in the market for long-term land.

What bidding process is typically used when selling land?

- 7.94 In this section we review the extent to which a competitive process is used to purchase land relative to a bilateral negotiation where there is no competition. Where fewer sites are open to competition, we would expect worse outcomes for potential home buyers.
- 7.95 Figure 7.11 below shows that, in 2022, 51.9% of sites (equivalent to 29.9% of plots) were sold on the open market. The open market bidding process promotes the most competition for sites as no bidder is excluded from the bidding process. We also find that 30.5% of sites (equivalent to 42.3% of plots) use a limited tender process that limits competition to only a select list of invited bidders. We note 14.4% of sites (equivalent to 19.8% of plots) were sold through a bilateral negotiation where there was no competition. Such processes may be used to ensure the credibility of bidders is high and to protect the privacy of the landowner, among other reasons.
- 7.96 Overall, competitive bidding processes were used for the sale of 82% of sites, with bilateral processes in the minority.

⁵⁹⁶ [X] sites won were option, option hybrid or promotion agreements compared to [X] for conditional, unconditional, build licence and other.

Figure 7.11 – Number of sites and plots in bidding data set by type of bidding process



CMA analysis of land agent bidding data

Note: We have excluded 5 sites where bidding process was not provided.

7.97 We note that our analysis of internal documents and top 11 housebuilder completed purchase data indicates that bilateral negotiations are more frequent than indicated by Figure 7.11 above:

- (a) internal strategy documents with respect to the bidding process found one top 11 housebuilder purchased more via bilateral processes than other bidding processes between 2021 and 2022.
- (b) Our analysis of the top 11 housebuilder purchase data suggests that approximately [10-20]% of completed sales in 2022 do not involve an intermediary and hence would not appear in the land agents bidding data set. Also, top 11 housebuilder purchase data indicates that around [30-40]% of sites in 2022 purchased by top 11 housebuilders are via off-market bilateral negotiations.

7.98 This suggests that although most sites sold via agents are subject to competition, there is a substantial minority of sites that are accessed by top 11 housebuilders that may not be subject to competition. However, we do not consider this a substantial concern as a large proportion of land is still accessible for smaller housebuilders through land agents.

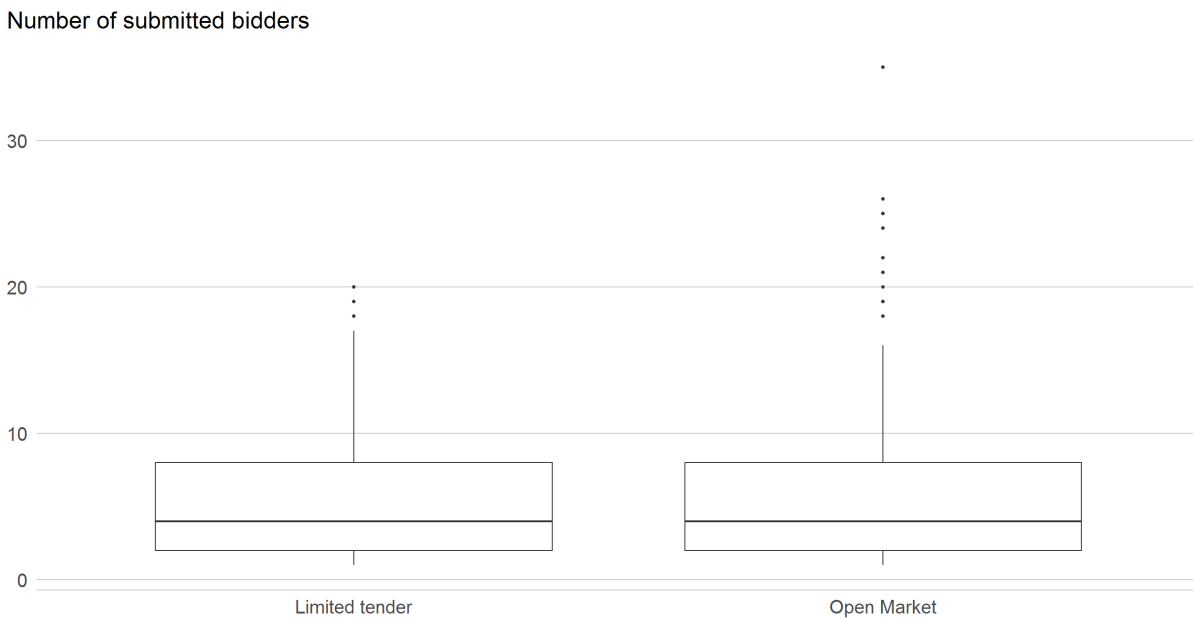
How does competition differ across type of bidding process?

7.99 We find that limited tender bidding processes are used very frequently (as shown above). Limited tenders restrict competition to only the select bidders invited to submit an offer, and may create barriers to entry for new entrants or barriers to

expansion for smaller housebuilders. This might lead to worse outcomes for consumers by limiting choice of housebuilder for potential homebuyers.

- 7.100 In this section, we investigate whether competition differs between type of bidding process, using open market as a basis for comparison.
- 7.101 Site characteristics (for example, size of site) and potentially landowners may differ between open market tenders and limited tenders, and so we cannot know for certain how outcomes might differ if limited tender sites were put on the open market. However, our analysis provides an indicative view.
- 7.102 Figure 7.12 below shows on average there were 5.7 bidders for limited tenders, and 6.2 bidders for open market tenders. For both bidding processes, half of sites around the median receive between 2 and 8 submitted bids. We note some sites offered on the open market receive more than 20 submitted bids, which is not the case for limited tenders. This indicates that although limited tenders impose a limit on the number of bidders invited, this does not usually result in there being substantially fewer bids submitted compared to open market tenders.

Figure 7.12 – Box plot of number of submitted bids by bidding process, 2022



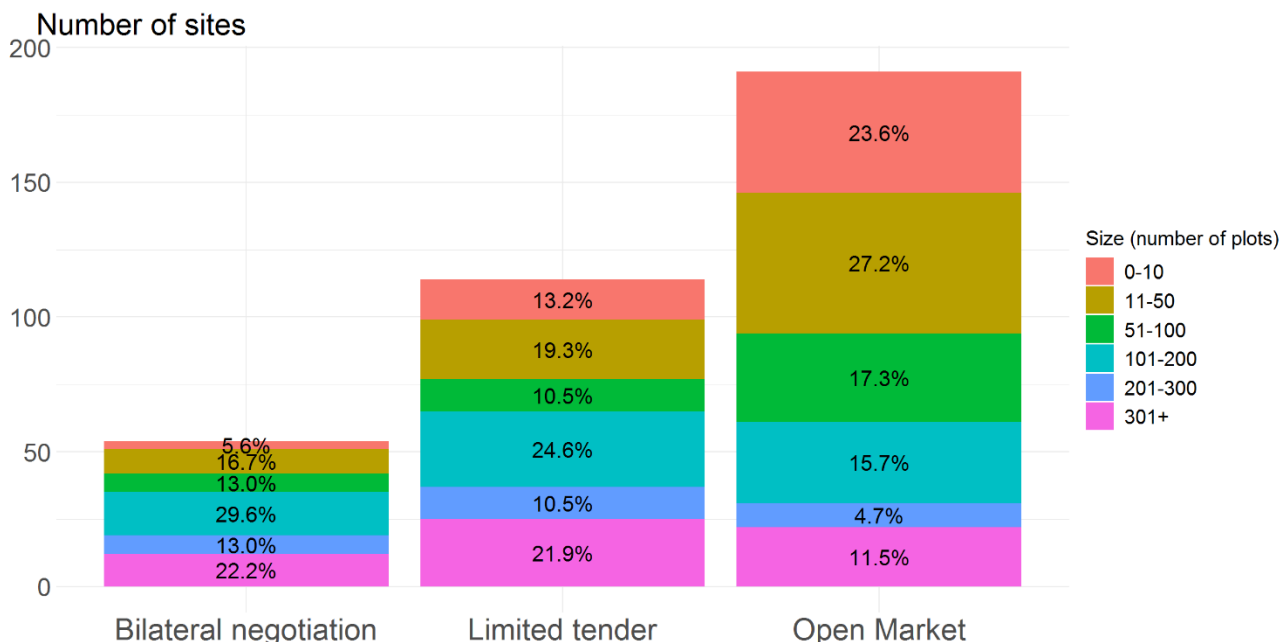
CMA analysis of land agent bidding data
Note: We have excluded 1 site where no submitted bidder was specified.

How does competition differ by size of site?

- 7.103 In this section we investigate the typical size of sites offered by landowners, and how the number of submitted bids differs across site sizes. We allocated each site to one of six site size categories based on its number of plots.

7.104 Figure 7.13 below indicates that 50.8% of sites sold via open tender, and 32.5% of sites sold via limited tender, were smaller than 50 plots. This suggests a substantial number of sites are smaller than 50 plots, and so may be an appropriate size to facilitate entry and expansion of SME housebuilders. However, it is important to note there is a substantial portion of sites that are more than 50 plots. We conduct further analysis to understand whether the level of competition differs for sites of different sizes.

Figure 7.13 – Sites sold via different bidding processes by size, 2022



CMA analysis of land agent bidding data

Note: We have excluded 3 sites where number of plots was not provided.

7.105 Figure 7.14 below plots the distribution of number of bid submissions by size of site. Note, this includes only 305 competitive bids (limited tender and open market bids) where we had data on site size. This shows the number of submitted bids did not change substantially with size of site: sites in most size categories had a median 3 to 4.5 submitted bids.⁵⁹⁷ We note the range of submitted bids is also similar across site size categories.⁵⁹⁸

7.106 The exception is sites with 101 to 200 plots, and those with more than 300 plots, which attracted a median of 5 bids in 2022. Analysis of Savills market reports and top 11 housebuilder internal documents broadly indicate that site sizes of between 100 and 300 were the most competitive in 2022.⁵⁹⁹ One top 11 housebuilder's

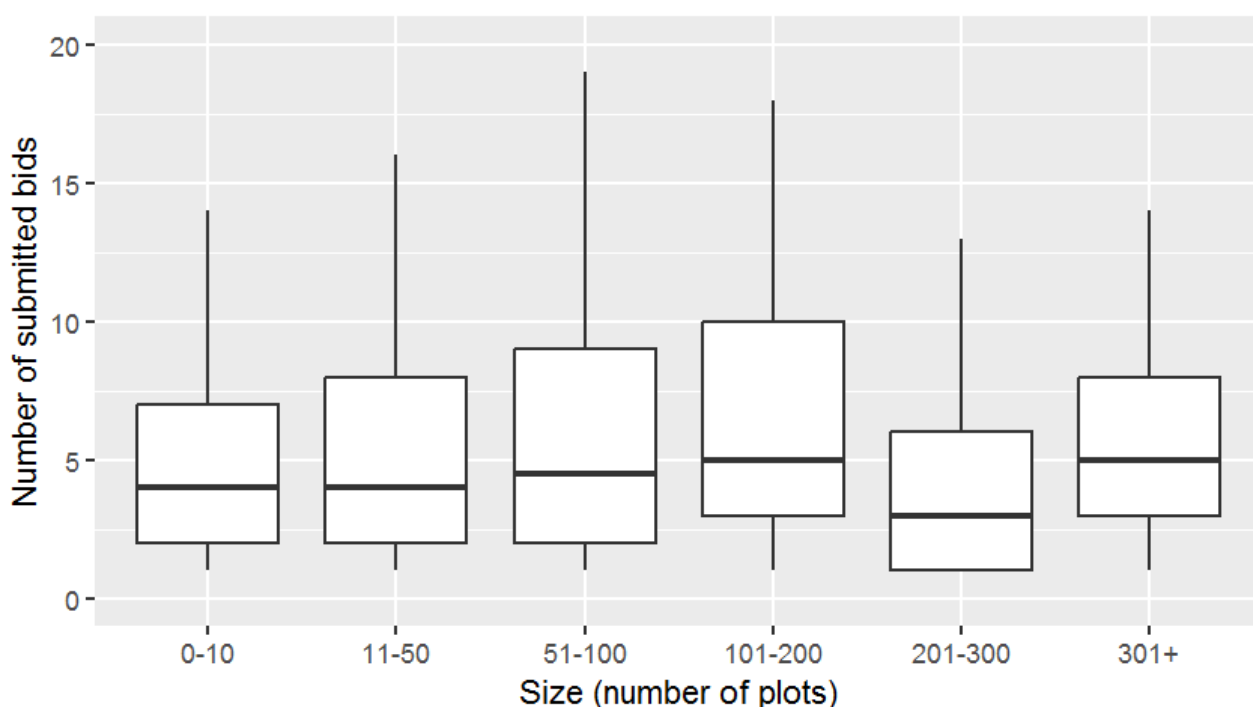
⁵⁹⁷ Note there are a few substantial outliers in the data set. For this reason, the average would not provide a reflection of the overall data set. Instead, we use the median which is less sensitive to outliers.

⁵⁹⁸ Note we do not test whether the median for 101-200 plots is statistical significantly different to other site sizes as the values appear to be relatively similar.

⁵⁹⁹ Savills (2023), [Market in Minutes: Residential Development Land – Q4 2022](#); Bellway (2022), [Annual Report and Accounts](#), page 27

internal document indicated that increasing the portion of smaller sites in its land bank allows it to have a larger number of ‘outlets’⁶⁰⁰ (sites with homes actively being marketed and sold). This is because sales are restricted by demand in the local area (measured by absorption rate), so having a spread of outlets in a larger number of local areas can increase annual house sales (see also Section 9 of the supporting evidence document for a fuller discussion of drivers of build out speed).

Figure 7.14 – Box plot of number of submitted bids by site size category, 2022



CMA analysis of land agent bidding data

Note: We have excluded 1 site where submitted bidder is not provided, and 3 sites where number of plots was not provided.

7.107 The above analysis suggests that splitting up large sites into smaller sizes would not substantially increase competition to purchase land. However, it might mean more land in a given area can be developed by several different housebuilders.

To what extent do housebuilders compete for land?

7.108 In this section, we review two key indicators to investigate the degree to which top 11 housebuilders and 1,273 ‘other’ bidders in the land agents bidding data set compete for land:⁶⁰¹

⁶⁰⁰ Lichfields (2021), [Feeding the Pipeline Research](#), p7

⁶⁰¹ The number of ‘other’ bidders is based on a count of unique non-top 11 housebuilder names in the land agent bidding data set. As the bidder names in the three separate land agent data sets were not consistently named (both within and across data sets), the number of unique ‘other’ bidders is overstated as housebuilders that are the same may be named differently. This does not have an impact on our analysis, as we have largely considered bidders outside the top 11 housebuilders in aggregate.

- (a) The extent to which housebuilders bid for the same sites. In a competitive land market, we would expect the top 11 housebuilders to frequently bid for the same sites, as opposed to bidding for different sites to avoid competing against each other. We would also expect other bidders to participate in the same bidding processes. We investigate this using a participation analysis.
- (b) The extent to which housebuilders are successful when bidding for the same sites. In a competitive land market, we might expect housebuilders to impose a competitive constraint such that several housebuilders are successful at winning land some of the time (as opposed to a small sub-set of housebuilders consistently winning). We investigate this using a win analysis.

7.109 Note, the analysis that follows is based on 305 competitive bids (limited tender and open market bids).

To what extent do housebuilders bid for the same sites?

7.110 Table 7.4 below counts how often combinations of two bidders submitted bids for the same sites. This is given as a percentage of all the sites the bidder listed in the left column took part in, also known as the participation rate. The darker the shading in the table, the higher the participation rate. Generally, where the top 11 housebuilder participation rates are higher, it would indicate that they bid for the same sites.

7.111 We find that top 11 housebuilders participate in [X]% or less of all total competitive tenders; hence, participation rates above this would indicate they are attracted to bidding for the same sites more than expected by random chance. We find 7 of the top 11 housebuilders ([X], [X], [X], [X], [X], [X], and [X]) bid for the same sites substantially more frequently than expected by random chance. Three of the top 11 housebuilders ([X], [X] and [X]) had lower participation in general. Importantly, at least one of the ‘other’ housebuilders participated in almost all bids that a top 11 housebuilder also participated in. This analysis suggests that the top 11 housebuilders tend to compete with each other for sites, and other housebuilders also compete frequently with top 11 housebuilders.

Table 7.4 – Participation rate analysis, 2022

		Of the number of sites that bidder (left) submitted a bid, % sites that bidder (top) also participated										
		Top 11 housebuilder 1	Top 11 housebuilder 2	Top 11 housebuilder 3	Top 11 housebuilder 4	Top 11 housebuilder 5	Top 11 housebuilder 6	Top 11 housebuilder 7	Top 11 housebuilder 8	Top 11 housebuilder 9	Top 11 housebuilder 10	Other
Bidder	Top 11 housebuilder 1	Dark Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 2	Red	Dark Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 3	Red	Red	Dark Red	Very Light Red	Very Light Red	Very Light Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 4	Red	Red	Light Red	Dark Red	Very Light Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 5	Red	Red	Light Red	Very Light Red	Dark Red	Very Light Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 6	Red	Red	Light Red	Very Light Red	Very Light Red	Dark Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 7	Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red	Very Light Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 8	Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red	Very Light Red	Very Light Red	Dark Red
	Top 11 housebuilder 9	Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red	Very Light Red	Dark Red
	Top 11 housebuilder 10	Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red	Dark Red
	Other	Red	Red	Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Very Light Red	Dark Red

CMA analysis of land agent bidding data

Note 1: Top 11 housebuilder names are anonymised.

Note 2: Participation rates redacted from table. The gradient of red indicates the relative participation rate. The darker the shading in the table, the higher the participation rate.

Note 3: We have excluded 1 site where submitted bidder was not provided.

To what extent are top 11 housebuilders and other builders successful in their bids?

- 7.112 Table 7.5 below indicates how often the bidder on the left won when bidding against the competitor at the top. This is calculated as a percentage of all the sites they participated in together, referred to as the win rate. The darker the shading in the table, the higher the win rate. Generally, where the win rates are relatively low and similar across the table, this would indicate everyone wins some of the time and top 11 housebuilders exert a competitive constraint on each other. We note the diagonal of the table shows the housebuilder’s overall win rate.
- 7.113 We find that six of the top 11 housebuilders [X], [X], [X], [X], [X], [X] have relatively low and similar win rates against most other housebuilders, and the other four top 11 housebuilders [X], [X], [X], and [X] participate frequently in bids, but win relatively little. This indicates each top 11 housebuilder is competitively constrained to some extent by the other top 11 housebuilders.
- 7.114 We note that our analysis does not include all sites negotiated for and/or acquired by housebuilders, as it only includes sites sold via an open or limited tender process and omits any site obtained through bilateral negotiations. For example, [X]. However, by isolating competitive tender processes we are able to

understand how frequently the biggest housebuilders compete with each other for sites, and the significance of other, smaller players in these processes.

7.115 It is also important to note that other bidders win frequently against top 11 housebuilders, showing other housebuilders exert a competitive constraint (to some extent) on top 11 housebuilders based on their collective win-rate.

Table 7.5 – Win rate analysis, 2022

		Of the number of sites that the pair bid upon, % sites the bidder (left) won										
		Top 11 housebuilder 1	Top 11 housebuilder 2	Top 11 housebuilder 3	Top 11 housebuilder 4	Top 11 housebuilder 5	Top 11 housebuilder 6	Top 11 housebuilder 7	Top 11 housebuilder 8	Top 11 housebuilder 9	Top 11 housebuilder 10	Other
Bidder	Top 11 housebuilder 1											
	Top 11 housebuilder 2											
	Top 11 housebuilder 3											
	Top 11 housebuilder 4											
	Top 11 housebuilder 5											
	Top 11 housebuilder 6											
	Top 11 housebuilder 7											
	Top 11 housebuilder 8											
	Top 11 housebuilder 9											
	Top 11 housebuilder 10											
	Other											

Source: CMA analysis of land agents bidding data

Note 1: Top 11 housebuilder names are anonymised.

Note 2: Participation rates redacted from table. The gradient of red indicates the relative participation rate. The darker the shading in the table, the higher the win rate.

Note 3: We have excluded 1 site where no submitted bidder was provided.

7.116 This is consistent with internal documents from top 11 housebuilders which indicate they monitor competitor behaviour, including those outside the top 11. For example, a regional division of one top 11 housebuilder tracked the level of competitors’ activity in the land market, type of land the competitors are (and are not) searching for, whether or not they participated in the same bid, the price a competitor bid in comparison to its own price, the expected margin if it had matched the price offer, potential rationale for bid and changes in key contacts. One top 11 housebuilder’s regional division also monitors competitors’ appetite for buying land and changes in hurdle rates. The source of its competitor intelligence is unclear, although one top 11 housebuilder indicates in internal documents that it receives bid feedback (likely from land agents) as well as ‘rumours’. Also one top 11 housebuilder monitors competitor activity on bids it had participated, using bid feedback from the land agent. It noted the successful bidder, its price offer, and the ‘required margin’ if they matched the bid.

To what extent do top 11 housebuilders compete for long-term land

7.117 As mentioned above, a limitation of the bidding data analysis is that it may reflect competition for short-term land relatively more than long-term land as there are not many option contracts in the data set. We reviewed internal land strategy documents from six of the top 11 housebuilders that had this information. We found all six of these housebuilders indicated that the long-term land market was competitive, with four noting this was accentuated by promoters and other developers. We therefore consider that top 11 housebuilders face competition for long-term land, both from each other and from other market participants.

Do intermediaries have an incentive to prolong their part of the process, and delay the conversion of land into housing?

7.118 If intermediaries had some control over the speed at which a particular land sale progressed, and – in a context of rising land prices – delays boosted their expected returns, we could see efforts by intermediaries to slow down the sale process. This would mean developable land being converted into homes more slowly, leading to worse market outcomes. We have therefore investigated the degree to which intermediaries have the ability or the incentive to engage in delaying behaviours.

7.119 We consider the magnitude and risk of this effect would be higher in the case of land promoters (as opposed to land agents) since:

- (a) promoters receive a relatively high share of the land value in fees following the sale of the land. We found most promoters (18 of 24) indicated a percentage fee of between 10 and 20 percent, although some promoters stated a percentage fee as low as 5% and as high as 25%.⁶⁰² In contrast, land agents receive 0.5% to 2%.⁶⁰³ This indicates, in theory, promoters may have a greater incentive to manipulate timelines if it results in a higher sale price.
- (b) the process of obtaining planning permission, which they lead, is relatively uncertain, lengthy, and complex (as discussed in more detail in Section 6 of the supporting evidence document) meaning greater scope to manipulate timelines. Review of agents' marketing material to landowners, and our analysis of bidding processes, indicates that for agents the process is relatively short, simple, and transparent, meaning much less scope to draw out the process.

⁶⁰² CMA analysis of land promoters' RFI responses

⁶⁰³ CMA analysis of land agents' RFI responses

7.120 We investigate whether promoters were relatively slow at bringing land forward for development. We identified two stages where a promoter could potentially prolong the process: (i) when obtaining planning permission and (ii) when selling and marketing land to developers having obtained planning permission.

7.121 We have not undertaken a substantive analysis of promoters' incentives as this would require significant amounts of consistent data across promoters on their revenues and costs. However, it is important to note that securing planning permission is not guaranteed,⁶⁰⁴ and promoters are paid only on completion of the land sale. The land promoter is paid a pre-agreed percentage fee of the net sales price.⁶⁰⁵ Hence prolonging the planning permission process means the promoter must continue to bear the risk of the planning permission being rejected and incurring the following costs:

- (a) Fee paid to landowner on signing the promotion agreement, known as a promotion fee or premium. Based on responses provided by six promoters, this fee varies between £5,000 and more than £100,000 depending on size of the site. This fee is typically reimbursed to the promoter on completion of the sale by deducting it from the proceeds of the land sale.⁶⁰⁶
- (b) Costs of obtaining planning permission. Based on responses by 18 promoters that provided planning and promotion costs information, marketing material and narrative responses, we find this is between £75,000 and more than £1m.⁶⁰⁷ This varies based on several factors including size of site, complexity of the site (e.g. such as archaeology, ecology, etc), and whether a planning application is refused and an appeal or legal challenge is required.⁶⁰⁸

7.122 We note one top 11 housebuilder said in its internal documents that some land promoters have faced cashflow issues due to delays caused by the planning system. This limited evidence suggests that land promoters do not have an incentive to delay the sales process, although we cannot conclude definitively whether the increase in future land prices would outweigh the risk and costs to the promoter.

⁶⁰⁴ Lichfields (on behalf of Land Promoters and Developers Federation), Realising Potential: [The scale and role of specialist land promoters in housing delivery](#), March 2018, page 6

⁶⁰⁵ In this context, the net sales price is the purchase price for the land, deducting legal fees, agent fees, VAT, fee paid by promoter to land owner to enter into promotion agreement, the promoter's costs (which is usually subject to a cap), and costs incurred by the owner.

⁶⁰⁶ CMA analysis of promotion agreements

⁶⁰⁷ CMA analysis of land promoters' RFI responses

⁶⁰⁸ CMA analysis of land promoters' RFI responses

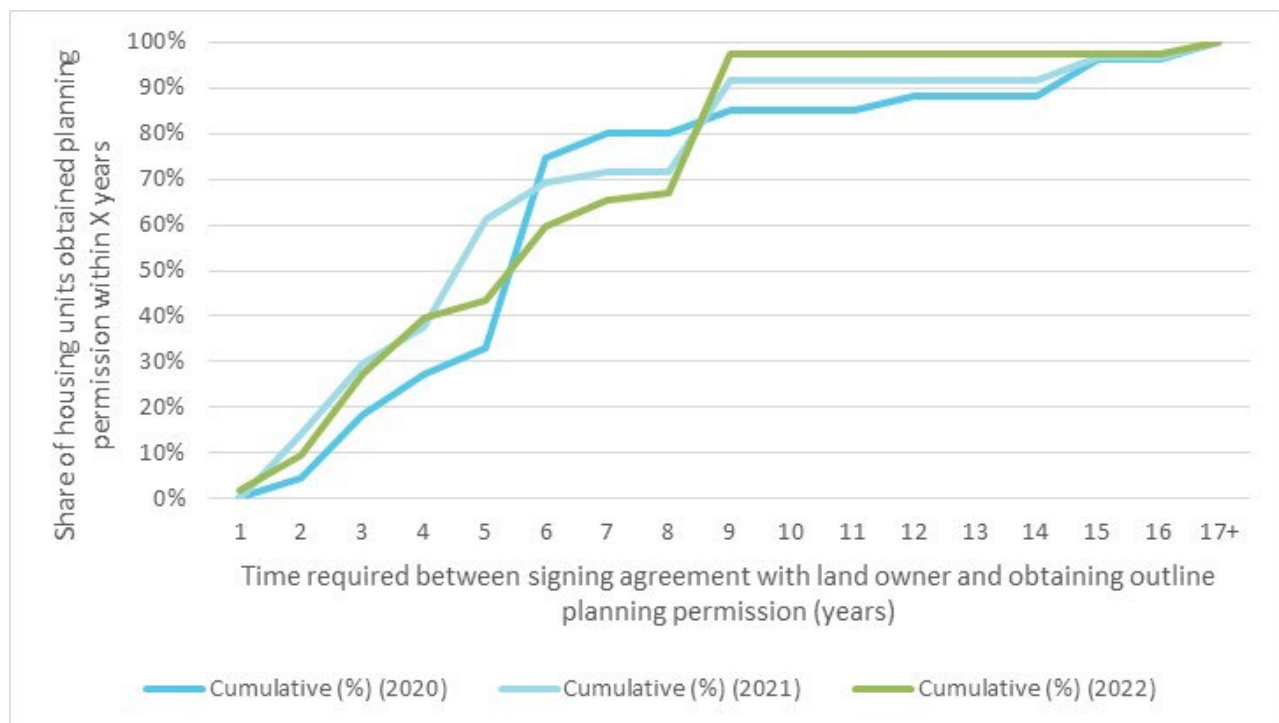
Are promoters slow at obtaining planning permission?

7.123 As obtaining planning permission is uncertain, lengthy, and complex, it means that promoters, in theory, may have the ability to prolong the process to improve the return they earn on the land. We investigate this by reviewing promoters' time required to obtain planning permission and compare this to the typical time required by housebuilders based on internal documents.

7.124 We analysed data from 21 land promoters on the number of plots that successfully obtained planning permission grouped by number of years required to secure that planning permission. Figure 7.15 below shows the share of housing units that obtained outline planning permission:

- (a) in 5 years or fewer was 33.2% for permissions obtained in 2020, 61% in 2021, and 43.4% in 2022.
- (b) in 9 years or fewer was 85.1% for permissions obtained in 2020, 91.6% in 2021, and 97.4% in 2022.

Figure 7.15 - Share of land (by housing units) that obtained planning permission within X years, 2020-2022



Source: CMA analysis of promoter data

7.125 This indicates that land promoters obtained planning permission for most housing units in fewer than 5 years and almost all in fewer than 9 years. This is broadly consistent with timelines indicated by two top 11 housebuilders. One top 11 housebuilder indicated their timeline to obtain outline planning permission for a 200 plot site is five years, although actual timelines vary site by site, and may be

significantly longer. Another top 11 housebuilder said promotion of the land can often take five to ten years or even longer. This is also consistent with the option agreement contract length indicated by several housebuilders, which is a minimum of five years.^{609,610}

Do promoters slow down the sale and marketing of land?

- 7.126 In theory, once promoters obtain planning permission, they may be able to prolong the sales and marketing process, for example by delaying the start of the process, to obtain a higher return on the land. We investigate the extent to which promoters could prolong the sales and marketing process in terms of their involvement in the process, their contractual obligations, and data on time required to complete the sale of the land.
- 7.127 The extent to which promoters are involved in the sales and marketing process will substantially affect their ability to prolong the process. Some promoters told us that the bidding process for land is handled by the land agent and the promoters are not involved.⁶¹¹ Other promoters stated that a competitive tender process is followed which is run jointly by the promoter and the agent.⁶¹² This indicates that promoters in some instances may be involved in the sales and marketing process, but that they do not have sole control of it.
- 7.128 While land promoters are able to influence the sales process, they are also contractually obliged to begin with the sale of the land as soon as practicably possible after receiving outline planning permission (in some contracts within two months). We note the land promotion contractual arrangements do not typically restrict the time between beginning of marketing and a completed sale. However, a land agent (if involved) would set out a timeframe for a completed sale.
- 7.129 We requested data on promoters' time taken between obtaining planning permission and completing the sale (i.e. to complete the sale and marketing of the land). We received responses from 21 land promoters for each year between 2020 and 2022 (inclusive) on the time required between obtaining outline planning permission and completing the sale of land to a purchaser. Figure 7.16 below shows that in 2022, 65% of units sold by promoters were sold within 12 months of obtaining planning permission. In 2021 that figure was 53%, and in 2020 it was 49%. This implies a significant proportion of sales take longer than 12 months, and

⁶⁰⁹ CMA analysis of housebuilders' RFI responses

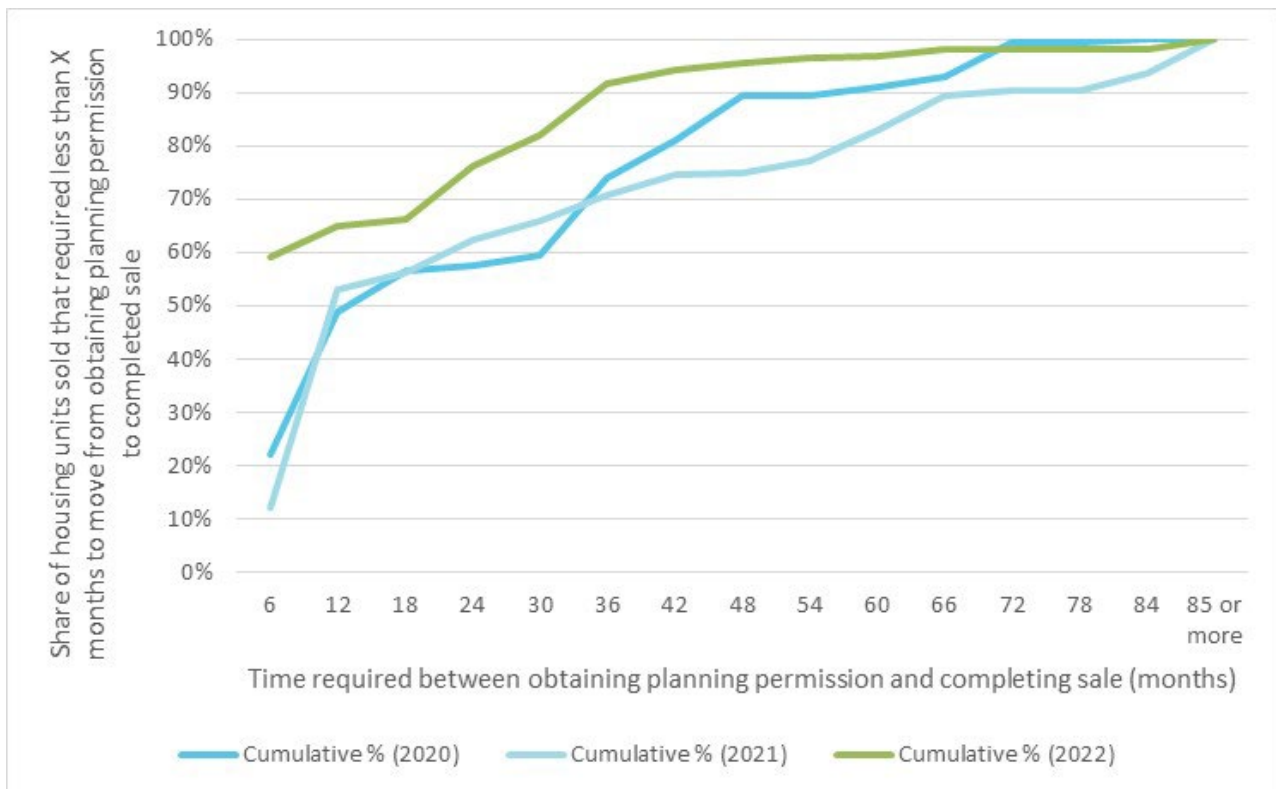
⁶¹⁰ We have separately looked at data on how long it takes for land to get through the planning process for the purposes of analysing land banks. As described in Appendix F regarding development timelines, our estimate for the most comparable element of the process is, on average, 3 to 4.5 years. However, we note the stages in the development process measured by this data are not entirely aligned with that we are considering for promoters, and the form in which we have the data is not easily comparable.

⁶¹¹ CMA analysis of land promoters RFI responses

⁶¹² CMA analysis of land promoters RFI responses

while virtually all are sold within 6 years, it implies large variation in the time taken to sell a site.

Figure 7.16 - Share of land (by housing units) that completed sale within X months following obtaining planning permission, 2020-2022



Source: CMA analysis of land promoter data

7.130 We summarise the reasons provided by the promoters we spoke to for the delay to the process below. These reasons are for the most part supported by other evidence, or may also occur where a housebuilder has taken the site through planning:

- (a) Low interest in site (e.g. due to complex Section 106 agreement, isolated location, brownfield site requiring demolition/remediation issues, etc.). The landowner may also find there is low interest from housebuilders for entering into an option agreement, for example, if the site was not attractive to purchase.
- (b) Originally selected housebuilder withdrew (e.g. due to funding issues) and had to return to market or wait for original builder to secure funding. Once a housebuilder enters an option agreement, we would typically expect it to purchase the site once it obtained planning permission, although we note the housebuilder may decide not to purchase, for example, if the site was not profitable to develop at the agreed price.

- (c) Covid caused marketing delays in addition to economic instability. This is supported by a Savills market report,⁶¹³ and one housebuilder said [X].
- (d) Disagreement on price with landowners. We find this also occurred for option agreements.⁶¹⁴
- (e) Multi-phase sales that required additional work (e.g. building infrastructure) or sign-off from a third party (e.g. Highways England) to market next phase, or slow development of prior phase by housebuilder. Lichfields investigated the relationship between the scale of planning permissions and number of homes built. One finding from this report was that homes on larger sites may be subject to phasing and will be built out over several years in parallel with new infrastructure.⁶¹⁵ A top 11 housebuilder also faced significant delays due to sign-off from third parties such as Highways England.⁶¹⁶
- (f) Complex technical and legal issues (e.g. multiple parties such as council, multiple housebuilders, title issues, sign-off required from additional party such as Homes England or adjoining landowner for access). The Lichfields report referenced in paragraph 7.130(e) above also found that some sites are delayed while they address technical, legal, and financial issues.⁶¹⁷

7.131 It is unclear whether the completion of a land sale is quicker via promotion agreements or option agreements as we do not have data on the time required for an option agreement to move from obtaining planning permission to completing a sale to the purchaser. We note the relative speed of completing the transaction may depend, to some extent, on whether there is agreement between the housebuilder and landowner on the valuation of the land under option following obtaining planning permission:

- (a) where the housebuilder and landowner agree on the valuation of the land under option, an option contract is likely to lead to a completed sale in a shorter time than a promotion contract as an open tender process will not be required. However, we note a lengthier open market process for selling the land also serves the purpose of increasing access to short-term land and optimising the value for the landowner which may incentivise more land to be brought forward.

⁶¹³ Savills, [Market in Minutes: Residential Development Land](#), 23 April 2020

⁶¹⁴ CMA analysis of housebuilders' RFI responses

⁶¹⁵ Lichfields (on behalf of Land Promoters and Developers Federation and Home Builders Federation), [Taking stock](#), May 2021, p2

⁶¹⁶ Lichfields (on behalf of Land Promoters and Developers Federation), Realising Potential: [The scale and role of specialist land promoters in housing delivery](#), March 2018, page 9

⁶¹⁷ Lichfields (on behalf of Land Promoters and Developers Federation and Home Builders Federation), [Taking stock](#), May 2021, p3

- (b) Where there is a disagreement on the valuation of the land under option, the matter is referred to an independent advisor to determine the valuation, which can take many months.⁶¹⁸ In this instance, it is unclear whether an option contract will lead to a quicker sale of land than a promotion agreement.

7.132 Overall, we have found no evidence that promoters delay the sale process after obtaining planning permission, and have limited scope to do so due to the contracts they operate under.

Is the recent trend for integration of promoters and housebuilders concerning from a competition perspective?

7.133 Promoters are both competitors to housebuilders for long-term land and suppliers of short-term land. In the course of our evidence gathering, we have found that there is an increasing trend of housebuilders purchasing promoters, primarily with the aim of increasing their land supply.

7.134 We would be concerned about a trend of increasing integration of housebuilders and promoters if this were:

- (a) reducing or restricting competition for long-term land, which would lower land prices and disincentivise landowners from bringing land forward; and
- (b) limiting access to short-term land to other housebuilders. There are three ways that this might materialise:
 - (i) a housebuilder might, with the agreement of the landowner, convert the method of control of a site held by a promoter from a promotion agreement to an option agreement. A conversion of this type would require the land to be sold to the vertically-integrated housebuilder once planning permission is obtained (if they wanted to buy it). This would mean other housebuilders would have no opportunity to bid for the land.
 - (ii) a housebuilder might, with the agreement of the landowner, convert the method of control of a site held by a promoter from a promotion agreement to an option hybrid agreement. A conversion of this type would require some of the land to be sold to the vertically-integrated housebuilder once planning permission is obtained (if they wanted to buy it). This would mean other housebuilders would have the opportunity to bid for only some of the land.
 - (iii) a housebuilder might, again with the agreement of the landowner, add a pre-emption clause to its existing promotion agreements. This would

⁶¹⁸ CMA analysis of housebuilders' RFI responses

mean the housebuilder has right of first or last refusal to purchase a site from a landowner prior to it being marketed, or following the conclusion of the marketing process. This can provide an advantage to the vertically-integrated housebuilder over other housebuilders.

- 7.135 We also note there may be efficiencies that arise from the integration of housebuilders and promoters such as cost savings, which could (though not necessarily) lead to better outcomes for consumers.
- 7.136 In this section, we investigate the extent to which housebuilders have purchased promoters since 2019 and explain the rationale for this trend. We assess whether this trend has reduced or restricted competition for long-term land using our analysis of shares of supply. We assess whether this trend has limited access to land to other housebuilders based on a review of internal documents by some housebuilders that have acquired promoters. We lastly review internal documents from housebuilders and assess the potential efficiencies of integration.

To what extent have housebuilders purchased land promoters?

- 7.137 Since 2019, several of the large housebuilders have either successfully acquired a promoter or attempted to. Barratt, Miller Homes, and Bellway successfully acquired land promoters, [redacted]. [redacted]. The largest acquisition within this timeframe was Barratt's purchase of Gladman developments, through which it gained promotion agreements for [redacted]. Berkeley Homes acquired the remaining 50% share of its joint venture, St William, [redacted]. [redacted]. Miller Homes acquired Wallace Land Investment & Management gaining promotion agreements [redacted]. Bellway acquired Rosconn Strategic Land [redacted].⁶¹⁹

Why are housebuilders purchasing land promoters?

- 7.138 From an examination of the relevant housebuilders' internal documents, we find that one of the key reasons larger builders considered acquiring a land promoter was to bolster their land bank. This was either to address a shortfall or to improve their holdings and spread more generally. In turn, these acquisitions are noted as supporting preservation of favourable margins in an increasingly competitive land market.
- 7.139 Ownership of a land promoter by a housebuilder may influence the type of agreement the promoter would agree with landowners, in order to try and secure land on better terms for its parent builder. For some of those that have acquired land promoters, the evidence suggests there is an opportunity to convert extant promotional agreements to option agreements, hybrid option agreements, or promotion agreements with pre-emption. This will then give the housebuilder rights

⁶¹⁹[redacted].

to purchase the site at a discount once the land promoter obtains planning permission. Where the housebuilder is unable to convert a promotion agreement, for example, if the landowner does not agree, then the housebuilder has to bid for the sites at open market and will still be in an advantageous position relative to other bidders due to the promotional fees discount.

7.140 [X].

7.141 [X].

7.142 Another common justification for the purchase of a promoter was to gain access to their valuable knowledge, skills and relationships within the land market. A land agent said in its experience of facilitating the disposal of land-owning companies that the value housebuilders obtain from acquiring land promoters lies in the expertise of the business rather than the land itself. [X]. [X].

To what extent has integration reduced or restricted competition?

7.143 We know that promoters compete with housebuilders for long-term land. We would be concerned about integration of housebuilders and promoters where the acquired promoters accounted for a substantial share of overall demand for long-term land. This might reduce or restrict competition for long-term land, leading to lower land prices, which might disincentivise landowners from bringing land forward for development and reduce the land supply.

7.144 We review data on promoters' signed agreements as this provides the most recent view of competition for long-term land. Table 7.6 shows acquired promoters' signed agreements entered into each year between 2020 and 2022 (in terms of sites and plots), expressed as a share of all agreements signed by promoters in respect of long-term land. Where data on signed agreements was not available, we've extrapolated the shares using data on stock of sites and plots acquired at the time of the acquisition. We note, these shares are overstated as they are based on signed agreements data from only 28 land promoters.

7.145 In terms of signed agreements, the shares of signed agreements are relatively small across all years. [X]. The shares in terms of number of plots are similar.

Table 7.6 – Shares of promoters based on signed promotion agreements, 2020-2022

Promoter	Number of sites			Number of plots		
	2020	2021	2022	2020	2021	2022
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of promoters' signed agreements data and housebuilder internal documents.

Note 1: CMA calculated based on signed promoter agreements for each year between 2020 and 2022

*Note 2: We do not have completed sales data on [redacted]. These shares are extrapolated based on using stock of units acquired at time of acquisition and applying this to [redacted] share of signed agreements in 2021. We assume the shares for these promoters do not change across time. This provides an indication of their size.

7.146 The above analysis indicates that housebuilders have acquired a relatively small share of promoters, in terms of agreements signed, and that many other promoters remain active in the market. In addition, other housebuilders continue to provide a competitive constraint for long-term land.

To what extent has integration limited access to land for other housebuilders?

7.147 Housebuilders that acquire land promoters may have an incentive to convert promotion agreements held by land promoters into agreements that advantage the housebuilder. We investigate this further with an analysis of the following information provided by two top 11 housebuilders both pre- and post-acquisition on:

- (a) the contractual arrangements between their respective land promoters [redacted] and their customers both pre- and post-acquisition.
- (b) marketing material sent from the land promoter both pre- and post-acquisition.
- (c) training and guidance materials relevant to securing an agreement with landowners both pre- and post-acquisition.

Comparison of pre and post-acquisition contractual agreements

7.148 We looked at information provided by two top 11 housebuilders both pre- and post-acquisition on the contractual arrangements between their respective acquired land promoters [redacted] and their customers. Our analysis of the agreements active at the point of acquisition showed few or none had been converted into more advantageous agreements for the top 11 housebuilders [redacted]. However, there is some tentative evidence that the types of contract signed by these promoters is changing post-acquisition, to give the housebuilder greater control over what happens to the land once planning is granted. A more detailed description of the evidence is provided below.⁶²⁰

- (a) [redacted].
- (b) [redacted].⁶²¹
- (c) [redacted].⁶²²

⁶²⁰ CMA analysis of [redacted] agreements pre- and post-acquisition.

⁶²¹ CMA analysis of [redacted] agreements pre- and post-acquisition.

⁶²² CMA analysis of [redacted] agreements pre- and post-acquisition.

Comparison of pre and post-acquisition marketing materials

- 7.149 One top 11 housebuilder has provided to us marketing material sent from its acquired promoter to potential customers. The evidence indicates that the top 11 housebuilder was keen, post-acquisition, to direct prospective landowner customers away from promotion agreements, by offering a choice of other contractual mechanisms such as option or hybrid agreements, some of which would be likely to put the top 11 housebuilder in a more favourable position once the land had gained permission. [REDACTED]. We also found that [REDACTED]. [REDACTED].
- 7.150 [REDACTED].
- 7.151 [REDACTED].

Comparison of pre and post-training material

- 7.152 A review of post training material indicates that a top 11 housebuilder had trained staff to influence some of its acquired promoter's existing customers to convert promotion agreements into option agreements and also offer the acquired promoter's potential customers the choice to enter into option agreements rather than promotion agreements.
- 7.153 [REDACTED].
- 7.154 [REDACTED]
- 7.155 [REDACTED]
- 7.156 [REDACTED]. This indicates that housebuilders are less likely to purchase land from promoters that are likely to be purchased by housebuilders. The document does not set out the reasoning for this position.

Do efficiencies arise from integration?

- 7.157 Where there are efficiencies arising from the integration of housebuilders and promoters, these could potentially benefit homebuyers, for example, in the form of lower prices, wider choice, or better quality. We consider whether there are efficiencies arising from vertical or horizontal integration.

Efficiencies from vertical integration

- 7.158 In principle, when an upstream firm is selling its product to a downstream firm, they will both optimise their prices independently, and will fail to consider that setting higher prices reduces demand for the other firm's products, resulting in worse outcomes for consumers and the firms. By vertically integrating, firms have the incentive to remove such double marginalisation, leading to lower prices for

the consumer, and increased joint profit for the integrated firms. We investigate whether the upstream promoter or downstream housebuilder has an ability or incentive to adjust their prices to increase joint profit and improve consumer outcomes.

- 7.159 In the case of vertical integration of housebuilders and promoters, there may be gains from removing double marginalisation between the housebuilder and the promoter. However, as set out in paragraph 7.7, under the residual valuation model land value is determined by subtracting housebuilder profit (and other development costs) from the gross development value of the land. As a result, this will largely influence the balance of returns between the landowner and promoter/housebuilder, and it is unclear how or whether any efficiencies would be passed on to consumers.

Other efficiencies

- 7.160 A review of internal documents from several housebuilders ([§]) indicates that the rationale for housebuilders acquiring promoters was not related to efficiencies (see paragraphs 7.138 and 7.139). Although there may be efficiencies from expanding the size of land teams within the integrated housebuilder, internal documents do not provide any indication of the size of these efficiencies.
- 7.161 Overall, it is unclear how or whether efficiencies arising from double marginalisation from these acquisitions would be passed on to consumers. Although there may be efficiencies from expanding the size of land teams within the integrated housebuilder, the size of these efficiencies is unclear.

8. Land banks

8.1 This chapter presents our analysis to answer two key questions:

- (a) Does the aggregate quantum of land held in the large housebuilders' land banks appear disproportionate? and
- (b) Are land banks at the local level suggestive of housebuilder concentration?

8.2 We first set out what land banks are, what purpose they serve for housebuilders, and we outline the nature of the concerns in relation to them. We then examine the current state of land claims across England, Scotland and Wales, using data on the amount and distribution of land held by the top 11 housebuilders. To answer the questions, as set out above:

- (a) We first outline the four phases of the development pipeline and how they relate to land banks;
- (b) We use data we have collated to estimate how long land is held in long-term land and short-term land on average;
- (c) We examine the evidence on land hold-ups and ransom strips measures on the length of time land remains in land banks; and
- (d) We set out our findings on the local concentration analysis to assess local land claims, incorporating the responses we have received.

What are land banks?

8.3 Land banks are portfolios of land that are held by certain types of public or private organisations, either for future development such as residential use, commercial or employment developments, or for maintenance purposes (such as protected woodland):

- (a) The types of public organisations that might hold land in land banks are public authorities or government departments under the UK government that are tasked to acquire, hold, manage or redevelop land. Examples include the Forestry Commission; The Ministry of Defence; DEFRA; The Crown Estate, and Homes England.
- (b) The types of private organisations that might hold land in land banks are individuals, housebuilders or other companies (eg, investment companies, land promotion companies or land holding companies) that have an interest in holding developable land.

- 8.4 In our market study, we have looked only at land held⁶²³ by housebuilders that is intended for residential housing development. Land intended for non-residential purposes is outside the scope of our study.
- 8.5 We recognise that non-housebuilders may also hold relatively large amounts of potentially developable land. We also recognise that such landowners may have an incentive to delay development of that land, particularly where there is an expectation that rising land and house values mean they would earn more by selling or developing the land further in the future rather than now. We focus on land banks of housebuilders specifically because:
- (a) Housebuilders would generally be the last ‘link in the chain’ to bring land forward and develop it into houses. Housebuilders can therefore more directly influence how fast land could be built out than those who hold land at earlier stages in the process.
 - (b) Much of the debate as to the potential negative effects of land banks, particularly in political discourse, has focused on the role of housebuilders in holding such land.⁶²⁴ We discuss previous research in relation to this debate in paragraphs 8.16 to 8.19.

Types of land banks

- 8.6 There are two main types of land banks held by housebuilders for residential housing. The precise terminology and definitions can vary, but for our analysis we use the terms ‘short-term land’ and ‘long-term land’, as defined below.
- (a) Short-term land is also referred to as current, immediate, controlled or consented land. These are sites that have some form of planning permission and where construction may not be far from commencing.
 - (b) Long-term land is also referred to as strategic land. This is land housebuilders have acquired (or taken out an option on) for future development but which does not yet have planning permission. This land requires long-term investment to secure planning permission, at which point it would move into the firm’s short-term land bank, forming a pipeline of developable sites.
- 8.7 Another point of difference between short- and long-term land is the way in which it is generally controlled by the housebuilder. Short-term land is more often owned by the housebuilder, while long-term land can be either owned by the housebuilder, or it can be the subject of an option agreement, where the

⁶²³ Where we refer to land ‘held’ by housebuilders, this includes both land which is directly owned and land where the housebuilder has some control over it through holding an option, as discussed at paragraph 8.7.

⁶²⁴ See for example, [London Post \(2022\) Michael Gove sets out plans to end house-building 'cartel'](#).

housebuilder has 'first refusal' on the site on pre-agreed terms (usually set in relation to the prevailing market price).

Measuring land bank size

- 8.8 Methods for measuring the size of land banks vary across housebuilders, but there are two main metrics used to measure the size of short-term and long-term land banks:
- (a) The number of plots: This is a measure of how many homes could be built on all the land in the housebuilder's land bank; and
 - (b) The number of years of supply: This measure estimates how long it would take for the housebuilder to construct homes on all the land in their land bank at their current build-out rate.
- 8.9 We have focused on the number of plots. This is a measure that is reported by most top 11 housebuilders, as well as in industry reporting. It is also less likely to be influenced by housebuilders' individual growth strategies and capacity than the years of supply measure. As such, it can be seen as a more objective and comparable measure across builders. Many respondents to our Working Paper on local concentration and land banks (Land Banks Working Paper)⁶²⁵ agreed that plot numbers were a reasonable metric to measure land bank size, although several mentioned the need to take into account additional information (eg on the tenures proposed for the plots).

Why do housebuilders hold land banks?

- 8.10 One of the primary reasons for a housebuilder to hold land is to ensure it has a steady supply of land to feed into its business. Without the supply of developable land, no new homes can be built, and the housebuilder's business cannot exist. Land banks ensure a forward pipeline of sites that have or are likely to have planning permission and are ready to go when needed. Many housebuilders flagged in their Statement of Scope responses how important land banks were for managing their development pipelines.⁶²⁶
- 8.11 More specifically, a housebuilder's land bank influences and is influenced by a number of strategic choices, including:
- (a) **Planned future growth.** Housebuilders may seek to increase or decrease the size of their land banks according to their growth plans: housebuilders seeking to grow will tend to expand the size of their land holdings to allow for

⁶²⁵ [Land banks working paper](#)

⁶²⁶ See for example, Taylor Wimpey, [Statement of Scope Response](#), pages 9-10 and Barratt, [Statement of Scope Response](#), pages 5-6.

this.⁶²⁷ By contrast, where prospects for the future are uncertain, housebuilders are likely to reduce their expected future output and so also reduce their investment into land. For example, many housebuilders withdrew from buying land in late 2022 as economic conditions deteriorated.⁶²⁸

- (b) **Managing land market exposure.** Housebuilders will use their land bank to manage their need to purchase land in future. Housebuilders will generally try to avoid having to buy land when the land market is 'hot', seeking to buy when others are less active and so reduce how much they will need to pay to secure a given site. For example, one housebuilder's annual report noted that their strong short-term land position "has also allowed [them] to be very selective with land acquisitions throughout 2022 and reduce [their] spend as the land market became more competitive."⁶²⁹

- (c) **Enhancing profitability.** Acquiring land at the right time, place and price is a fundamental lever for securing profitability and outperforming rivals. One aspect of this is the balance housebuilders strike between buying long-term land with the aim of securing planning permission themselves, compared to buying short-term land which is closer to being ready to develop but also tends to be more expensive. Several of the top 11 housebuilders target bringing a certain proportion of their completions from land which had started in their strategic land banks: for example, one housebuilder targets sourcing more than 40% of their completions from the strategic pipeline in the medium term, as '[t]he strategic pipeline enhances our ability to increase the contribution per legal completion because of the inherent margin uplift from strategic plots. It also allows us to take a long-term view of sites.'⁶³⁰ Another housebuilder noted that acquiring strategic land 'allowed us to secure and control land with less capital investment and more flexibilities.'⁶³¹

⁶²⁷ For example, board documents from one housebuilder include a forecast that their annual opening land bank (including all sites it has an interest in) would increase from around 17,500 in 2022/23 to over 49,000 in 2026/27, with corresponding increases in their expected completions. Another concluded a land teach-in document by noting that their strategy regarding their land bank varies over time and "very much depends what part of the market cycle we are in".

⁶²⁸ For example, Miller's 2022 end of year trading update showed that, following the economic outlook in the second half of 2022, they took a more cautious approach to land purchases and reduced their spending on land. Miller, [Trading Update Year End](#), 2022. Taylor Wimpey's 2022 end of year trading statement also showed that they significantly reduced land commitments as market conditions changed in the third quarter. Taylor Wimpey, [Trading Statement](#), January 2023.

⁶²⁹ Taylor Wimpey, [Taylor Wimpey Annual Report 2022](#), p.23; Similarly, Bellway noted in its annual report that 'The strengthened overall land bank enables the Group to reinforce its disciplined financial land buying criteria in the year ahead, while retaining its long-term capacity to grow volume output to over 16,000 homes per annum.' Bellway, [Bellway Annual Report 2022](#), p.5

⁶³⁰ Taylor Wimpey, [Taylor Wimpey Annual Report 2022](#), p.31

⁶³¹ Bellway, [Bellway Annual Report 2022](#), p.14

- 8.12 Housebuilders have also highlighted the planning system as an important driver of the need to hold land in land banks.⁶³² There is some support for this in internal documents, with one housebuilder noting a ‘frustrating planning environment, means beneficial to have a slightly longer land bank’. The same document highlights that as well as being ‘[a]ble to adapt to changes in Government approach’, other benefits to their strategic land pipeline include ‘[c]ontrol of an efficient balance sheet’ and ‘[d]elivers added value across the market cycle’. While these latter two points are likely to be linked to managing planning or government policy changes, they also appear to be wider financial benefits from holding strategic land. Another housebuilder noted a number of reasons they would need to continue investing in land, of which planning was one: ‘...need to continue to invest as (a) some divisions have a short land bank, (b) we need more outlets to mitigate against a hardening market and (c) it is going to get harder to secure DPP [detailed planning permission], so we need more sites in the pipeline to secure future plots for build.’ The planning system is therefore clearly a factor, although not the only factor, influencing housebuilders’ decisions on the size of their land banks.
- 8.13 We would therefore expect housebuilders’ land banks to vary over time and between companies according to their future plans for growth (both in aggregate and in different locations), their reading of current and likely future prospects for both the land and housing markets and their approach to managing exposure to risk in changes in market conditions, including through changes in planning policies.

Concerns around the impact of land banks

- 8.14 A number of stakeholders have voiced concerns, both prior to us commencing this market study and in the course of our engagement, around the impact of housebuilders’ land banks on the way the housebuilding market functions.
- 8.15 We categorise these concerns into three interrelated issues:
- (a) First, that land banks have the effect of reducing the amount of land available for development, as a result of their size and geographical reach. For example, one response to our statement of scope stated ‘[t]he greatest barriers to competition in the land market are probably the options which can be negotiated between sellers and buyers. These options serve the purpose for buyers of sterilising land, preventing others from acquiring it, and thus

⁶³² See for example, [Barratt response to Statement of Scope](#), paragraph 4.8 and 4.9; [Taylor Wimpey response to Statement of Scope](#) paragraph 5.5; [Bellway response to update report and MIR consultation](#) paragraphs 3.5 and 3.6. For example, in their land and planning strategy slides, one housebuilder states: ‘ensuring a strong and resilient land bank will be pivotal to hedge against political interference’.

directly increasing scarcity. If options are widespread in a locality, they would be a barrier to entry for SME developers.⁶³³

- (b) Second, that the control of large amounts of developable land, with minimal competition to sell new homes at the local level, allows housebuilders to slow the delivery of homes. In this regard, stakeholders highlight the large numbers of planning permissions which have not been built out, and the large amount of land without planning permission held by housebuilders, and query why this is the case.⁶³⁴
- (c) Finally, we have heard that land ownership is not transparent, and that this lack of transparency hinders small and medium sized housebuilders from identifying and securing suitable land for development, as well as making it more difficult for them to appraise the nature of competition in a given local area. For example, one response to our Statement of Scope noted '[t]he lack of transparency in the land market, and the prevalence of opaque option agreements in the south east in particular, make it difficult for self-commissioned housebuilders to buy land, and increase the search costs for under-capitalised organisations'.⁶³⁵ While this point was not directly linked to land banks, the effect is likely to be more pronounced the more land banking occurs.

8.16 To evidence these concerns, academics and interested stakeholder groups have used data on the aggregate size of housebuilders' land banks available from their annual accounts, or data on planning permissions granted, to argue that land is being 'hoarded' and not developed as promptly as it could be. Key pieces of research and reporting undertaken in this area include:

- (a) Analysis by Shelter in 2016 found the top 10 listed developers had more than 400,000 plots in their current land banks (representing 6 years of supply) and nearly 500,000 plots in their strategic land banks (representing a further 6 or 7 years of supply).⁶³⁶ However, it concluded that large land banks were a symptom rather than the cause of issues, with the root cause being a reliance on speculative housebuilding.⁶³⁷
- (b) Analysis by the Local Government Association in 2021 found that more than 1.1 million homes granted planning permission in England in the last decade are yet to be built. It highlighted that while 2,782,300 homes were granted

⁶³³ [Highbury Group response to Statement of Scope](#), page 1

⁶³⁴ See for example [Shelter \(2016\) Land banking: what's the story? \(part 1\)](#); [Local Government Association \(2021\) Over 1.1 million homes with planning permission waiting to be built – new LGA analysis](#).

⁶³⁵ [Community Land Trust Network response to Statement of Scope](#), page 5

⁶³⁶ [Shelter \(2016\) Land banking: what's the story? \(part 1\)](#).

⁶³⁷ [Shelter \(2016\) Land banking: what's the story? \(part 2\)](#).

planning permission by councils between 2010/11 and 2019/20, over the same period only 1,627,730 had been built.⁶³⁸

- (c) A report by i in June 2023 found that ‘the top 10 housebuilders listed on the London Stock Exchange are sitting on 700,000 plots, many of which have planning permission’. It further reported that ‘the housebuilding industry is estimated by experts to be sitting on more than one million plots of usable land that could provide new homes’.⁶³⁹

8.17 While we have not attempted a comprehensive review of international research, we note one interesting example from Murray (2020), which analysed data on home sales and landbanks from the annual reports of Australia’s top eight publicly listed residential developers from 2001 to 2018 and state-level planning approvals and lot production data in Queensland, Australia. He found that the results do not support a static interpretation that all profitable housing is built out immediately and that land banks serve only as inventories and are minimised. Instead, he found (1) 13 years of new supply are held by the eight largest housing development companies, and eight years of these landbanks are held in housing subdivisions that are approved and already for sale, that (2) the amount of zoned supply in a region is unrelated to the rate of new housing supply, and that (3) housing developers routinely delay housing production to capitalise on market cycles. Dynamic incentives to maximise total returns, including capital gains in the option value of undeveloped land, could be related to observed behaviour.⁶⁴⁰

8.18 Other research has come to a different conclusion to those studies referred to at paragraph 8.16 above:

- (a) Lichfields analysis for the Land Promoters and Developers Federation and the Home Builders Federation argued that focusing on unbuilt permissions is too simplistic. It compared the land banks of the 10 largest housebuilders to delivery timelines, identifying that land with implementable planning permissions was equivalent to 3.3 years of supply for these firms, while including land in the process of getting planning permission gave a pipeline equivalent to 5.3 years of supply.⁶⁴¹ It compared this to LPAs needing to demonstrate five years’ worth of deliverable supply and an estimate that housebuilders would need to hold 5.7 year pipelines to secure annual growth in their housing output.⁶⁴² Further work looked at case studies in five Local

⁶³⁸ [Local Government Association \(2021\) Over 1.1 million homes with planning permission waiting to be built – new LGA analysis.](#)

⁶³⁹ [I \(2023\) Gove slams housebuilders hoarding almost a million plots of land as 'completely unacceptable'.](#)

⁶⁴⁰ Murray, C (2020) Time is money: How landbanking constrains housing supply, *Journal of Housing Economics*, Vol. 49, p. 101708, available at: [Time is money: How landbanking constrains housing supply - ScienceDirect.](#)

⁶⁴¹ [Lichfields \(2021\) Feeding the Pipeline.](#)

⁶⁴² This estimate was produced by Chamberlain Walker for Barratts: [ChamberlainWalker \(2017\) The role of land pipelines in the UK housebuilding process.](#)

Planning Authority areas which showed that after five years, few planning permissions had lapsed altogether, with the majority either built out or on larger sites which were in the process of being built out.⁶⁴³ In response to the article referenced above, Lichfields highlighted the analysis it had carried out in these studies to argue that the article had overstated how much of the land was readily deliverable, and that ‘any house builder with an immediate land bank of less than three years would run out of plots and have to stop building because they would not be able to replenish it with new sites taken through the planning process’.⁶⁴⁴

- (b) Built Place argued that focusing on unbuilt permissions is ‘not an accurate representation of the housebuilding process in the current planning environment’, for a variety of reasons, including that such figures overstate planning permissions (eg due to double-counting re-submissions), understate new homes (as it includes only new build completions where the permissions include conversions) and do not take into account time lags and lapse rates. However, it suggested such analysis does raise questions about the transparency of housing delivery and the lack of control by LPAs over the delivery of houses once planning permission has been granted.⁶⁴⁵
- (c) In a response to the CMA’s Update Report and Market Investigation Reference consultation, Professor Pat Macallister submitted an analysis of the land holdings of the leading volume house builders in the UK.⁶⁴⁶ Among other findings, this found overall, for the three largest housebuilders (in terms of completions), there is little evidence of any significant changes in their land inventories since the OFT report in 2008, while the smaller listed housebuilders (Redrow, Bellway and Vistry), have grown their land holdings as their number of completions has increased. He found there seems to be more variation between the firms in their focus on strategic land. While their annual reports show a clear trend of them emphasising and tracking the growing share of their short-term land supply pipeline generated from their strategic land portfolios, assuming that most of the strategic land is controlled through option agreements rather than being owned, increases in land prices are not in the interest of housebuilders who have the option to purchase land at a discount to the future market value and so will ultimately have to pay more for the land. He also stated that although the evidence is limited, it generally indicates that UK housebuilders tend to have smaller land inventories relative to their output compared to residential developers in the US, Australia, and Ireland. Although not conclusive, this finding challenges

⁶⁴³ [Lichfields \(2021\) Tracking Progress: Monitoring the build-out of housing planning permissions in five local planning authority areas.](#)

⁶⁴⁴ [Lichfields \(2023\) Losing the plots: the misdirected exhumation of housebuilder land 'hoarding'.](#)

⁶⁴⁵ [BuiltPlace \(2021\) Digging Deeper – Unbuilt Planning Permissions.](#)

⁶⁴⁶ [Professor Pat MacAllister Response to update report and MIR consultation submission.](#)

arguments that specific features of the UK planning system compel UK housebuilders to hold excessively large land inventories.

- (d) A report by Molior for the London Mayor in 2012 found of the 210,000 existing planning permissions for new homes in London, 55% were in the control of building firms, while 45% were in the control of non-building firms such as investment funds, historic landowners, government and ‘developers’ who do not build. Molior concluded accusations of land banking directed at builders were ‘misplaced’, as site-by-site interviews suggested builders intended to build their sites, while non-builders did not. It argued that the fact that non-builders control almost half of the planning pipeline is a constraint on housing development in London.⁶⁴⁷ A 2014 update found a smaller percentage of planning permissions held by non-developers and the majority of those held by developers in 2012 had since progressed to full construction commencement.⁶⁴⁸
- (e) The Letwin review sought to explain the gap between housing completions and the amount of land allocated or permissioned in areas of high housing demand and make recommendations for closing it. As part of this, the review considered whether there is ‘land banking’ ‘in the sense of major builders or others attempting to influence the market by “locking up” land before they seek final implementable permissions to build’. It concluded ‘[t]heir [major housebuilders’] business models depend on generating profits out of sales of housing, rather than out of the increasing value of land holdings; and it is the profitability of the sale of housing that they are trying to protect by building only at the “market absorption rate” for their products. I have heard anecdotes concerning landowners who seek to speculate in exactly this way by obtaining outline permission many years before allowing the land to have any real development upon it – and I am inclined to believe that this is a serious issue for the planning system. But it is not one that is consistent with the business model of the major house builders.’⁶⁴⁹ However, the review did find that once implementable planning permission is in place, the major house builders proceed to build at a rate designed to protect their profits by constructing and selling homes only at a pace that matches the market’s capacity to absorb those homes at the prices determined by reference to the local second-hand market.

8.19 Some of the examination of land banks has therefore been based on relatively simple analysis of the number of plots or years of supply represented by the land held by large housebuilders, either in isolation or in comparison to the number of planning permissions issued. Other studies have tried to put this into context,

⁶⁴⁷ [Mayor of London \(2012\) Barriers to Housing Delivery.](#)

⁶⁴⁸ [Mayor of London \(2014\) Barriers to Housing Delivery Update Report.](#)

⁶⁴⁹ [Letwin \(2018\) Independent review of build out rates: Draft analysis, p.29](#)

either by reference to what this data does and does not cover or the business models of housebuilders. These have generally weighed against land banks per se being an issue, although we note that the Murray (2020) study referenced above did indicate land banks could be consistent with an incentive to hold onto land to maximise returns. Many of these papers identify that land banks may be a symptom of another issue – most commonly either concerns over the functioning of the planning system or regarding the incentives of housebuilders to build out sites expeditiously. We discuss the role of the planning system in Section 6 and housebuilders’ incentives to build out in Section 9 of the supporting evidence document.

- 8.20 To better understand the role and impact of land banks within housebuilding, we have: gathered data on the more than 5,800 individual sites held in the land banks of the top 11 housebuilders; examined local-level data on planning applications; analysed national data on planning application outcomes and how land progresses through the planning system; examined internal documents gathered from the largest housebuilders; and undertaken extensive engagement with academic experts, devolved governments in Wales and Scotland, and market participants. The information we have gathered using our statutory powers means we have access to a greater depth of information as to the location of sites owned by top 11 housebuilders and their internal decision making on these sites than any of the previous pieces of research we have reviewed.

Size and geographical distribution of top 11 housebuilders’ land banks

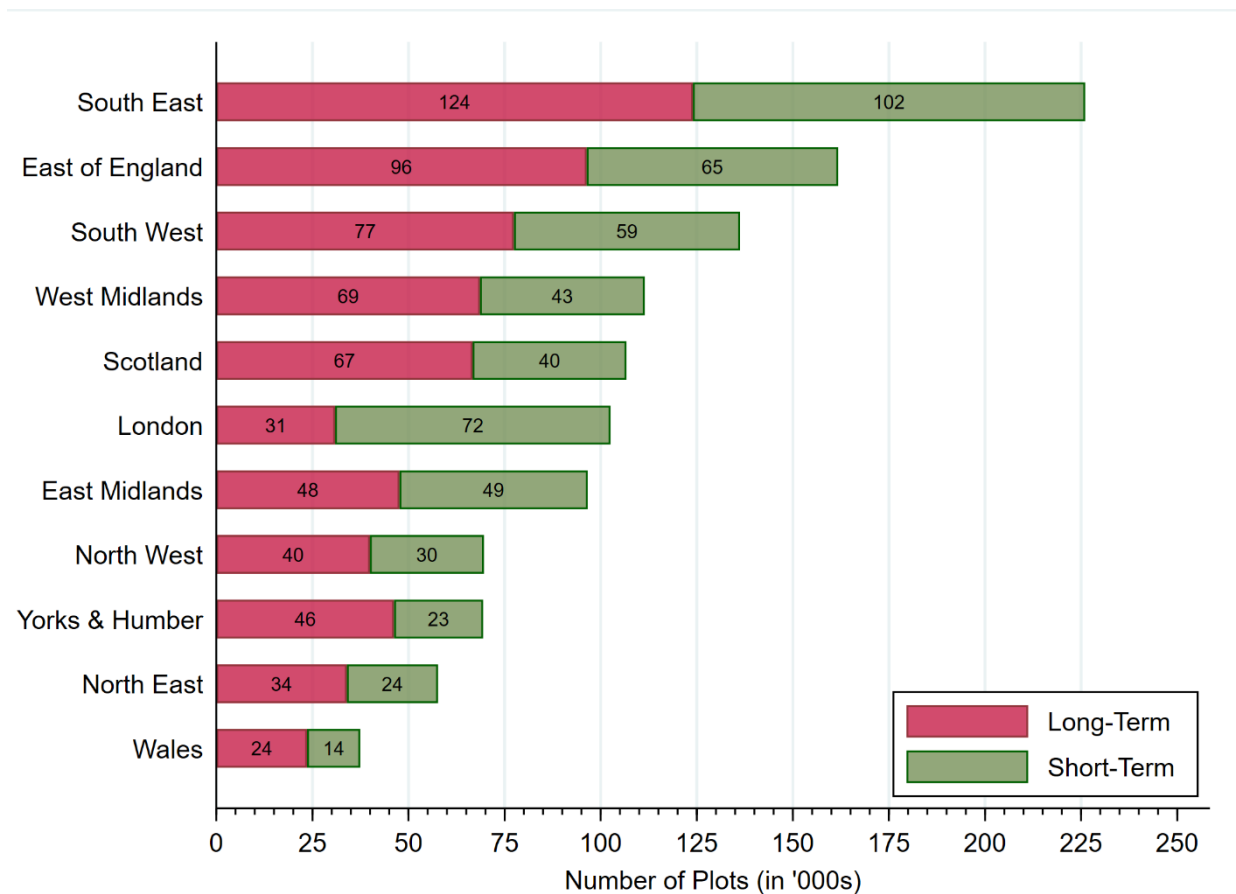
- 8.21 Estimates of the size of housebuilders’ land banks, drawing on publicly available data for 8 of the 11 housebuilders, puts the total land bank size for these housebuilders at roughly 900,000 plots in 2021.⁶⁵⁰ As we noted in our Update Paper, these land holdings are distributed across the regions and nations of GB, and in plot-terms have been growing over time.
- 8.22 To make our own estimate of the amount of land held in land banks across GB, we have gathered data on the exact location and size of more than 5,800 individual sites held in the short-term and long-term land banks of the 11 housebuilders as described in Appendix C on the data sources we have used for our land banks analysis. This gives us an estimate of 1.17m plots held in the land banks of the 11 housebuilders, as of 2022. Our estimate is therefore in broad alignment with estimates made on the basis of publicly available information.

⁶⁵⁰ CMA analysis of data from Jeffries UK Building, Construction & Housebuilders, Equity Research, October 2022.

8.23 At Figure 8.1, we show how the plots held by the 11 housebuilders are distributed across England, Scotland and Wales. Across each nation, the total number of plots in long-term land banks is greater than in short-term land banks. By nation, England has the most plots in long-term and short-term land banks (c.565,000 long-term and c.466,000 short-term plots) followed by Scotland (c.67,000 long-term and c.40,000 short-term plots) and then Wales (c.24,000 long-term and c.14,000 short-term plots).⁶⁵¹ Within England, land claims are weighted towards the south and midlands of England, and lower in the north of England.

8.24 Considering the distribution of housebuilders' land banks across regions, most (8 out of 11) hold both short-term and long-term land across most regions of England. Fewer hold land in Scotland and Wales, with five holding no land in Scotland and four holding no land in Wales. In addition, some of those that do hold land in Wales have relatively low numbers of plots compared to their holdings in English regions or Scotland. By contrast, three of the housebuilders concentrate their land holdings mainly in two or three regions of England or Scotland/Wales.

Figure 8.1: The number of plots in long-term and short-term land banks by English regions, Scotland and Wales



Source: CMA analysis of the top 11 housebuilders' land banks data.

⁶⁵¹ Note: figures do not sum up due to rounding.

8.25 Looking at the type of land held in land banks across GB, 70 per cent of short-term land is greenfield land and the remaining 30 per cent is brownfield land. For long-term land, roughly 90 per cent of land is greenfield, roughly 8 per cent of land is brownfield and about 3 per cent of land is greenbelt land. At Table 8.1 and Table 8.2, we show the variation in the percentage shares of land held in long-term land and short-term land by English regions and Scotland and Wales.

Table 8.1: Type of land held in short-term land banks by English regions, Scotland and Wales

		<i>Per cent</i>	
	<i>Brownfield</i>	<i>Greenfield</i>	
London	96.6	3.4	
Wales	31.4	68.6	
West Midlands	29.5	70.5	
North West	26.1	73.9	
South East	23.6	76.2	
North East	23.1	76.9	
Scotland	18.7	81.3	
Yorkshire and The Humber	17.5	82.5	
East of England	15.9	84.1	
South West	13.8	86.2	
East Midlands	8.8	91.2	

Source: CMA analysis of the top 11 housebuilders' land banks data

Note 1: No figures are reported for green belt land as there is no short-term land is held in green belt land.

Note 2: No status was provided for 0.2 per cent of land in South East

Table 8.2: Type of land held in long-term land banks by English regions, Scotland and Wales

			<i>Per cent</i>	
	<i>Brownfield</i>	<i>Greenfield</i>	<i>Green Belt</i>	
London	60.2	39.8	-	
Wales	12.9	87.1	-	
East of England	8.0	86.2	5.8	
South East	6.4	93.6	-	
West Midlands	6.3	86.3	7.4	
North West	4.7	90.2	5.1	
Scotland	3.8	96.2	-	
South West	3.1	93.9	3.0	
North East	2.9	97.1	-	
East Midlands	0.8	93.1	6.2	
Yorkshire and The Humber	0.6	99.4	-	

Source: CMA analysis of the top 11 housebuilders' land banks data

8.26 At Table 8.3, we find that roughly 85 per cent of long-term land held by the top 11 housebuilders is controlled through some form of agreement with the landowner: roughly 65 per cent of the land is controlled through an option agreement, with other type of contract agreements below 10 per cent. About 15 per cent of long-term land is owned by the top 11 housebuilders.

Table 8.3: Long-term land and type of contract

Contract Type	Per cent
Option	65.4
Owned	15.0
Promotion	7.2
Conditional Contract	6.0
Hybrid	3.0
Other Contracts	6.4
Unknown	0.1

Source: CMA analysis of the top 11 housebuilders' land banks data

Notes:

[1] Category 'Other Contracts' includes multiple type of contracts that could not be distinguished, pre-emption, development management and unknown contracts/contracts that have lapsed.

8.27 At Table 8.4, we find that about 19 per cent of land is allocated as part of an LPA's Local Plan. About 76 per cent of long-term is not allocated as part of a Local Plan, suggesting that there is significant uncertainty around whether it will achieve planning permission.

Table 8.4: Long-term land and Local Plan land allocation

Local Plan Status	Per cent
Allocated	18.9
Draft Allocated	1.9
Not Allocated	76.1
Unknown Status	3.0

Source: CMA analysis of the top 11 housebuilders' land banks data.

8.28 We have considered how this land is distributed across GB at a more granular level. Using our land bank dataset, we have mapped the geographical distribution of both short-term and long-term land holdings to LPA/LA areas.

8.29 In Appendix D, we set out maps at the LA/LPA area level (and for England also identify Government Office Regions (GORs)) showing the number of plots in short-term land holdings, which provides an indication of current/ forthcoming housebuilding activity, and long-term land holdings, which indicate (more tentatively) where longer-term housebuilding may occur. We also show the population density at LA area level to provide context for where most people live in Great Britain.

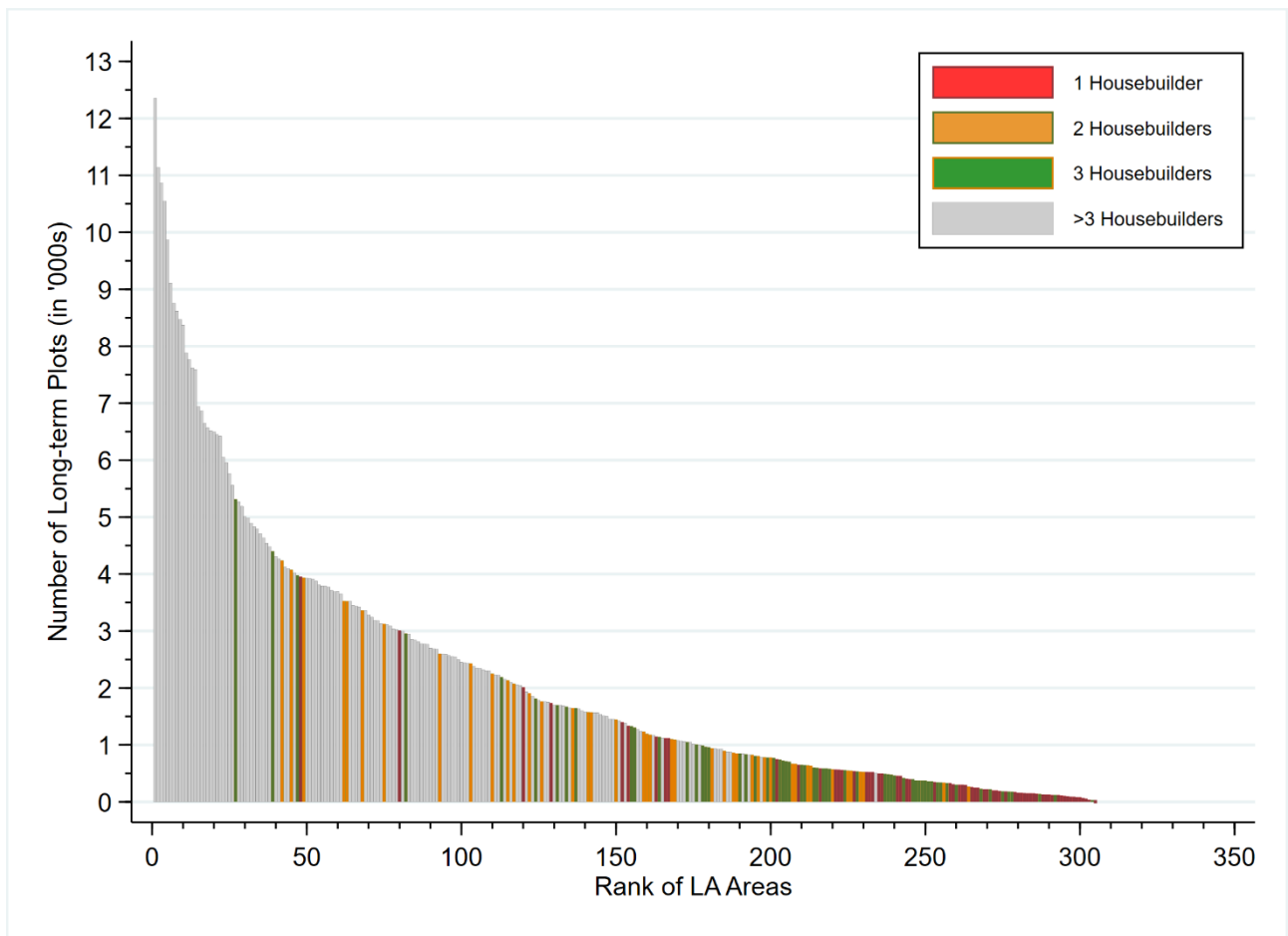
8.30 The data suggests the following:

- (a) **The top 11 housebuilders have a broad geographic presence:** The 11 housebuilders are present to some degree in most LA areas across GB. Their collective presence is strongest in central England, but there are few areas with no land held in land banks at all.
- (b) **Short-term land banks centre around densely populated areas.** Short-term land holdings appear to map on to population density across GB:
 - (i) In England: Short-term land banks are large in several London boroughs as well as in London's vicinity, particularly to the north-west between London and Birmingham.
 - (ii) In Scotland: The largest land holdings are in and around parts of the Central Belt and southwest of Scotland.
 - (iii) In Wales: Short-term land holdings are concentrated in the more populous southern region.

- (c) **Long-term land banks look to be less closely related to population density, being spread across more of GB.** The 11 housebuilders are present in LA areas with medium and high population density, but they are also present in LA areas that are further away from major cities and where the current population density is low:
- (i) In England, housebuilders hold long-term land in land banks in most LA areas of the South of England, the Midlands, and the North of England. More areas in the North East, South East and South West have a higher number of plots in long-term land compared to the short-term land banks.
 - (ii) In Scotland and Wales, the long-term land held in land banks is distributed in areas beyond the major cities where local populations are smaller. In Wales, there are long-term plots but no short-term plots in the mid-Wales region.

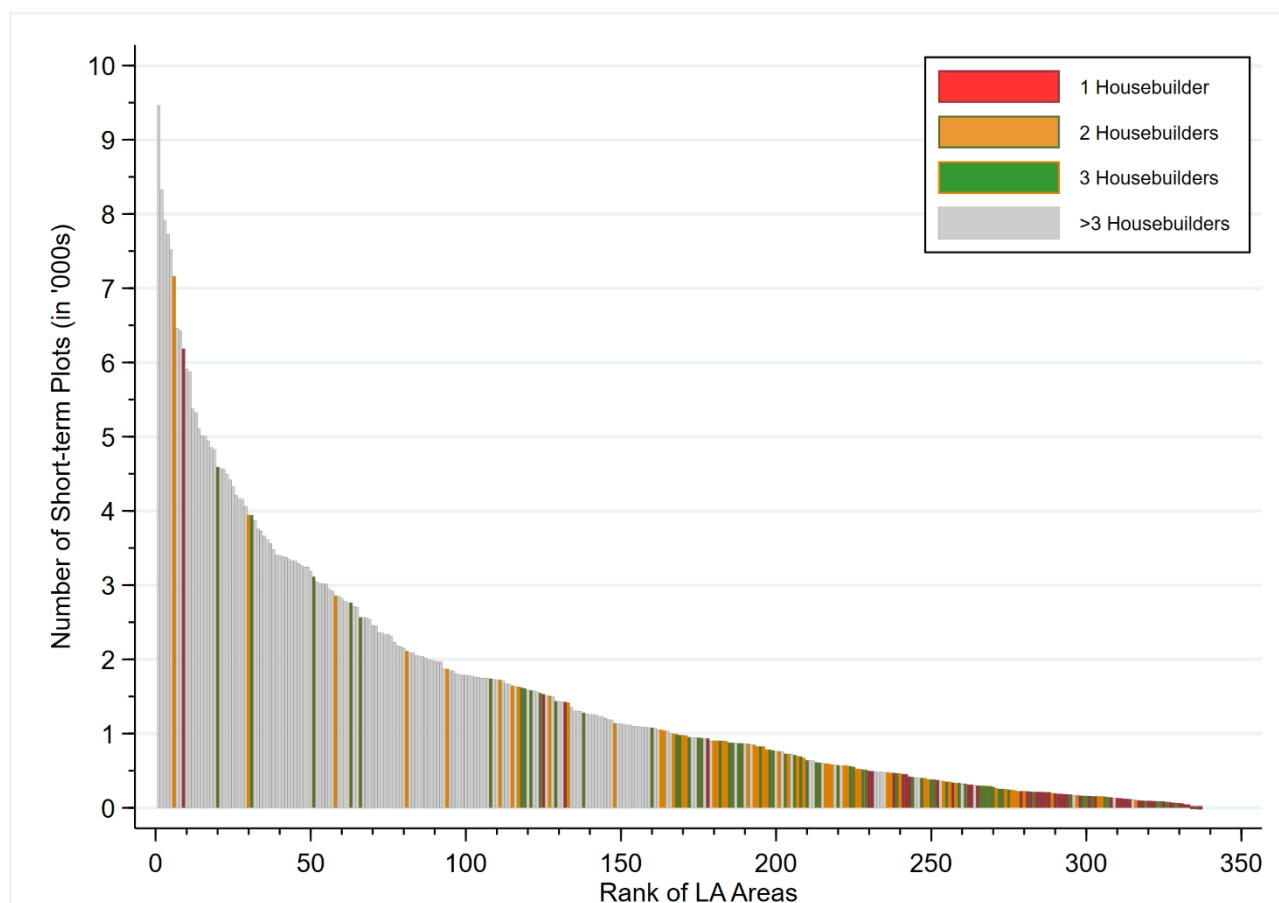
8.31 We have examined how land banks in different LAs are distributed across individual housebuilders – in particular, whether there are many LAs where only a small number of the 11 housebuilders hold either long-term or short-term land. This is shown in Figure 8.2 and Figure 8.3: we show the quantum of long- and short-term land, respectively, held in land banks in each LA area, with LAs ordered from largest land bank to smallest.

Figure 8.2: The distribution of long-term plots in each LA area and by the number of top 11 housebuilders



Source: CMA analysis of the top 11 housebuilders' land banks data.

Figure 8.3: The distribution of short-term plots in each LA area and by the number of top 11 housebuilders



Source: CMA analysis of the top 11 housebuilders' land banks data.

- 8.32 For long-term land, in LAs where the top 11 housebuilders hold a relatively large amount of land in total, this land is distributed among at least three housebuilders. By contrast, in LAs where land banks are smaller, this land tends to be held by a smaller number of housebuilders (particularly where fewer than 1,500 plots are held in long-term land banks). Out of 306 LAs, 124 have only one (65) or two (59) housebuilders present, most of which have land holdings of fewer than 500 plots.
- 8.33 For short-term land it is also the case that in the LAs with the biggest overall land claims, this land is dispersed between several top 11 housebuilders, although there are a small number of instances where LAs with relatively large land banks (over 5,000 plots) have only one or two of the top 11 housebuilders holding land. There is a smaller number of LAs with only one (53) or two (55) of the 11 housebuilders present out of 338 LAs,⁶⁵² and more LAs where there are three or more housebuilders present even with small overall land holdings (fewer than 1,500 plots, and particularly where there are fewer than 500 plots in short-term

⁶⁵² There are fewer LAs with no short-term land bank holdings compared to those with no long-term land banks.

land banks). There are 17 LAs where there is only one housebuilder with both short-term and long-term land.

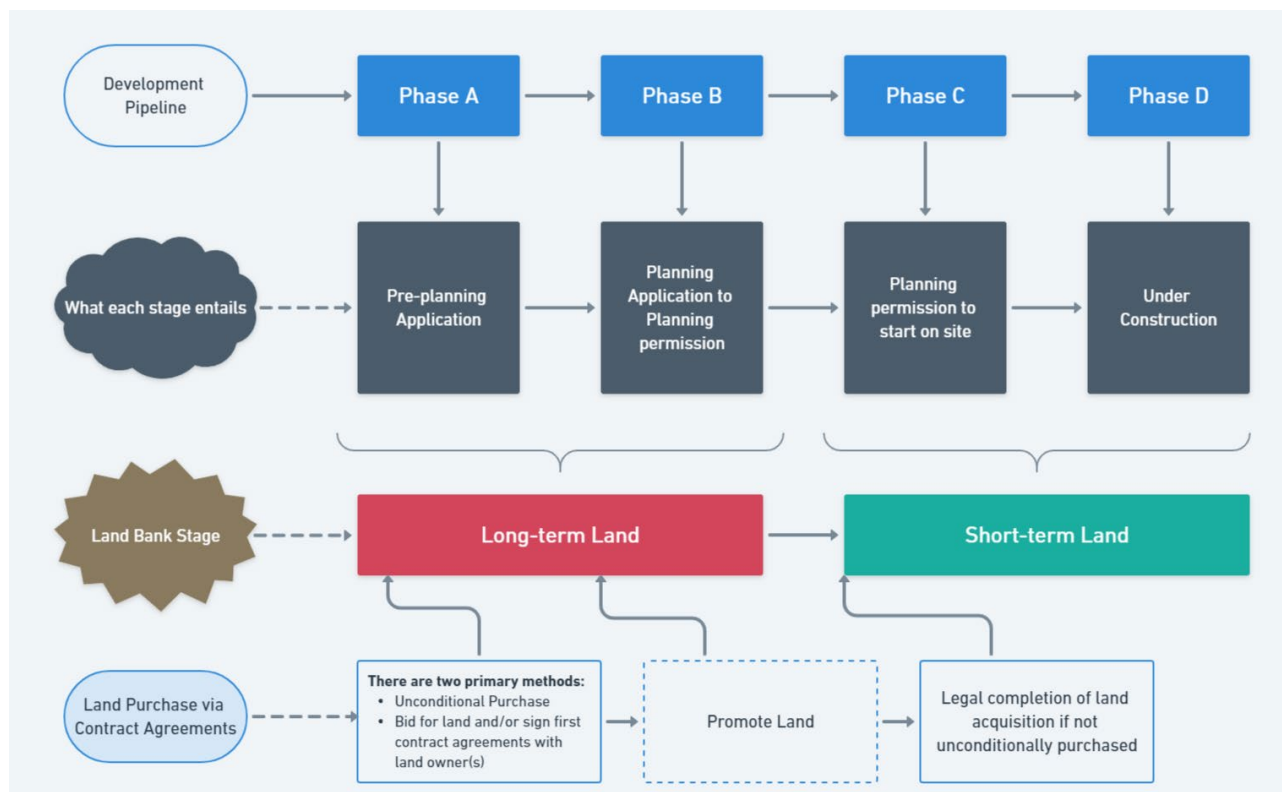
How long does land remain in land banks?

- 8.34 The main concern we have heard with regard to the total size of land banks is that they prevent other builders from getting access to land. This would largely be a concern if it prevented others from developing the land more quickly. At paragraphs 8.16 to 8.19, we note that several studies have sought to put the aggregate size of (particularly) short-term land banks in context against housebuilders' business models, and particularly factors such as the amount of land necessary to support growth or time taken to receive planning permission and start on site, with the aim of concluding on the appropriateness of their scale.
- 8.35 In this section we:
- (a) Briefly explain how the phases of the development pipeline relate to the land held in short- and long-term land banks;
 - (b) Use the permissions data and the land banks data to estimate how long land remains in short-term and long-term land banks;
 - (c) Provide concluding remarks on the size of land banks, weighing up the evidence on housebuilders' ability and incentive to bank land.

The development pipeline and the relationship to land bank size

- 8.36 Land banks exist because land is a necessary input to support the various phases of the development pipeline to build houses. Section 2 of our final report provides further details about the development pipeline, but Figure 8.4 shows the relationship between the four phases of the development pipeline and how they relate to the short- and long-term land banks. Phases A and B relate to long-term land as this is land that has no form of planning permission. Phases C and D relate to short-term land as this is land that has some form of planning permission.
- 8.37 Post Phase D, the end of construction leads to the completion of new home(s). A housebuilder will include in their land bank all of their schemes at different phases of the development pipeline. For example, if each phase of the development pipeline takes one year to complete, this implies the land will remain in the land bank for 4 years with the construction of new home(s) taking place in year 4. If there are delays at any stage in the development pipeline, land will remain in the land bank for longer.

Figure 8.4: Development pipeline and its relationship with the land bank stage and land purchase



Source: CMA analysis of the development pipeline presented in *CWEconomics* (2017⁶⁵³, 2019⁶⁵⁴) and responses received from RFI requests.

Notes:

[1] Contract agreements include but are not limited to the following contract types as land can be purchased with one or many different types of contracts (see background on methods of acquiring land in Section 7 of the supporting evidence document):

- [a] Option agreements
- [b] Conditional contracts
- [c] Hybrid agreements
- [d] Promotion agreements

Views on land bank size and land banking

8.38 We have used the permissions data, the land banks data and published reports to estimate how long land stays in land banks. Appendix F provides further details of our analysis of the development timeline.

8.39 For long-term land, we find, as of December 2022:

- (a) Using all the data points in the land banks data, we estimate that land had been in long-term land banks on average for 7 years in GB, with some variation by nation.
- (b) However, long-term land banks are likely to include some sites which are ultimately determined to be unviable and so may not make it as far as a

⁶⁵³ ChamberlainWalker (2017) *The Role of Land Pipelines in the UK Housebuilding Process*.

⁶⁵⁴ Chamberlain, P, and Walker, C, (2019) *An Investigation into Land Banking in Scotland, Scottish Land Commission, Commissioned Report*.

planning application. Assuming that land that is owned for more than 132 months is unviable⁶⁵⁵ (which equates to c.15 per cent of the land held in long-term land banks data), and excluding these sites from the analysis, we find that the remaining land had been in long term land banks on average for just over 4 years. We find little variation by nation, with land held in long-term land banks on average for between 4 and 5 years.

8.40 For short-term land, we find, as of December 2022, the average number of years land had stayed in short-term land banks, using two different data sources, the permission data and the land banks data, aligns with published estimates. We estimate that land had remained in short-term land banks on average for between 2.5 and 4.5 years.

8.41 Our analysis does not tell us precisely at which phase land spends the most time. However, there are several reasons, in our view, why these average time frames do not appear to be unreasonably long for land to remain in long- and short-term land banks. We set out the reasons below with reference to the development pipeline:

- (a) **Phase A: Not all land will progress through each phase of the development pipeline.** Roughly 76 per cent of long-term land is not allocated as part of an LPA's Local Plan (see Table 8.4), implying the majority of land will face uncertainty as to whether planning permission will be granted. In addition, as set out in Section 6 of the supporting evidence document, around 15-20% of major planning applications are rejected in England and 10-20% are rejected in Wales (and around 10% of all applications are rejected in Scotland). Land that is not granted planning permission, or requires several attempts to get planning permission, will remain in the land bank for longer.
- (b) **Phase B: The length of time required to take an application through planning is substantial and increasing** (see the discussion of the length, cost and complexity of the planning systems in Section 6 of the supporting evidence document). Planning delays can have a material impact on how housebuilders operate and imply that housebuilders will hold more land in both their short- and long-term land banks, but also the land will remain in their land banks for longer.
- (c) **Phases C and D and towards completion: There can be a further time lag between detailed planning permission being granted, and construction commencing. At the build-out stage, housebuilders build to the absorption rate, which may lengthen the time land remains in**

⁶⁵⁵ We take the figure of more than 132 months, as this relates to land that has been owned/controlled before the introduction of NPPF in 2012 in England.

short-term land banks. We note that not all land in short-term land banks will be ready to be built out immediately. For example, land with outline planning permission will be some way off from construction commencing; there will also generally be a time lag between detailed planning permission being granted and/or reserved matters being discharged for construction to start. Each of these factors are necessary parts of the development pipeline and imply a need for land banks. In addition, as we discuss in the Section 9 of the supporting evidence document, construction can be delayed even once detailed planning permission is granted, for example due to labour and materials constraints or if a site is challenging to build out due to its topography or layout. Further, as we also discuss in Section 9 of the supporting evidence document, housebuilders have an incentive to build out in a manner which does not reduce their sale prices, which may mean building more slowly and so keeping land longer than they could otherwise. This would mean land being held up in short-term land banks is a symptom of this phenomenon, rather than being concerning in and of itself.

- 8.42 Overall, we do not consider the aggregate size of land banks in and of themselves present a concern. Rather they are likely to reflect underlying issues in the operation of the market such as the operation of the planning system and incentives to moderate the speed at which sites are built out. They may also be indicative of other sources of unavoidable delay, as detailed in Section 9 of the supporting evidence document.
- 8.43 We look at land hold-ups and ransom strips as a further source of delay in the following section.

Land hold-ups and ransom strips

- 8.44 We have heard that land owned or controlled by housebuilders can remain in a land bank for longer if owners of adjacent land deploy tactical measures that obstruct the development. This can add to the time and cost required to develop sites. Such tactical measures are sometimes referred to as land hold-ups and ransom strips, although these are not necessarily mutually exclusive actions. Such actions can affect land that is both developable and undevelopable, and they can arise during the development of a site. In this section, we:
- (a) Define what is meant by land hold-ups and ransom strips;
 - (b) Summarise the evidence we have received from the top 11 housebuilders and Homes England; and
 - (c) We provide our views on the evidence we have received and the impact these measures can have on how long land remains in land banks.

Defining ransom strips and land hold-ups

- 8.45 A ransom strip refers to a parcel of land needed to access an adjacent property from a public highway, to which the owner is denied access until payment is received. A ransom strip can be a strip of land that has been retained when a larger piece of land has been sold. This strip is often a thin section of the land that can be around the boundary, at a potential access point or between parcels of private land or between private land and a public highway.⁶⁵⁶ We understand that this is more likely to occur in urban areas where housebuilders are more likely to encounter fragmented land ownership.
- 8.46 In contrast, land hold-ups can relate to many different situations, which can include but are not limited to situations such as:
- (a) A landowner refusing to sell their land to the housebuilder. This can be caused by many different factors such as disagreements over the price of the land, concerns about the impact of the development on the environment or the wider area.
 - (b) Multiple landowners of adjoining parcels disagreeing over how to develop the land. The causes of such hold-ups can include rival landowners arguing that competing sites are not deliverable; landowners having to agree that land should come forward in combination with adjoining sites; or rival landowners needing to agree a link such as a road between sites. They can also relate to other rights and interests, such as sub-surface mine and mineral rights.
 - (c) Where there are established developments (these can be commercial or residential developments in built-up areas), hold-ups can occur when claims are raised about the impact on noise pollution and access to light.

Summary of the evidence

- 8.47 We asked the top 11 housebuilders to provide details of their experiences of these issues in the last two years. Two of the 11 housebuilders told us they had not experienced these issues in this period. Nine of the 11 housebuilders provided details of issues, but some experiences occurred outside of the last two years.
- 8.48 Several of the top 11 housebuilders told us that these practices can be tactical in some instances, where actions are taken in an attempt to get a financial payout in return for the claim to be withdrawn. But in other instances, these actions can be genuine disagreements over property rights and the result of the different landowners' interests not aligning at the same time to move developments forward. These actions appear to occur quite infrequently; seven of the nine

⁶⁵⁶ [Ashfords \(2021\) What is a 'ransom strip' and does size matter?](#)

housebuilders who provided details of experiences with hold ups provided 20 different examples, which equates to roughly 1 per cent of the total number of long-term sites we have from the land banks data, and with costs ranging between £5,000 to more than £1 million to resolve. Housebuilders address these situations through negotiations in some instances; in others, they can be mitigated through due diligence prior to acquiring land. However, the housebuilders indicated they can add significant time delays and costs where they occur.

8.49 The time taken and the costs involved can vary as they can depend on the complexity of the hold-up or ransom claim.

(a) One housebuilder told us that a commercial business near a development site raised a claim that future residents of that nearby site would complain about future noise [from the business site]. Legal proceedings and finding a resolution delayed site development by [1 – 5] years and cost more than £[80,000 – 90,000].

(b) One housebuilder told us that the owner of a strip of land that was adjacent to their site raised an objection over their entire development because an access point would be required over their strip of land. They said that this objection made local planners nervous of a judicial review. To resolve this situation, the housebuilder submitted a fresh planning application to overcome the ransom claim and agreed to additional contracts with the adjacent landowner. This took over [5 – 10] years and cost more than £1 million.

8.50 Homes England told us that they invest in strategic pieces of land as they become available which can require further work to bring it forward for development. This can involve several different actions which need to take place before building can commence, including: combining the land owned by many different landowners through collaboration where risks and rewards are shared; renegotiating ransom strips; and putting in place high-cost infrastructure (eg that valued at £100 million). It can be more difficult for individual landowners or housebuilders to achieve agreement over these actions and so Homes England has a role in facilitating collaboration. All these factors will contribute to land remaining in the land banks for many years until these hurdles are cleared. Homes England also highlighted that the planning system strongly influences the speed of progress of land towards development. Homes England has had some experiences of hold ups due to ransom strips but considered it difficult to tell how prevalent such situations are.

Conclusion

8.51 Land may be delayed from development where it is held up by disagreements with neighbouring landowners, including as a result of ransom strips. The evidence we have received indicates such situations occur quite infrequently, but that when

they do, they can have a significant impact on the time and cost involved in development. Some hold-ups are likely to be borne of genuine disagreements over property rights and the effect on others' land from developments. These are risks which housebuilders are well aware of and try to mitigate, for example through due diligence prior to purchase.

- 8.52 Overall, across all land held by housebuilders we do not consider hold-ups caused by such disagreements are likely to materially affect how long land takes to be developed.

Exploring local concentration and land banking

- 8.53 In this section, we focus on a subset of our data analysis and look specifically at local land holdings and local planning permissions, to understand local-level concentration in land claims.

Identifying local areas with high concentration

- 8.54 To assess the local concentration of land holdings and development activity, we used LPA and/or LA areas as a proxy for local housing market areas (**HMA**s), as discussed further in Appendix E on identifying housing market areas.
- 8.55 In Appendix G, we set out the methodology for identifying concentrated areas. We used two methods to identify local concentrated LPA/LA areas using the land banks data and the permission data (see Appendix C for details of the land banks data sources used). We identified a total of 26 local areas. By nation, these local areas are distributed as follows:
- (a) 19 local areas were identified in England;
 - (b) 6 local areas were identified in Scotland; and
 - (c) 1 local area was identified in Wales.

Review of evidence on local concentrated areas

- 8.56 In Appendix H we provide details of the evidence we gathered to further investigate the 26 local areas we identified with high concentration, and which we set out in our Land Banks Working Paper.
- 8.57 In our subsequent phase of work, we found no concerns with 17 of the 26 local areas, finding that sufficient new build properties were being completed to meet local housing need and there was land available for future development.
- 8.58 For the remaining 9 local areas, we reviewed the information we received from the top 11 housebuilders and other stakeholders who operate in those areas to

understand the local competition dynamics. From our review of this information, concentration does not appear to be arising as a result of deliberate strategies to limit competition in those remaining areas.

- (a) For Wales, we examined the evidence we received for Pembrokeshire. The evidence suggests that the local concentration concerns appear in part due to a lack of permissioned land available to build new homes, which has led to a lack of mix of housebuilders being present.
- (b) In Scotland, we examined the evidence for three local areas: East Renfrewshire, East Dunbartonshire and West Dunbartonshire. The evidence suggests that there have previously been more developments undertaken but there is less information on current development activity, such that concentration is lower than originally indicated. In all three areas, we have viewed documents that outline strategic land opportunities for potential future developments.
- (c) In England, we examined the evidence for five local areas: Havant, Kingston Upon Thames, South Tyneside, Tower Hamlets and Watford. The evidence suggests that, for each of these areas, a mix of different housebuilders have been active recently. Many developments in these areas have been completed or are due to complete over the next few years. Additionally, in South Tyneside, the evidence suggests that new build developments have been limited because of a lack of developable land and due to the lack of planning applications being granted.

Conclusion on local concentration and land banking

- 8.59 From our review of the evidence, the small number of instances of concentration that we have identified do not appear to be arising as a result of deliberate strategies to limit competition in those areas. In some cases, concentration is lower than our initial screening indicated or appears to be a relatively short-term phenomenon. In others, it arises due to a limit on the amount of land suitable for development or number of permissions being granted in that area which acts as an external constraint on how many builders can be active.
- 8.60 In summary, our in-depth analysis of concentration at the local level has not revealed any concerning areas, with the majority of local housing markets characterised by the presence of several housebuilders.

9. Drivers of price and build out

- 9.1 An important driver of outcomes in most markets is how firms make decisions around how much, and what type, of supply to bring to the market, and what price they are going to charge for that supply. In the housebuilding market this is a particularly complex process, with policies in relation to home ownership and regulation (particularly planning) playing a significant role.

How build-out rates interact with prices

- 9.2 Housebuilders are strongly incentivised to maximise the price at which they sell homes, rather than to lower the price in order to increase the volume of sales.
- 9.3 The extent to which housebuilders can expand their supply in a local area is limited by the volume of homes for which they have planning permission and the rate at which they can feasibly build homes.⁶⁵⁷ Housebuilders can increase the rate at which they sell these homes by offering them for sale at below the market price. However, because the number of homes housebuilders can build (and therefore sell) in an area in the short to medium term is inherently limited by the planning system, lowering their prices is more likely to bring sales of these homes forward in time, rather than increasing their overall sales over the medium term.⁶⁵⁸ Therefore, reducing prices will reduce the overall revenue that housebuilders receive for these sales and this is unlikely to be offset by a reduction in costs (e.g. lower financing costs as a result of selling homes more quickly). Consequently, reducing prices to increase sales will rarely be a profit-maximising strategy for housebuilders. One housebuilder's internal documents show that they are aware of this trade off between price and volume, whereby a given proportionate increase/fall in prices has a greater impact on profitability than an equivalent proportionate increase/fall in volume.
- 9.4 There is strong evidence from studies,⁶⁵⁹ as well as housebuilders' RFI responses and internal documents, that the rate at which homes are sold and built within a local market is generally slower than the pace at which housebuilders could build them. This evidence shows that instead of seeking to sell homes as quickly as possible, housebuilders tend to sell them at a rate that is consistent with the local

⁶⁵⁷ In the longer term, supply will depend on the extent to which they can get hold of further land with planning permission in the area.

⁶⁵⁸ Once a housebuilder has built out and sold the homes it has planning permission for in an area it cannot simply sell more homes. To increase sales above this level a housebuilder must first obtain more planning permissions which, as we explain above, is a lengthy and risky process.

⁶⁵⁹ See for example: [Independent review of build out: final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/independent-review-of-build-out-final-report.pdf); [Why not build faster?: Explaining the speed at which British house-builders develop new homes for owner-occupation - Enlighten Publications \(gla.ac.uk\)](https://www.gla.ac.uk/research/research-projects/why-not-build-faster/); [Start to Finish \(second edition\): What factors affect the build-out rates of large scale housing sites? \(lichfields.uk\)](https://www.lichfields.uk/start-to-finish/)

absorption rates.⁶⁶⁰ To prevent excess capital being tied up in unsold housing stock, housebuilders also tend to build homes at a similar pace at which they offer homes for sale.

- 9.5 Housebuilders tend to avoid reducing the sales prices of houses as far as possible, although they do offer incentives to individual consumers at the margin (eg part-exchange, subsidisation of mortgage, free upgrades on kitchens) to help drive sales. This is supported by evidence from housebuilder internal documents detailing their responses to the sudden rise in interest rates in Autumn 2022. These documents show that while housebuilders tended to experience a significant fall in the rate at which homes were sold, they did not respond by seeking to reduce the prices at which they sold the homes,⁶⁶¹ although in some cases they did step up the level of incentives they offered.⁶⁶²
- 9.6 We note that while housebuilders do commonly use incentives to compete for sales, they are limited in the extent to which they are able to do so. Internal documents show that the use of incentives is very common. However, one housebuilder told us that conditions imposed by mortgage providers means there are limits on the value of the incentives they can provide without having to reduce headline prices.
- 9.7 The land purchase process further contributes to housebuilders' focus on sale prices above volumes. Most land is bought under the residual valuation model, meaning that when housebuilders bid for land, they offer a price that is affordable based on their estimate of the value of the homes they can build on it, taking into account the costs of developing a site, and their target rates of return.
- 9.8 As we explain in the supporting evidence document on the land market, the majority of land sales we have information on involve some form of competitive process, with many different types of bidders involved. Any successful bid for land is therefore likely to incorporate the most optimistic (but plausible⁶⁶³) assumptions about future market prices. Such competition is welcome, to the extent that it incentivises landowners to bring land forward. But it also means that a housebuilder's bid for land will need to put forward development plans that

⁶⁶⁰ Albeit as we explain in more detail in paragraph 9.30, there are certain technical and supply side factors which will limit the rate at which homes could be built.

⁶⁶¹ Although over the course of the period since there has been a modest fall in house prices.

⁶⁶² For example, one housebuilder in a finance update to executives in December 2022 detailed significant falls in site visitors and sales rates which lead to the introduction of incentives to subsidise mortgage payments for a period and offer improved part exchange terms. Another housebuilder in its December 2022 CEO report reported a large drop in sales rates and updated incentives including mortgage, deposit and bills contributions for certain customers. A housebuilder in its December 2022 CEO report to the Board notes that despite significant falls in sales rates and forward reservations it did not experience similar falls in selling prices.

⁶⁶³ If the housebuilder repeatedly overestimated the value it would realise from a development, it would consistently make a loss. This encourages housebuilders not to use pricing assumptions that are substantially above the current market price of similar homes.

maximise the site's future sale value if it is to be the winning bid. With all housebuilders pursuing the same strategy, there is a strong market imperative to seek price maximisation, which implies moderating build-out speed.

- 9.9 At the same time, where the supply of development land is inherently limited by the planning system, competition for land potentially increases land prices to a level that is significantly above what landowners would be willing to accept for their land.⁶⁶⁴ This suggests if housing were delivered more quickly and at lower prices then, where this resulted in housebuilders being willing to pay less for land, it may not have a significant impact on the overall supply of land.

Factors which influence new build prices

- 9.10 As noted above, housebuilders generally have an incentive to maximise the price they achieve for their houses. However, the price of new build homes is constrained by both the price of other comparable new build homes in a local area, and the price of comparable second-hand properties.
- 9.11 Internal business cases prepared by housebuilders as part of the land purchase process provide a useful insight into how housebuilders set the prices for new homes. Evidence from these business cases shows that housebuilders consider the local market prices of both comparable new build and second-hand properties to be a constraint on their pricing of new build homes.
- 9.12 Data on the price of comparable new build properties in a local area is a key input into the price at which housebuilders expect that they will be able to sell new build homes. Our analysis of a selection of housebuilders' business cases for land purchases shows that housebuilders routinely use data on the prices of comparable nearby new build developments when making pricing assumptions for land purchases. When determining the comparability of nearby new build properties, housebuilders consider factors including the size, layout, specification, and location. In addition, we understand that housebuilders also consider relevant local demand-side factors when setting prices of their developments relative to comparator developments. This can include assessing how factors such as local amenities, transport connections, and the demographics of the local population for a site compares with those for other developments.
- 9.13 In addition, these business cases also show that housebuilders usually consider prices of nearby second-hand houses when forecasting prices during land purchases. However, new build homes are often sold at a small premium to second-hand homes: the so-called 'new build premium'. For example, one internal document suggests that housebuilders can price above the second-hand market in

⁶⁶⁴ See for example, [Gathering the windfall | CPP \(progressive-policy.net\)](#); Muellbauer (2023) [Why we need a green land value tax and how to design it - ORA - Oxford University Research Archive](#).

some locations. The document suggests that the housebuilder believes it can price 5% above the second-hand market in one location because the houses are new builds 'with all the associated benefits'. The evidence from these business cases suggests that prices of new build houses face some constraint from the second-hand market, although they can generally be priced slightly above the second-hand market because of there being some differentiation between new build and second-hand houses.

- 9.14 Other evidence also suggests that the price of second-hand homes is a constraint on new build prices. Our consumer research found that whether a property was a new build was generally a secondary factor in consumers' decision to purchase a property. It concluded that, 'The main decision factor for buying a property tended to be the location and the extent to which the property met buyers' expectations in terms of size and cost. The fact that it was a new build was in most cases a secondary factor.'⁶⁶⁵ This suggests that consumers will often consider both new build and second-hand homes when buying a property.
- 9.15 At a national level there is a strong correlation between the rate at which prices of new build homes change, and the equivalent price evolution for second-hand homes (see Figure 9.1). This suggests that the price of new build housing is bounded above, at least to some extent, by the price of second-hand housing. Second-hand home sales account for the majority of transactions in the housing market: in England and Wales transactions for new build homes made up only 11% of total housing market transactions, on average, between 2013-14 and 2022-23.⁶⁶⁶

⁶⁶⁵ [CMA consumer research](#)

⁶⁶⁶ [CMA analysis of ONS datasets HPSSA 6](#) and [HPSSA 7](#).

Figure 9.1 Indices of new build and second-hand property prices in England and Wales (1 April 1995=100)



Source: CMA analysis of data from [UK House Price Index: data downloads September 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/data-downloads/uk-house-price-index-data-downloads)

9.16 Therefore, we do not consider it likely that, in general, housebuilders will account for a sufficient fraction of housing sales in a given local area to allow them to increase prices above the current market level by restricting their output. However, as we explain above, our analysis suggests that housebuilders could supply homes to the market at a faster rate than they do and reduce their prices, although they typically choose not to do so.

Factors which influence the speed of building

9.17 The rate at which homes are delivered varies from area to area and from site to site and is influenced by a variety of factors. Broadly these factors fit into one of two categories:

- (a) Factors which influence the rate at which housebuilders are willing to supply homes; and
- (b) Factors which influence the rate at which housebuilders could feasibly supply homes.

Factors which influence the rate at which housebuilders are willing to supply homes

9.18 As discussed above, housebuilders tend to build houses at a rate that is consistent with the local absorption rates. The rate at which housebuilders are willing to supply homes is affected by a variety of factors that affect absorption rates and the likelihood of them imposing a limiting constraint on the builder's plans, including:

- The level of local and aggregate demand: where local demand is greater relative to the supply of housing, housebuilders are more likely to believe they can sell at a faster rate without impacting the price they can charge.
- The diversity of housing on a site and within the local area: different types of homes provided can appeal to different groups of buyers, and therefore can be sold more quickly without reducing the market price than would be the case for the same number of more homogenous homes.

Level of local and aggregate demand

- 9.19 As we describe in paragraph 9.4 above, a key factor which influences the rate at which housebuilders are willing to build and sell homes is the local absorption rate. Therefore, sales and build-out rates, are likely to be higher in areas where demand is greater relative to the supply of housing. This is because in these areas, housebuilders are more likely to be able (or believe they will be able) to sell at a faster rate without disturbing the market price, meaning they can build out at a faster rate.
- 9.20 Several pieces of research support this, including work by Lichfields,⁶⁶⁷ and Ball et al.⁶⁶⁸ which all suggest that areas with greater demand have faster build-out rates due to the greater ability of housebuilders to sell homes on to the market at given prices. In addition, as we discuss in paragraph 9.4, our review of housebuilders' internal business cases as part of land purchases shows that the level of local demand is the main factor that housebuilders consider when making assumptions about expected local house prices, sales rates, and build-out rates because of its role in determining the absorption rate. As part of assessing demand, housebuilders consider the prices and sales rates of nearby new build sites, the second-hand market, local amenities, transport connections, and the demographics of the local population.
- 9.21 Local demand for housing will be strongly influenced by the national economic outlook, particularly expectations for interest rates and household incomes. The rate at which housebuilders sell homes will therefore be strongly influenced by the prevailing macroeconomic conditions. As we describe in paragraph 9.5, housebuilder internal documents show that sales rates slumped in the immediate aftermath of the sudden rise in interest rates in autumn 2022 (although average selling prices did not).⁶⁶⁹ In addition, research by Savills shows how the sales rates for major housebuilders have fluctuated over time in accordance with the

⁶⁶⁷ [Lichfields \(2020\) Start to Finish](#)

⁶⁶⁸ Ball, Cheshire, Hilber, and Yu (2023) 'Why Delay? Understanding the construction lag AKA the build out rate', presented at International AREUEA Conference, July 2023.

⁶⁶⁹ However, we note that in the period since the mini-budget there has been a modest decline in average house prices.

economic outlook – with sales rates falling significantly following the Global Financial Crisis, the Covid-19 pandemic, and Autumn 2022.⁶⁷⁰

Diversity of type and tenure of housing

- 9.22 There is evidence to suggest that a greater diversity of housing can increase the speed of housing delivery. Diversity of housing can take a number of forms, but generally speaking diversity at a site takes the form of either or both:
- (a) diversity of type of housing – eg differences in the branding, size, and design of the homes; or
 - (b) diversity of tenures of housing – housing tenure refers to differences in the *financial arrangements and ownership structure under which someone has the right to live in a house. Different housing tenures would include homes sold into the private market, privately rented housing and affordable housing.*
- 9.23 In principle, differences in the type of housing both at a site level and within the local area may influence the rate at which housebuilders are willing and able to build and sell houses. There is evidence to suggest that different types of housing may appeal to different customer groups, and thus offering greater diversity can increase the rate at which houses can be sold:
- (a) Several internal documents show that housebuilders consider the mixture of houses in terms of size and style when forecasting the sales rate. These documents suggest that increasing the product mix on a site can increase the sales rate. For example, one document states ‘Given the size of the site it is envisaged that part of the site could be remixed with the [X] range. This would increase the product mix and potentially the sales rate’.
 - (b) One housebuilder suggested that the mix of housing relative to the second-hand market can have an impact on the build-out rate. It also suggested that smaller houses generally drive a faster absorption rate, but in certain locations larger houses can have faster absorption rates due to the second-hand stock being predominantly smaller.
 - (c) Some housebuilders suggested that using multiple brands on a site can improve build-out rates on large sites. This is because using multiple brands allows housebuilders to tailor their offering to different customer groups, and thus increase the sales rate. This has been supported by some internal documents, with one housebuilder analysing the impact of dual branding on 25 large sites making a preliminary finding that an additional brand may provide an uplift in sales rate.

⁶⁷⁰ See Figure 1 of [Savills \(2023\), A new normal for housebuilding?](#)

- (d) The Letwin review,⁶⁷¹ as well as research by Lichfields and Savills,⁶⁷² found that across small samples of large sites, sites that had a greater variety of types of housing tended to build homes at a faster rate. However, we note that Greenhalgh et al. find a negative correlation between site diversity and site output.⁶⁷³

9.24 Similarly, increasing the diversity of tenures can influence the rate at which housebuilders are willing to supply homes. Several housebuilders told us that when they build affordable housing or build-to-rent housing at their sites, the price of this housing is typically agreed relatively early in the development at a fixed price and that the supply of this housing tends not to impact the rate at which houses can be sold into the private market. This means these tenures can be built at a faster rate because the rate at which they are sold will not influence their price. Furthermore, as these sales have limited impact on private sales rates, they can also be built alongside and in addition to homes for sale onto the private market. For example, one housebuilder told us it ‘aims to pre-sell at least 50% of any development prior to construction, often as affordable housing ... This model supports an accelerated build out rate by providing [X] with greater certainty around its inventory. [X] can build out, and transfer, pre-sold plots immediately instead of bringing supply to the market in order to meet demand’.

9.25 There is evidence to support the view that increasing the diversity of housing tenures may increase the rate at which homes are built:

- (a) Lichfields analysis of a sample of large sites found that sites with more affordable housing (again an indicator of diversity) were built out at up to twice the rate than sites with lower (<30%) levels of affordable housing.⁶⁷⁴
- (b) We have also seen examples from housebuilder business cases for land purchases which support the view that diversity of tenure can increase the speed of housing delivery. For example:

⁶⁷¹ [Letwin \(2018\) Independent Review of Build Out Rates: draft analysis](#)

⁶⁷² [Lichfields \(2020\) Start to Finish](#); [Savills \(2018\) What next for housebuilding?](#) Lichfields analyse a sample of 12 sites over multiple years to gather 80 data points and use the number of outlets on a site as a proxy for diversity between developers. They found that, on a site-by-site basis, the average number of outlets open over the site’s entire delivery lifetime had a fairly strong correlation with annual delivery, both as a percentage of total dwellings and in absolute terms, with a greater number of outlets contributing to higher levels of delivery. Savills analyse 30 large sites and consider the impact of house type mix (detached, semi-detached, terraced and flats) on sales rate. They find a positive correlation between diversity and sales rates, although they find an inconsistent relationship and suggest that other factors also influence build-out rate.

⁶⁷³ [\(PDF\) Does the Diversity of New Build Housing Type and Tenure Have a Positive Influence on Residential Absorption Rates? An Investigation of Housing Completion Rates in Leeds City Region \(researchgate.net\)](#)

Greenhalgh et al. analyse land registry house sales data, comprising over 20,000 units, across four local planning authorities in the Leeds city region. They find a negative correlation between site diversity and site output and suggest that where demand is high, house type does not necessarily influence absorption rates, as new build units will sell almost regardless of type.

⁶⁷⁴ Page 17: [start-to-finish_what-factors-affect-the-build-out-rates-of-large-scale-housing-sites.pdf](#) (lichfields.uk).

- (i) One document notes that ‘The viability [of the investment] assumes immediate social unit completions and then a steady rate of 0.6 units per annum.’
- (ii) Another document setting out the financial appraisal of a large site anticipates the building of approximately 700 private homes over a five-year period at a rate that corresponds closely to the expected sales rate of 2.5 per week over the same period; and in addition to these approximately 450 affordable homes over the same period.
- (c) Ball et al. find that increases in the share of ‘public units’⁶⁷⁵ at a site is associated with sites building out more quickly. They suggest this is because public sites are provided by non-profit firms and the development process is not driven by local market conditions.⁶⁷⁶

9.26 Inevitably housebuilders will only choose to increase diversity of housing at a site where it is profitable to do so (to the extent that this is their choice, and not dictated by external factors such as the planning system). Internal documents suggest that housebuilders focus on maximising gross development value when considering the mixture of housing on a site. One housebuilder’s annual report also suggests that they focus on a range of standard house types.⁶⁷⁷ This suggests that the incentive for housebuilders to increase profits by maximising prices and reducing costs may constrain the level of diversity that they would choose to provide on sites.

9.27 There are limits to the extent to which it is possible to increase diversity at some sites. Our analysis suggests that site logistics can limit the diversity of sites. One internal document suggests that some sites lend themselves to dual branding more than others due to having multiple access points. Another suggests that the topography of a site can limit the layout and design options available, which can limit the ability to provide certain types of housing at a site.

9.28 We note that in this independent review of build-out rates, Letwin recommended a series of measures intended to increase the speed of delivery of housing by increasing the diversity of housing at these sites.⁶⁷⁸ At the time of writing, most of these measures had not been implemented, but the Levelling Up and Regeneration Act (LURA) and updated National Planning Policy Framework (NPPF) do contain a number of measures aimed at increasing the rate of housing delivery (we describe these in paragraphs 9.66 to 9.69).

⁶⁷⁵ A dwelling is labelled as a ‘public unit’ if it is either built by a housing association or jointly developed by a private developer and a housing association.

⁶⁷⁶ Ball, Cheshire, Hilber, and Yu (2023) ‘Why Delay? Understanding the construction lag AKA the build out rate’, presented at International AREUEA Conference, July 2023.

⁶⁷⁷ [Page 16 of Bellway annual-report-2022.pdf \(bellwayplc.co.uk\)](#).

⁶⁷⁸ [Independent review of build out: final report - GOV.UK \(www.gov.uk\)](#).

Factors which limit the rate at which homes can be built

- 9.29 The rate at which housebuilders *could* feasibly supply homes on a given site is affected by a range of external factors. Several housebuilders told us that operational and supply-side constraints can influence build-out rates. These comments have been supported by internal documents which suggest that in some instances supply has not been able to keep up with demand and therefore that build out has been constrained. However, we note that these factors appear to be largely localised and, in many cases, transitory, meaning the extent to which they influence build-out rates will vary over time as well as on an area by area and site by site basis.
- 9.30 We have identified several factors that can influence the rate at which homes can be supplied, including labour and material constraints, site characteristics, weather, house type, and delays caused by third parties.
- (a) **Labour and materials constraints:** Several housebuilders told us that build-out rates can be constrained by labour and material shortages. Internal documents suggest that labour and materials shortages have been a concern for housebuilders in recent years. One internal document suggests that there have been long-term structural issues causing labour shortages. However, several housebuilders suggested that shortages have worsened in recent years. A number of reasons for this were suggested, including EU Exit, the Covid-19 pandemic, and the situation in Ukraine. However, some internal documents suggest that shortages have been manageable and have not impacted build-out rates. Some internal documents also suggest that shortages are beginning to ease.
 - (b) **Weather:** Some housebuilders told us that weather conditions can slow build-out rates. One housebuilder suggested that adverse weather conditions can lead to significant delays in the construction of pre-watertight stages, with bricklaying being a particular challenge. This is supported by an analyst report provided to us by a housebuilder which suggests that “weather can also have an impact on build rates and completions, with seasonality remaining a key feature of the housebuilding market”. Ball et al. also find that weather can impact build-out rate.⁶⁷⁹
 - (c) **Site characteristics:** We understand that the characteristics of a site, including whether a site is greenfield or brownfield, and the topography and logistics of a site, can also impact build-out rate.

⁶⁷⁹ Ball, Cheshire, Hilber, and Yu (2023) ‘Why Delay? Understanding the construction lag AKA the build out rate’, presented at International AREUEA Conference, July 2023.

- (i) Some housebuilders told us that greenfield sites take longer to build than brownfield sites, although one said it was not possible to make broad, general comparisons between greenfield and brownfield sites. One housebuilder said that brownfield sites usually take longer because they are more likely to require demolition and remedial work prior to the superstructure construction, which adds to the overall project timeline.⁶⁸⁰
 - (ii) Some housebuilders also said that the topography of a site can impact build-out rate. It was suggested this is because sites with more complex topography require significantly more work prior to the superstructure construction to create levels and build retaining walls, leading to slower build-out rates.
 - (iii) Some housebuilders also suggested that site layout can have an impact on the build-out rate. This is because a site's layout can impact the number of access points and ease of movement, which can impact the build-out rate.⁶⁸¹
- (d) **House type:** We understand that different house types take different durations to build and can therefore affect the build-out rate. One housebuilder suggested that the number of storeys on a house can influence the build duration. Another housebuilder told us that the complexity of the dwellings being built can influence the construction duration.⁶⁸² Make UK Modular claim their analysis shows that modular houses can be built in 20 weeks, compared with 40 weeks for brick-built houses.⁶⁸³
- (e) **Local authorities and third parties:** Several housebuilders told us that delays by local authorities and other third parties can affect the build-out rate. A variety of delays were mentioned, including delays by utility providers in relation to network connections, delays due to environmental legal negotiations (such as tree protection orders), and delays in the delivery of wider infrastructure. Another was delays in discharging pre-commencement planning conditions, which does not relate to the construction phase of a site,

⁶⁸⁰ This argument is supported by some existing evidence. Work by Lichfields ([Lichfields \(2020\) Start to Finish](#)) suggests that large greenfield sites deliver around one third more dwellings per annum than large brownfield sites. However, the study only focuses on large sites and does not control for other variables, such as differences in size that may be driving this difference. Letwin ([Letwin \(2018\) Independent Review of Build Out Rates: draft analysis](#)) also compares the build-out rate of greenfield and brownfield sites; however, he finds that site type does not impact build-out rates. He argues that remediation work on brownfield sites is usually required before planning consent, meaning it does not impact the build-out phase of a site.

⁶⁸¹ This argument is supported by Lichfields ([Lichfields \(2020\) Start to Finish](#)) who draw on case studies to suggest that sites which have multiple access points can have higher build-out rates. However, Letwin ([Letwin \(2018\) Independent Review of Build Out Rates: draft analysis](#)) found no evidence that site logistics impede the build-out rate of a site, outside of highly constrained inner-city settings

⁶⁸² This includes factors such as the complexity of design and construction as well as the nature of planning conditions. Development of apartments is typically more complex than houses.

⁶⁸³ [Greener, Better, Faster: Modular's Role In Solving The Housing Crisis | Make UK](#)

but to delays in the clearance of pre-commencement conditions, which can then lead to delays in starting work on a site after planning permission has been obtained.

The role of the private market in meeting housing need

9.31 Increasing housebuilders' incentives to supply homes more quickly could potentially have some impact on the price of housing and the number of homes that are delivered. However, this is unlikely to be sufficient, in and of itself, to deliver enough homes to meet housing need as described in Section 2 Supply and Affordability because:

- (a) As we explain in Section 6 on the planning system, insufficient planning permissions have been/are being granted to meet housing need. Unless more planning permissions are granted over the longer run, improvements to build-out rates are likely to change *when* homes are built, rather than to have a large impact on *how many* homes are built.
- (b) A competitive private market will not, on its own initiative, produce sufficient housing to meet overall housing need. The cost of private sector housing, and the level and distribution of incomes and assets, means that significant numbers of households lack the resources to be able to afford adequate housing on the private market. In addition, the wider benefits of housing availability and conditions (such as health outcomes,⁶⁸⁴ educational attainment, and productivity⁶⁸⁵) are not captured by private actors in the market (housebuilders and landowners) as profit. This means that the private market will not, on its own initiative, produce sufficient housing to meet overall housing need, even if it is highly competitive.⁶⁸⁶

9.32 However, increasing housebuilders' incentives to supply homes more quickly could have implications for how housebuilders might respond to reforms aimed at increasing housing supply. Given that many areas have a shortage of supply (see Section 2 Supply and Affordability), the options for loosening the restrictions on housebuilding posed by planning we set out in Section 6 on the planning system, could be expected to boost the pace of housing delivery in those areas. However, we note that reforms to the planning system to boost the number of planning permissions granted may not have the desired effect on build-out rates in areas where the local absorption rate is a significant constraint on how many homes are supplied. Areas where demand for housing is relatively limited compared to the potential supply (how many homes could be built) are most likely to be significantly

⁶⁸⁴ [Housing and health: a reading list - House of Commons Library \(parliament.uk\)](#)

⁶⁸⁵ [How does the housing market affect UK productivity? - Economics Observatory](#)

⁶⁸⁶ We note that, at the same time, many individuals see negative externalities from new housing, hence the frequent objection to new developments, although these are not typically factored into assessments of housing need.

constrained by the absorption rate. In areas where demand is high compared with potential supply then the absorption rate is much less likely to be a constraint on how many homes are supplied by housebuilders.

Housebuilders' commercial decisions could be influenced by the sharing of non-public information

- 9.33 Housebuilders' commercial decisions are based on a range of information. Much of this is publicly available, such as listed house prices (available through housebuilder or estate agent websites), achieved (headline) prices⁶⁸⁷ (through land registry with some lag), competitors' plans for number and types of houses to be built (through planning applications), and to some extent competitor sales (through housebuilder websites) and incentives (some incentives are advertised publicly on housebuilders' websites). We also understand that the HBF publishes weekly figures at an aggregate level to members on the number of site visitors, active sites, net reservations, and the number of net reservations from multi-unit sales (for England, Wales, and Scotland). Some housebuilders also make information on achieved or target hurdle rates available in their annual reports,⁶⁸⁸ although we understand in practice these are sometimes flexed for specific sites e.g. where the land is considered to be higher or lower risk where land is more scarce. Therefore, there is a significant amount of publicly available information available which will inform housebuilders' decision-making on price, sales rates and build-out rates.
- 9.34 Evidence from some of the largest 11 housebuilders' internal documents suggests that some sharing between themselves of apparently non-public information on sales prices, incentives, and rates of sale may be taking place. The sharing of commercially sensitive information has the potential to weaken competition between housebuilders by reducing strategic uncertainty in the market and influencing housebuilders' commercial decisions, potentially including on output or prices. Housebuilders may find it mutually beneficial to share this information because it helps to provide greater certainty about rivals' current market prices (including any incentives they provide) and sales rates and this potentially could influence the prices at which they bid for land and/or their own decisions about the current levels of pricing, sales rates, and build-out rates.
- 9.35 We are concerned that any sharing by housebuilders of non-public information of this kind may have the object or effect of preventing, restricting or distorting

⁶⁸⁷ We understand that at least some forms of incentive would not appear in these prices as they do not directly affect the price the consumer pays to the housebuilder for the house.

⁶⁸⁸ See, for example: [Vistry-R-A-Final-AW-2022-2023.pdf \(vistrygroup.co.uk\)](#) p.20: "All new development opportunities for Partnerships have a minimum 40% ROCE hurdle and minimum 50% pre-sold revenue hurdle."; [Barratt Developments PLC Annual Report and Accounts 2023](#), p.24: "We will continue to apply our long-standing hurdle requirements for land investment, which require a minimum gross margin of 23% and ROCE of 25%".

competition. While we do not consider this behaviour to be one of the main factors in the persistent under-delivery of the market against government targets and assessed need (and, therefore, in contributing significantly to increasing affordability pressures at a market-wide level), we do consider that it may weaken competition in the market. In light of these concerns, we have decided to launch an investigation into this suspected conduct under the Competition Act 1998.

Government interventions affecting price and supply

9.36 In addition to the competitive decisions of private housebuilders, the quantity and price of new build housing in the market can be influenced by government policy interventions. In this section, we discuss some of the more significant policy interventions in the housebuilding market by government.

Help to Buy

9.37 The Help to Buy: Equity Loan scheme was introduced to address a fall in property sales following the Global Financial Crisis and the consequent tightening of regulations by the regulatory authorities over the availability of high loan-to-value and high loan-to-income mortgages. The scheme had two principal aims: to help prospective homeowners obtain mortgages and buy new build properties; and, through the increased demand for new build properties, to increase the rate of house building in England.⁶⁸⁹ Similar schemes were run in Wales and Scotland, although with different eligibility criteria.

9.38 In England, the scheme provided an equity loan from government of up to 20% (and from February 2016, 40% in London) of the market value of an eligible new build in England, initially for properties up to the value of £600,000. The loan was interest free for five years, with the interest rate rising each year from year six onwards, and the value of the loan changing with the value of the property. Buyers had to meet affordability requirements to show they could repay the bank mortgage. Buyers outside London can repay either 50% or 100% of the current value of the equity loan any time after the first year of ownership. In London, buyers can repay in up to four instalments, each at least 10% of the home's current market value, any time after the first year. The loan must be paid back in full on sale of the property, within 25 years, or in line with the buyer's main mortgage, if extended beyond 25 years. Up until 2021, both first-time buyers and movers were eligible, although it could not be used for buy-to-let homes or to purchase a second home. From March 2021 to March 2023, only first-time buyers became eligible. In addition, outside of Greater London the maximum price of a

⁶⁸⁹ National Audit Office Progress Review, June 2019 [Help to buy equity loan scheme progress review \(nao.org.uk\)](https://www.nao.org.uk/publications/2019/jun/help_to_buy_equity_loan_scheme_progress_review), p.5.

house which could be purchased was reduced.⁶⁹⁰ Between 1 April 2013 and 30 September 2022, 375,645 homes were bought with a Help to Buy loan (of which 316,805 were bought by first-time buyers).⁶⁹¹ The total value of these equity loans totals £23.7 billion, and the value of the properties sold under the scheme totals £105.4 billion.⁶⁹²

9.39 The Help to buy Scotland Scheme closed in February 2021.⁶⁹³ As in England, the Scottish scheme helped buyers purchase a new build property in Scotland through the provision of an equity loan, which reduces the size of the mortgage that a buyer needs to take out.⁶⁹⁴ The Scheme was established on 30 September 2013 with the aim of supporting Scotland's house-building industry due to reduced mortgage availability, and has been aimed at those buyers who are unable to purchase a new build home without additional support. The purchase price of a property was initially capped up to the value of £400,000 until October 2014, after which it was reduced to £250,000, then to £230,000 in April 2016, and then further to £200,000 in April 2017, to help to target funding at lower income families and first-time buyers.⁶⁹⁵ From the start of HTB (Scotland) in September 2013 until the end of March 2020, 17,250 new build properties have been purchased with assistance from HTB (Scotland). The value of equity loans extended by the Scottish Government under HTB (Scotland) over this period has amounted to £550m.⁶⁹⁶

9.40 Help to Buy – Wales was introduced in January 2014 and is still in operation having been extended until at least March 2025.⁶⁹⁷ The scheme provides a shared equity loan of up to 20% of the purchase price. To be eligible for the Help to Buy – Wales scheme, participants must provide a 5% deposit and be buying a new build home, with a maximum price of £300,000 (from 1 April 2023; before this the limit was £250,000), from a builder who is registered with the scheme. Since 1 April 2023 all homes purchased under the scheme must have an EPC rating of at least B. Between 2 January 2014 and 31 March 2023, 13,641 properties were purchased under the Help to Buy-Wales scheme and 76% of total purchases were completed by first-time buyers. Over this period, the total value of equity loans was £537.6m and the total value of properties purchased was £2,721.0m.⁶⁹⁸

⁶⁹⁰ Regional maximum prices were: South East: £437,600; East of England: £407,400; South West: £349,000; East Midlands: £261,900; West Midlands: £255,600; Yorkshire and the Humber: £228,100; North West: £224,400; North East: £186,100.

⁶⁹¹ See: [Help to Buy: equity loan scheme: data to 30 September 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

⁶⁹² See: [Help to Buy: equity loan scheme: data to 30 September 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

⁶⁹³ See: [Help to Buy \(Scotland\) - Homeowners - gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁶⁹⁴ See: [Help to Buy \(Scotland\) – return 2013 to 2020 – gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁶⁹⁵ See: [Help to Buy \(Scotland\) – Characteristics report 2020-21 – gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁶⁹⁶ See: [Help to Buy \(Scotland\) – Return to 2020 report – gov.scot \(www.gov.scot\)](https://www.gov.scot).

⁶⁹⁷ See: [Help to Buy – Wales | GOV.WALES](https://gov.wales)

⁶⁹⁸ See: [Help to Buy - Wales \(Shared Equity Loan Scheme\): April 2022 to March 2023 | GOV.WALES](https://gov.wales).

- 9.41 Help to Buy in England has been subject to evaluations by DLUHC (undertaken by consultants),⁶⁹⁹ the National Audit Office (NAO),⁷⁰⁰ and the Committee for Public Accounts (CPA)⁷⁰¹ and as part of a broader review of meeting housing demand by the House of Lords.⁷⁰² These reports have generally found that Help to Buy led to some additional housebuilding, particularly in areas that were less supply-constrained. However, the CPA found that while Help to Buy has helped many people to buy properties who otherwise would not have been able to do so, a large proportion of those who took part did not need its help. It also highlighted that DLUHC had allowed the scheme to become a semi-permanent feature, potentially outliving the purpose it was designed for: 'Help to Buy was designed as a short-term solution to address the collapse in supply after the financial crash. The original phase, from 2013 to 2016, stabilised the market and increased developer and buyer confidence, leading to increased demand for, and supply of, new build properties. However, the additional funding for the scheme announced in 2017, when the housing market had improved, might not have been necessary or delivered enough value.'⁷⁰³
- 9.42 Further, the House of Lords reported findings from a leading academic that in areas where housing is severely supply-constrained (such as in Greater London) the scheme has 'led to a substantive increase in house prices, with no statistically significant effect on construction numbers.'⁷⁰⁴ It also reported that the Affordable Housing Commission had concluded that 'many' affordable for sale and rent products 'are clearly unaffordable to those on mid to lower incomes.'⁷⁰⁵ The House of Lords report concluded 'The Government's home ownership schemes come with an opportunity cost and evidence suggests that, particularly in areas where help is most needed, these schemes inflate prices by more than their subsidy value. In the long term, funding for home ownership schemes do not provide good value for money, which would be better spent on increasing housing supply.'⁷⁰⁶
- 9.43 Clearly, Help to Buy also had a significant impact on housebuilders. Across the 11 largest housebuilders, home sales supported by Help to Buy accounted for on average 26% of their total sales between 2013 and 2023. However, the average masks a wide range, with some having 10% or less of their sales supported by Help to Buy, while at the other end of the scale, nearly 40% of one housebuilders' sales were supported by Help to Buy over this period.

⁶⁹⁹ Finlay, S., Williams, P., & Whitehead, C. (Feb 2016). Evaluation of the Help to Buy Equity Loan Scheme. Department for Communities and Local Government and Evaluation of the Help to Buy Equity Loan Scheme 2017 (publishing.service.gov.uk)

⁷⁰⁰ [Help to Buy: Equity Loan scheme – progress review - National Audit Office \(NAO\) report](https://www.nao.org.uk/publications/2016/help-to-buy-equity-loan-scheme-progress-review/)

⁷⁰¹ [Help to Buy: Equity loan scheme: progress review \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/committee-for-public-accounts/reports/2016/help-to-buy-equity-loan-scheme-progress-review/)

⁷⁰² [Meeting housing demand \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/committee-for-public-accounts/reports/2016/meeting-housing-demand/)

⁷⁰³ [Help to Buy: Equity loan scheme: progress review \(parliament.uk\)](https://www.nao.org.uk/publications/2016/help-to-buy-equity-loan-scheme-progress-review/), p.5.

⁷⁰⁴ [Meeting housing demand \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/committee-for-public-accounts/reports/2016/meeting-housing-demand/), p.28.

⁷⁰⁵ [Meeting housing demand \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/committee-for-public-accounts/reports/2016/meeting-housing-demand/), p.28-29.

⁷⁰⁶ [Meeting housing demand \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/committee-for-public-accounts/reports/2016/meeting-housing-demand/), p.29.

- 9.44 However, it should be noted that not all of these sales should be treated as directly attributable to Help to Buy: in some cases, buyers may have been able to purchase an equivalent property even if Help to Buy had not been available, and for others it may have had an impact on the type or size of property they purchased. Nevertheless, the NAO found that Help to Buy supported five of the six largest developers in England to increase the overall number of properties they sold year on year, thereby contributing to increases in their annual profits, although it could not estimate how much Help to Buy had contributed to their increase in profits.⁷⁰⁷
- 9.45 Housebuilders have highlighted a number of different actions they are considering in response to the withdrawal of Help to Buy, including partnering with a new Homes England First Homes scheme pilot, partnering (or exploring partnering) with other organisations to develop a range of schemes to support first time buyers in a variety of ways, schemes to support first time buyers secure access to mortgage products, focusing on private rented or bulk investor sales, and changing the mix and location of properties they may build. Others anticipated Help to Buy as making little difference to their sales, and taken no mitigating steps. This implies that in the absence of Help to Buy housebuilders will employ other tools to support potential buyers into purchasing from them.⁷⁰⁸

Affordable housing

Rationale and need for affordable housing

- 9.46 As noted in Section 2 Supply and Affordability, adequate housing is recognised internationally as a human right.⁷⁰⁹ The cost of private sector housing that meets acceptable standards, compared with the level and distribution of incomes and assets, means that significant numbers of households lack the resources to be able to buy or rent adequate housing from the private market. Without the provision of affordable homes these households can fail to obtain housing of a decent standard. Affordability is determined by a wide range of factors such as household formation, credit conditions, population growth and levels of household income. Where the supply of housing by the private market is suppressed due to, for example, planning constraints or weak competitive incentives then affordability issues can be exacerbated.

⁷⁰⁷ [Help to buy equity loan scheme progress review \(nao.org.uk\)](https://nao.org.uk), paragraph 16.

⁷⁰⁸ We note that prior to Help to Buy, some of the large housebuilders had offered their own schemes to support buyers as well. Some loan balances from these schemes are still ongoing and appear on housebuilders' balance sheets. CMA analysis of published annual reports and accounts across the top 11 housebuilders suggest that at the end of 2022 the outstanding balances of these loans was around £65m, Persimmon had an outshining loan balance of £36m on shared equity schemes at 31 December 2022 (see: page 175 of [Persimmon Annual Report 2022 \(persimmonhomes.com\)](https://persimmonhomes.com))

⁷⁰⁹ [following-grenfell-briefing-right-to-adequate-safe-housing_0.pdf \(equalityhumanrights.com\)](https://equalityhumanrights.com)

- 9.47 In addition, as noted in Section 2 Supply and Affordability, housing availability and conditions can influence a range of socially important factors. These wider benefits will be reflected in the amount of housing that is needed by society. However, these wider benefits are not captured by private actors in the market (housebuilders and landowners) as profit. This means that the private market will not, on its own initiative, produce sufficient housing to meet overall housing need, even if it is highly competitive. Governments are therefore required to intervene in the housebuilding market to help ensure that housing need can be met. Policies to support the provision of affordable housing are one way in which they do this.
- 9.48 There is no consensus on the overall level of affordable housing that is needed in Great Britain (GB). Assessing the level of affordable housing need is a complicated and largely subjective task. In each nation of GB, the governments have adopted targets or aims for the provision of affordable housing based, in part on assessments of need, but which also take account of other policy considerations such as constraints on national budgets:
- (a) During the last parliamentary term (May 2016 to May 2021) the Scottish government adopted a target of delivering 50,000 affordable homes and has since adopted a target of delivering 110,000 affordable homes by 2032.⁷¹⁰
 - (b) In July 2021, the Welsh government committed to deliver 20,000 new low-carbon homes for rent within the social sector during the (4 year) government term.⁷¹¹
 - (c) Although there is no formal government target for the provision of affordable housing in England, the government's Affordable Homes Programme aims to deliver 180,000 new homes between 2021 and 2026.⁷¹²
- 9.49 A report by Bramley (2018) found that new affordable housebuilding of 162,000 across GB was required to meet need (145,000 in England, 10,000 in Scotland and 7,000 in Wales).⁷¹³ In Scotland and Wales the adopted targets are broadly compatible with the assessment of need set out by Bramley and – as Figure 9.3 and Figure 9.4 show – recent levels of affordable housing delivery in these nations are close these levels. However, in England the aim for affordable housing delivery for the Affordable Homes Programme and current levels of delivery (see Figure 9.2) fall well below the Bramley's assessed level of need.

⁷¹⁰ See: [50,000 affordable homes target reached - gov.scot \(www.gov.scot\)](https://www.gov.scot/news/50000-affordable-homes-target-reached/).

⁷¹¹ See: [Written Statement: Social Housing in Wales \(15 June 2021\) | GOV.WALES](https://gov.wales/written-statement-social-housing-wales-15-june-2021/)

⁷¹² See: [Jenrick unveils huge £12 billion boost for affordable homes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/jenrick-unveils-huge-12-billion-boost-for-affordable-homes).

⁷¹³ See: Table 1.2 of Bramley (2018): [crisis_housing_supply_requirements_across_great_britain_2018.pdf](https://www.bramley.org.uk/wp-content/uploads/2018/03/crisis_housing_supply_requirements_across_great_britain_2018.pdf).

Provision of affordable housing in GB

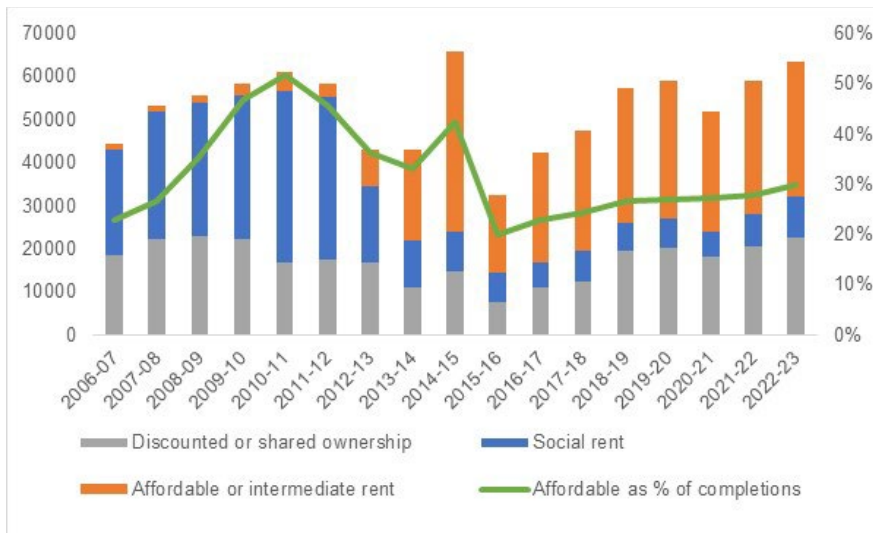
- 9.50 Affordable housing generally takes one of three forms (although the exact definition differs between the nations of GB⁷¹⁴):
- (a) Social rent – homes offered for rent at a substantial discount to market prices (circa 50% or more).
 - (b) Affordable or intermediate rent – homes let at least 20% below local market rents (affordable rental properties) or let at rates set between market rents and social rents (intermediate rental properties).
 - (c) Discounted or shared ownership – there is a variety of schemes in place across GB that operate to sell homes to certain consumers (such as first-time buyers, key workers, or families below a certain income threshold) either at a discount to market prices or through a shared ownership scheme.
- 9.51 The volume and type of affordable housing provided varies between the nations of GB. Figures 9.2 to 9.4 show that compared with England, in Scotland and Wales the provision of additional affordable housing since 2007/08 has represented a greater share of housing provision when assessed against new build completions.⁷¹⁵ In addition, in Scotland and Wales the proportion of affordable housing that is provided as socially rented housing is much greater than it is for England. Our analysis shows that between 2007/08 and 2022/23:
- (a) In England, additional affordable housing supply was equivalent to 31% of new build completions. In terms of types, 31% of additional affordable housing supply was socially rented housing, with 36% being affordable or intermediate rent and 33% being discounted or shared ownership;
 - (b) In Scotland, additional affordable housing supply was equivalent to 41% of new build completions. In terms of types, 71% of additional affordable housing supply was socially rented housing, with 9% being affordable or intermediate rent and 20% being discounted or shared ownership; and
 - (c) In Wales, additional affordable housing supply was equivalent to 41% of new build completions. In terms of types, 63% of additional affordable housing supply was socially rented housing, with 13% being affordable or

⁷¹⁴ For definitions of affordable housing see: (for England) [Fact Sheet 9: What is affordable housing? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/fact-sheet-9-what-is-affordable-housing); (for Scotland) [SECTION 1: AFFORDABLE HOUSING - Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/section-1-affordable-housing-planning-advice-note-2-2010/pages/section-1-affordable-housing-planning-advice-note-2-2010.aspx); (for Wales) [Technical Advice Note – Planning and Affordable Housing - \(gov.wales\)](https://gov.wales/technical-advice-note-planning-and-affordable-housing).

⁷¹⁵ Note that not all additional affordable housing supply will be new build housing as in some cases additional affordable housing can be existing housing stock converted to affordable status. However, the vast majority of additional affordable housing tends to be new build, for example in England in 2021/22 92% of additional affordable housing was new build (see: [Affordable housing supply in England: 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/affordable-housing-supply-in-england-2021-to-2022))

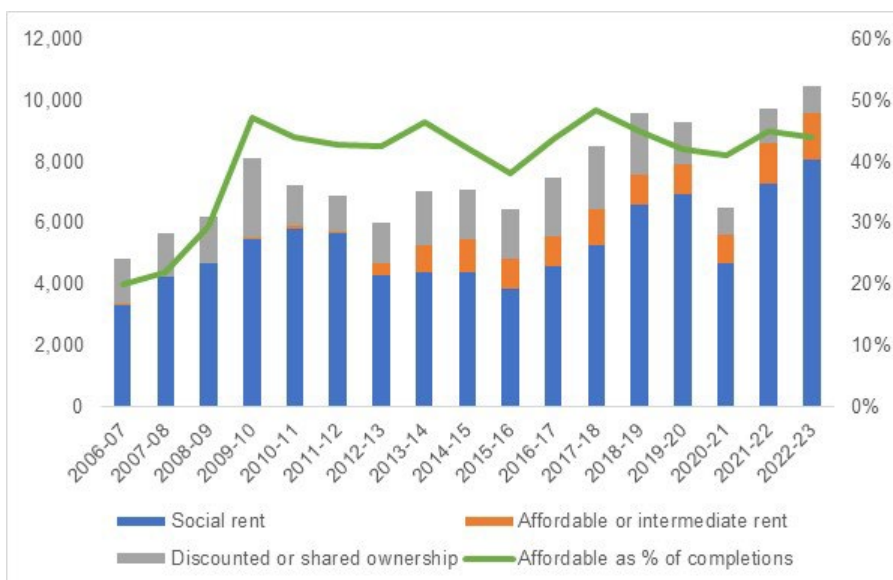
intermediate rent and 8% being discounted or shared ownership (note that the tenure of 16% of affordable housing in Wales could not be identified⁷¹⁶).

Figure 9.2 Affordable housing provision by tenure in England 2006/07 to 2022/23



Source: CMA analysis of DLUHC data ([Live table 1000 Additional affordable homes provided by tenure](#))

Figure 9.3 Affordable housing provision by tenure in Scotland 2006/07 to 2022/23



Source: CMA analysis of Scottish Government data ([December+2023+-+Affordable+Housing+Supply+New+Style+-+Web+Table.xlsx \(live.com\); Tables for New House Building - All Sectors](#))

⁷¹⁶ The data for Wales only identifies the tenure of affordable housing where it is provided by a Registered Social Landlord.

Figure 9.4 Affordable housing provision by tenure in Wales 2007/08 to 2022/23



Sources: CMA analysis of Welsh Government data ([Additional affordable housing provision by location and year \(gov.wales\)](#); [Additional affordable housing provision by provider \(RSLs only\), tenure and funding \(gov.wales\)](#); [Additional affordable housing provision by provider \(RSLs only\), tenure and funding \(gov.wales\)](#))

9.52 Across all nations of GB, the vast majority of affordable housing is delivered by registered providers (RPs).⁷¹⁷ There are three main types of RPs: not-for-profit RPs (known as Housing Associations), for-profit RPs, and local authorities.⁷¹⁸ RPs are funded through a mix of grant funding,⁷¹⁹ income from the housing they provide as well private borrowing (in the case of private RPs).

9.53 From our discussions with representative bodies of RPs for England, Scotland, and Wales, as well as RFI responses received from housebuilders, we understand that new build affordable housing is generally built via one of three routes:

- (c) Where land is acquired by an RP and either they build the homes or a housebuilder is contracted to do so;
- (d) Via a partnership agreement between an RP and a housebuilder to purchase land and build affordable housing; or
- (e) Via planning obligations agreed as part of planning permission for a site through a Section 106 agreement (in England and Wales) or Section 75 agreement (in Scotland).

9.54 In England 44% of all affordable homes delivered in 2021/22 were funded through Section 106 agreements, compared with 47% in the previous year and 51% in 2019/20.⁷²⁰ In Wales in 2022/23 31% of affordable housing was provided through

⁷¹⁷ For example, in England in 2021/22 81% of new affordable housing was delivered by RPs.

⁷¹⁸ See: [Fact Sheet 9: What is affordable housing? - GOV.UK \(www.gov.uk\)](#).

⁷¹⁹ The mains source of which are: (In England) the Affordable Homes Programme administered by Homes England: [Affordable housing supply in England: 2021 to 2022 - GOV.UK \(www.gov.uk\)](#); (In Scotland) the Affordable Housing Supply Programme: [Affordable Housing Supply Programme - More homes - gov.scot www.gov.scot](#); and (In Wales) the Social Housing Grant: [Social Housing Grant: guidance for registered social landlords and local authorities | GOV.WALES](#).

⁷²⁰ See Chart 3 of: [Affordable housing supply in England: 2021 to 2022 - GOV.UK \(www.gov.uk\)](#).

planning obligations with 42% in 2021/22 and 30% in 2020/21.⁷²¹ We have not been able to source equivalent data for Scotland.

- 9.55 During the period 2018 to 2022 the five largest housebuilders in GB provided approximately 86,400 affordable homes at an average of around 17,300 per year. This represented 28% of their total completions during this period. The majority of these homes (86%) were provided via planning obligations.
- 9.56 Under routes (a) and (b) the ownership of the housing is taken over by the RP involved in the project. Under route (a), where an RP contracts with a housebuilder, we understand from our discussions with representative bodies for RPs that it is common for the RP to request tenders for the work from a number of providers (often from a list of preferred or approved suppliers), but in some cases there will be a bilateral negotiation with a preferred supplier. We further understand from these discussions that it is common for the RP to commission smaller, more locally based builders to build the housing. This in part reflects the size and nature of the projects involved (which may not appeal to some of the larger housebuilders) and also a desire to support local businesses. Under route (b) where the RP is partnering with a housebuilder to build the housing, the exact nature of the commercial arrangements will vary depending on the parties involved, but will generally involve some kind of bilateral agreement.
- 9.57 Under route (c) the ownership of the housing is usually transferred to an RP but in some cases, where the housing is discounted or shared ownership, it may be sold directly to consumers by the housebuilder. Where the housing is transferred to the ownership of an RP, RFI responses from housebuilders indicated that there are differences between the nations of GB in how the process for this transfer works:
- (a) In England, a tender process is typically run covering most of the potential RPs in a local area. Bids from RPs reflect the income that they expect to earn from the housing as well as the costs they will incur in providing the housing. In a limited number of cases LPAs will provide housebuilders with a list of RPs or nominate a specific RP. Where the latter is the case the price for the housing will be a bilateral negotiation between the two parties.
 - (b) In Scotland, typically the LPA will nominate a specified RP, which is often the LPA itself. The government provides benchmarking on what RPs can pay in relation to the affordable homes based on reasonable costs of provision.⁷²²

⁷²¹ CMA analysis of data from: [Affordable housing provision: April 2022 to March 2023 | GOV.WALES](#).

⁷²² See: [Funding applications and appraisal procedures - Affordable Housing Supply Programme \(AHSP\): process and procedures MHDGN 2023/01 - gov.scot \(www.gov.scot\)](#).

- (c) In Wales, typically the LPA will nominate a specified RP, which is often the LPA itself. The values paid by RPs are set by Welsh Government via Acceptable Cost Guidance Values.⁷²³

9.58 In our discussions with RPs representative bodies, they described a number of key barriers to the provision of affordable housing. The main one was the availability of grant funding, while other key barriers included the planning system, and the availability of land:

- (a) As most affordable housing developments are funded, at least in part, by grant funding then the availability of this funding is necessarily a key factor in the level of affordable housing that can be provided. In addition, the cost of supplying affordable homes has increased substantially in recent years due to a combination of factors such as increasing environmental and safety regulations, general prices inflation and rising interest rates.⁷²⁴
- (b) Like other forms of housing, affordable housing has to go through the process of applying for planning permission and is subject to some of the risks, uncertainties, and delays associated with that process that we describe in the supporting evidence document on the planning system.
- (c) Given that the values of private developments are generally higher than those for affordable developments, and hence private housebuilders can generally bid more for land, RPs have difficulty competing with private housebuilders to purchase land. Consequently, many affordable developments take place on land that would not be of interest to private developers. However, the availability of such land which is also suitable for affordable development can be limited.

Affordable housing and market outcomes

9.59 The provision of more affordable housing could potentially influence broader market outcomes such as prices, the speed of housing delivery, and housebuilder profits.

9.60 The impact of the provision of affordable housing on average house prices in an area is ambiguous. Clearly the provision of affordable housing will lead to below-market housing costs for those who live in the homes. Where affordable housing is provided in addition to private housing then it will have limited impact on the price of private housing as it caters for a largely separate market. However, if affordable housing is provided instead of private housing, then a consequential reduction in the private housing supply could result in higher house prices. We note that a

⁷²³ See: [Acceptable Cost Guidance for the Social Housing Grant | GOV.WALES](#).

⁷²⁴ Not only does this increase the cost of providing new affordable homes but it also increases the cost of maintaining and upgrading existing homes which in turn limits the funds available to invest in new housing.

recent study of the impact of the provision of affordable housing on house prices found that it led to a reduction in house prices in the short term and had no appreciable impact in the longer term.⁷²⁵

- 9.61 We discuss the relationship between different housing tenures, including affordable housing, and the speed of housing delivery, in paragraphs 9.24 to 9.25 above. We find that there is evidence to suggest that where private housebuilders provide affordable housing on their sites the overall speed of housing delivery in an area can be faster because the rate at which it is sold (usually to an RP) is not constrained by the local absorption rate. Furthermore, as these sales do not impact private sales rates, they can also be built alongside and in addition to homes for sale onto the private market.
- 9.62 In terms of housebuilder profitability, the building of affordable housing on their sites via planning obligations is likely to have limited impact on their overall profitability. Housebuilders told us they typically take a blended approach to assessing the required site profitability across all tenures of housing at a site. The rationale is that the investment decision is based on acquiring the site as whole. Housebuilders then typically reflect assumptions in respect of the likely affordable housing requirements and required profitability in their land valuations.⁷²⁶ In general terms, these factors combine to mean that higher affordable housing requirements tend to lead to lower land values, rather than reducing overall housebuilder profitability.⁷²⁷ That said, it was noted by some housebuilders that overly onerous affordable housing requirements can suppress land values to a level which creates a reluctance for landowners to sell. Where affordable housing is provided by housebuilder as a contractor or via a joint venture then the level of housebuilder profitability may vary according to the level of risk assumed by the housebuilder.

LURA and NPPF measures

- 9.63 The LURA and the revised NPPF contain a number of measures which may influence the speed of housing delivery. These include measures to better monitor and enforce build-out rates, as well as measures that may make it easier to develop on land purchased without the 'hope value' associated with potential future planning permission.

⁷²⁵ Economic Issues, Vol. 26, Part 1, 2021 - 21 - Does UK social housing affect housing prices and economic growth? An application of the ARDL model, Faith Chorley and Chunping Liu: [EI_March2021_chorley.pdf](#) (economicissues.org.uk).

⁷²⁶ The assumption is based on the local LPAs policies on the provision of affordable housing. As land purchases are normally conditional on the planning permission that is achieved then changes to affordable housing which are different from this assumption will generally also be able to be reflected on land prices.

⁷²⁷ At least in margin terms. As the value of affordable housing will be less than that of market housing provision of affordable housing will reduce the overall GDV of a site. Therefore, whilst the profit margin may be the same the absolute level of profits will be lower.

9.64 We describe these measures in more detail below. However, it is clearly too soon to judge how these measures will impact the speed of housing delivery.

Measures to improve build-out rates

9.65 The Government has introduced several measures aimed at improving build-out rates through the LURA and changes to the NPPF.⁷²⁸ The proposed measures include:

- (a) Changes to the reporting and monitoring of build-out: Developers will be required to formally notify local authorities of commencement of construction at a site, via a Development Commencement Notice (DCN), and to report annually to local authorities on their actual delivery of housing against a proposed trajectory that they submit on commencing a scheme for which they have permission. In addition, DLUHC will publish data on developers of sites over a certain size in cases where they fail to build out according to their commitments.
- (b) Changes to planning applications: Changes to the National Planning Policy Framework to ensure developers will be required to explain in planning applications how they propose to increase the diversity of housing tenures to maximise a development scheme's absorption rate will highlight that delivery can be a material consideration in planning applications (i.e. this could mean that applications with trajectories that propose a slow delivery rate may be refused in certain circumstances). In addition, local planning authorities can choose not to approve new applications on sites where the build out of development has been too slow (for example, this might include an application for an additional phase of a development on an existing site when delivery of homes has been slow).
- (c) Reform to completion notices: the LURA proposes to modernise and streamline existing powers for local authorities to serve a completion notice (which has the effect that if the development is not completed within the period specified in the notice, the planning permission for unfinished development lapses).

⁷²⁸ See Chapter 5, [Levelling-up and Regeneration Bill: reforms to national planning policy](https://www.gov.uk/government/bills/2024/levelling-up-and-regeneration-bill) - GOV.UK (www.gov.uk)

Community land auctions

- 9.66 The LURA provides for trialling of community land auctions (CLAs) by LPAs. CLAs run by LPAs are a mechanism that will enable LPAs to auction off allocations for development sites within their local plans.⁷²⁹
- 9.67 Land value increases when land is allocated in a local plan, and when planning permission is granted. Through the CLA landowners will bid to have their land allocated in a local plan. The intention is that CLAs will encourage landowners to reveal the true price at which they would willingly part with their land: if they choose to bid too high a price, they risk another site being allocated for development over theirs. Hence, through the CLAs the intention is to enable LPAs to secure land for development at a price which does not include the 'hope value' associated with the land potentially being granted planning permission.
- 9.68 Once an auction has been run and the LPA has selected the sites to be allocated, it will then take an option on the purchase of the allocated land. In turn it will then either exercise this option prior to selling on to a developer or developing itself or alternatively sell on the option to developers. Land allocated through the CLA process would still need to go through the planning application process in the normal way. Any difference in the option price or its exercise price and the price agreed with a developer will accrue to the LPA.

Changes to compulsory purchase powers

- 9.69 The LURA provides for LPAs to apply for a direction from the Secretary of State to permit Compulsory Purchase Orders (CPOs) to be used for specific projects in the 'public interest', such as education, healthcare, or affordable housing, without compensating the landowner for the 'hope value' associated with the land potentially being granted planning permission.⁷³⁰

⁷²⁹ See Chapter 13, [Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms - GOV.UK \(www.gov.uk\)](#).

⁷³⁰ See: [Compulsory purchase - compensation reforms: consultation - GOV.UK \(www.gov.uk\)](#).

10. Barriers to entry and expansion for SME housebuilders

Background sections relevant to SMEs

- 10.1 Evidence suggests that the number of SME housebuilders, and their collective market share, has declined since the late 1980s.⁷³¹ HBF analysis of NHBC data suggests there were just over 2,000 small housebuilders in England and Wales in 2015, compared with more than 12,000 in 1988.⁷³² In addition, the HBF suggests that small housebuilders were responsible for almost 4 in 10 new houses in England and Wales in 1988, compared with fewer than 1 in 8 in 2015. However, the NHBC's share of the warranty market has declined over time.⁷³³ This means these figures may overstate the decline of SME housebuilders because it may be that predominantly SME housebuilders have switched warranty provider.
- 10.2 As data from NHBC gives an incomplete picture, we have undertaken our own analysis of data provided by the four largest warranty providers.⁷³⁴ Our data set covers an average of 95,000 houses built in 2022, meaning it does not cover all housing built in that year. However, our analysis suggests there were around 4,500 small housebuilders and around 70 medium-sized housebuilders in 2022 (although we note our analysis may include some double-counting). Within this data set, small housebuilders had a share of around 30% in England, Scotland, and Wales in 2022, as seen in Figure 10.1. This is equivalent to just below 30,000 houses. This compares to just below 20,000 houses for medium-sized housebuilders and just below 50,000 for large housebuilders. However, our analysis covers a different geographic area to the HBF figures, meaning the results are not directly comparable. In addition, our data excludes self-build and social housing, meaning the figures may not be representative given they significantly understate the number of houses built. While the limitations of the data mean that we cannot be certain of the exact numbers falling into different size categories, this suggests there are substantial numbers of SME housebuilders still active in the market, contributing a significant share of houses.

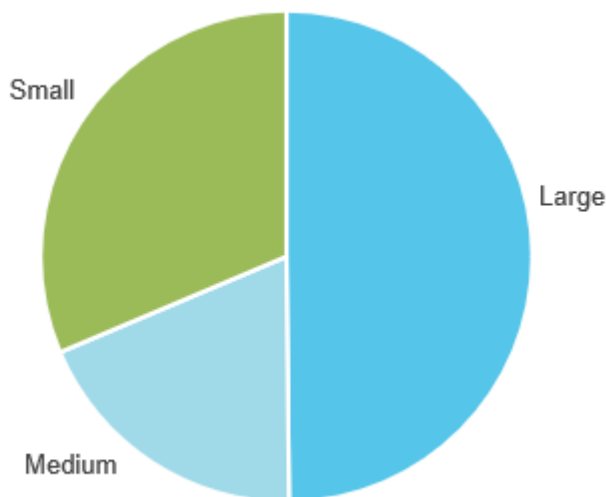
⁷³¹ The CMA classifies small housebuilders as delivering ≤100 units per year, medium as delivering 101-1,000 units per year, and large as delivering 1,001 or more units per year.

⁷³² [HBF \(2017\). Reversing the decline of small housebuilders: Reinvigorating entrepreneurialism and building more homes](#)

⁷³³ The CMA's NHBC structural warranties undertakings review found that the NHBC had a market share of 90% in 1990, and 70-90% in 2016. The NHBC's website indicates it has a market share of 70-80%. (see [NHBC undertakings review - provisional decision \(publishing.service.gov.uk\)](#); [NHBC: The UK's Leading Provider of Warranty and Insurance for New-Built Homes](#))

⁷³⁴ We also reviewed analysis by Mintel of ONS data on market shares of micro, small, medium and large businesses. However, as this data includes those active in renovating existing homes as well as building of new properties, and because firm size in this data set is defined by number of employees rather than number of homes built, it was not sufficiently comparable. See [UK House Building Market Report 2023 | Mintel](#)

Figure 10.1: Houses built by housebuilder size in England, Scotland, and Wales in 2022



Source: CMA analysis of data from Build Zone, ICW, MD Insurance, and NHBC.

Note: Excludes self-build houses and social housing.

Note: Small housebuilders deliver ≤ 100 units per year, medium deliver 101-1,000 units per year, and large deliver 1,001 or more units per year.

Barriers to entry and expansion for SME housebuilders

- 10.3 Barriers to entry and expansion are factors that prevent, or make it difficult, for firms to enter or expand in a market. These factors give incumbents an advantage and can reduce competition in a market.
- 10.4 In order to explore barriers to entry and expansion in the housebuilding market, we gathered information from SME housebuilders to get an understanding of the key challenges they face. The housebuilders we approached use different types of land and construct different types of housing, and our sample included housebuilders present in different parts of Great Britain. However, to ensure respondents had sufficient experience in navigating the housebuilding process, we largely approached medium-sized housebuilders (ie those building over 100 units per year). We contacted 47 housebuilders and have received written responses from 19 SME housebuilders. We have also had calls with an additional three housebuilders and heard directly from industry stakeholders, including the Federation of Master Builders, Home Builders Federation, and Homes for Scotland. A detailed summary of the responses we received is provided in Appendix I: Barriers to entry and expansion for SME housebuilders.
- 10.5 In addition to gathering information directly from market participants, we have drawn on existing research and analysis of the challenges faced by SME housebuilders. A more detailed summary of the existing literature is provided in Appendix I.

10.6 This section is organised as follows:

- (f) First, we set out the challenges faced by SME housebuilders which our research has highlighted are important barriers to entry and expansion.
- (g) Second, we set out the effect of these barriers on market outcomes.

Challenges faced by SME housebuilders

10.7 Our research has identified several barriers to entry and expansion, which we expand upon below. These are the effect on SME housebuilders of:

- (a) the planning system;
- (b) the land market;
- (c) access to finance; and
- (d) labour and materials constraints.

10.8 In a well-functioning market, some of these factors will always create barriers to entry and expansion; for example, the planning system will restrict where development can take place. However, we focus on the extent to which these barriers are higher than is necessary for the market to function effectively, and whether lowering them would improve outcomes in the market.

Effect of planning system on SME housebuilders

10.9 Existing evidence suggests that the planning system is particularly burdensome for SME housebuilders.⁷³⁵ Several studies suggest that the time taken by, and uncertainty in, the planning process create particular challenges for SME housebuilders due to them being less able to mitigate risk across a greater number and geographic spread of sites. A number of studies also identify the complexity, information requirements, and cost associated with the planning system as a barrier for new entrants and an issue for SME housebuilders. Several publications suggest that the planning system may favour large sites due to large sites having lower costs and greater convenience for local authorities (for example, the APPG for Small and Micro Business suggest small sites attract greater local opposition).⁷³⁶ This may act as a barrier for SME housebuilders given that they typically develop smaller sites than large housebuilders.

10.10 Our own research is consistent with this evidence, with the planning system emerging as the greatest barrier amongst the SME housebuilders we have heard

⁷³⁵ See Appendix I: Barriers to entry and expansion for SME housebuilders.

⁷³⁶ [All Party Parliamentary Group for Small and Micro Business | FSB, The Federation of Small Businesses](#)

from. The uncertainty of the planning system was raised as one of the main barriers, with delays, inconsistency, and changes in policy all being cited as factors that contribute to uncertainty. In addition, several SME housebuilders cited the costs associated with the planning system as a challenge, and some mentioned the complexity of the planning system.

- 10.11 Overall, our analysis shows that some features of the planning system create barriers to entry and expansion that are higher than is necessary for the market to function effectively. For a more detailed explanation of the impact of the planning system on SME housebuilders, please refer to the supporting evidence document, Section 6.

Effect of land market on SME housebuilders

- 10.12 Existing evidence suggests that land-related issues are key for SME housebuilders. In particular, the availability of land, as well as the affordability of land, have been cited as challenges.⁷³⁷
- 10.13 A number of explanations have been offered for the challenges that SME housebuilders face in these respects. Several studies suggest that there is a lack of suitable sites for SME housebuilders, while some suggest land is being bought up by larger developers or investors, limiting the number of sites available for SME housebuilders. Other explanations include a lack of transparency in the land market, the level of developer contributions, and the planning system favouring large sites.
- 10.14 Our research supports the view that land-related issues are among the main challenges faced by SME housebuilders. In particular, challenges related to acquiring land were raised as an issue, with some respondents mentioning that there are shortages in sites with low planning risk and several reporting that the cost of land is an issue. In addition, one SME housebuilder said that the practices of land agents can act as a barrier to acquiring land, due to land agents favouring certain developers. Another commented that the risk they face when purchasing land would be lessened if they were able to hold a landbank, like large housebuilders.
- 10.15 Finding land was seen as less of a challenge by most respondents. Nevertheless, a few respondents raised concerns about land agents only offering sites to companies on a shortlist, meaning they can miss opportunities. However, there were mixed views on the significance of this issue. In addition, CMA analysis of data provided by three of the largest land agents suggests that this is unlikely to

⁷³⁷ See Appendix I: Barriers to entry and expansion for SME housebuilders.

significantly prohibit SME housebuilders from finding land because a substantial proportion of sites are sold on the open market.

- 10.16 Overall, our analysis has identified features of the land market that can create barriers for SME housebuilders, particularly related to securing land. For a more detailed explanation of the impact of the land market on SME housebuilders, please refer to the supporting evidence document, Section 7.

Effect of access to finance on SME housebuilders

- 10.17 We understand that access to finance can act as a barrier for SME housebuilders. Existing evidence highlights the importance of issues related to finance.⁷³⁸ However, the APPG for Small and Micro Businesses and the FMB suggest that challenges related to finance have reduced in recent years.⁷³⁹ The APPG for Small and Micro Businesses suggests this is because ‘the Government have taken steps to improve the finance available to small builders through the Home Builders Fund’ and ‘the lending climate in general for small businesses has improved since the financial crash’ (although we note that this may have changed since the Bank of England began raising the Bank Rate).⁷⁴⁰
- 10.18 The literature suggests that the availability of finance is a challenge for a substantial minority of SME housebuilders, which a report by Europe Economics suggests is because SME housebuilders are reliant on loans from banks, whereas large housebuilders can raise finance through other sources.⁷⁴¹
- 10.19 In addition, some studies suggest that the cost and conditions attached to finance also create challenges for SME housebuilders. For example, the HBF highlights that the reliance of SME housebuilders on project-by-project financing can create additional entry, exit, and legal fees which can increase interest costs.⁷⁴² The HBF also highlights that some sites are only available subject to finance, but in many instances finance is only available after a builder has secured planning permission, which can lead to SME housebuilders either having to finance pre-development costs themselves, or only purchase land with detailed planning permission.⁷⁴³
- 10.20 However, finance was not cited as one of the main challenges amongst the SME housebuilders we heard from (although we note this may be related to the fact we

⁷³⁸ See Appendix I: Barriers to entry and expansion for SME housebuilders.

⁷³⁹ [All Party Parliamentary Group for Small and Micro Business | FSB The Federation of Small Businesses; FMB House Builders' Survey 2022 | FMB, Federation of Master Builders](#)

⁷⁴⁰ [All Party Parliamentary Group for Small and Micro Business | FSB, The Federation of Small Businesses; Bank Rate history and data | Bank of England Database](#)

⁷⁴¹ [Report: How to increase competition, diversity and resilience in the house builder market? - Shelter England](#)

⁷⁴² [Reversing the decline of small housebuilders: \(hbf.co.uk\)](#)

⁷⁴³ [Reversing the decline of small housebuilders: \(hbf.co.uk\)](#)

mainly have information from larger SME housebuilders who may have better access to finance). A few SME housebuilders did raise concerns regarding finance, including issues related to the cost of finance, finance only being available on a project-by-project basis, and the planning system impacting the availability and cost of finance.⁷⁴⁴ In addition, Homes England told us that finance could become more of a challenge for SME housebuilders in the coming years because of the economic outlook.

- 10.21 Overall, our analysis suggests that finance can create barriers for some SME housebuilders, although the evidence we have gathered indicates it is a less significant barrier than planning and land. We understand that, even in a well-functioning market, finance is always likely to be more of a challenge for SME housebuilders than large housebuilders. This is because their size makes finance more expensive and harder to obtain, and means they are reliant on external finance, whereas large housebuilders can use their own capital to finance projects.⁷⁴⁵ However, the conditions attached to finance, and the role of the planning system in increasing its cost, can create barriers for some SME housebuilders that are higher than is necessary for the market to function effectively. In addition, we note that challenges related to finance may increase if the economic outlook matches current forecasts.⁷⁴⁶

Effect of labour and materials constraints on SME housebuilders

- 10.22 We understand that both labour and materials shortages can act as a barrier for SME housebuilders. Existing evidence suggests that labour and materials constraints have been a long-term issue for SME housebuilders, with some evidence suggesting that shortages have worsened due to Brexit and the Covid-19 pandemic.⁷⁴⁷ The SME housebuilders we heard from supported this, although several suggested constraints are now easing.
- 10.23 An inability to acquire sufficient labour and materials can impact the ability of SME housebuilders to enter and expand in the market, with several SME housebuilders we heard from informing us that shortages have led to cost inflation and/or increased build times. However, even in a well-functioning market, it is likely that SME housebuilders would always be disproportionately impacted by shortages due to large housebuilders having preferential access to suppliers upstream and greater buyer power because of their size.

⁷⁴⁴ See supporting evidence document, Section 6.

⁷⁴⁵ See Appendix B: Cost of capital, where we discuss the impact of capital structure.

⁷⁴⁶ [Economic and fiscal outlook – November 2023 - Office for Budget Responsibility \(obr.uk\)](https://obr.uk/economic-and-fiscal-outlook-november-2023/)

⁷⁴⁷ See Appendix I: Barriers to entry and expansion for SME housebuilders.

Other challenges faced by SME housebuilders

10.24 We understand that there are several other barriers faced by SME housebuilders. Existing evidence suggests that the need to engage with statutory consultees, third-party agencies and utilities companies can create challenges for SME housebuilders due to poor communication and delays.⁷⁴⁸ In addition, the SME housebuilders we spoke to raised other concerns, including mortgage availability and the level of demand for housing. However, such barriers have generally been identified less frequently, or as less severe constraints, than the challenges discussed above.

Effect of barriers to entry and expansion

10.25 In this section, we consider the potential impact of reducing the barriers to entry and expansion on outcomes in the market. We consider several outcomes, including the level of overall housing supply, the quality of new houses, and the variety of new houses.

Effect on overall supply

10.26 Several studies have tried to assess the impact on housing output if there were more SME housebuilders. Analysis by the HBF suggests that if the number of housebuilders building fewer than 100 houses per year returned to 2007 levels, we could expect to see 25,000 more houses delivered per year, and a return to 2010 levels would help increase output by 11,000 houses per year.⁷⁴⁹ Research by LDS and Savills suggests SME housebuilders could deliver ‘more than 55,000 additional homes per year’ in England and Wales, and Homes for Scotland estimates that if the number of SME housebuilders returned to pre-2007-08 levels, they could contribute around 2,000 units per year to Scotland’s housing supply.⁷⁵⁰

10.27 However, it does not necessarily follow that an increase in SME output to historical levels would lead to an equivalent number of additional homes being built. The above studies do not take into account that there is some overlap in the type of sites and houses that SME housebuilders and larger builders focus on.⁷⁵¹ Therefore, some of the output SME housebuilders would previously have produced may instead be produced by larger housebuilders, rather than not being built at all. These estimates therefore do not take into account that an increase in the output of SME housebuilders may replace some of the output of larger housebuilders, rather than being entirely additional to existing build levels. This

⁷⁴⁸ See Appendix I: Barriers to entry and expansion for SME housebuilders.

⁷⁴⁹ <https://www.hbf.co.uk/news/reversing-the-decline-of-small-housebuilders/>

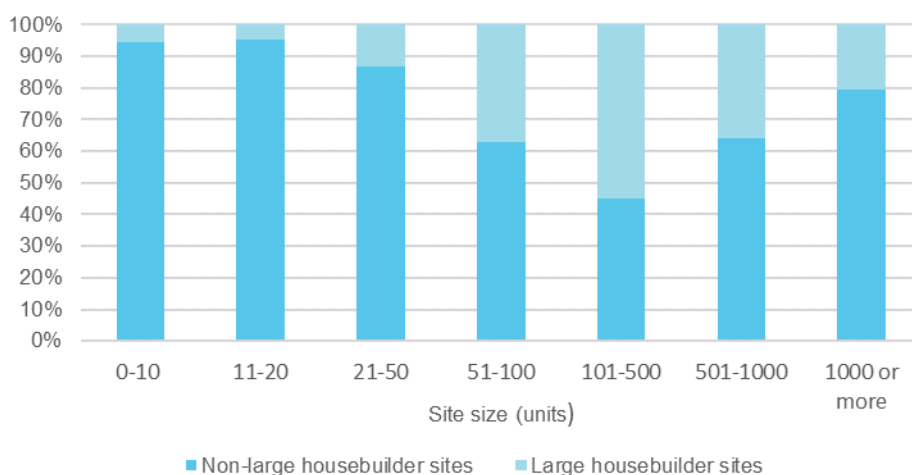
⁷⁵⁰ [Savills SME housebuilders report demonstrates huge potential - LDS \(ldsyoursite.com\)](#); [1-HFS-SMALL-SCALE-BUILDERS-REPORT-2019_DIGITAL-1.pdf \(homesforscotland.com\)](#)

⁷⁵¹ For example, see Figure 10.2 which shows that there is an overlap in the sizes of sites built by large and non-large housebuilders.

means that the impact of an increase in SME output would be less than the estimates suggest.

10.28 Genuinely additional output from SME housebuilders is most likely to come from sites that large housebuilders are less likely to develop, such as small sites. CMA analysis suggests that large housebuilders typically develop larger sites of 50 units or more. Non-large housebuilders develop the majority of sites under 50 units, as seen in Figure 10.2. We have also heard from a few SME housebuilders that they are more likely to develop challenging sites that large developers would not develop. One housebuilder also said that SME housebuilders develop in areas that large housebuilders do not because of a lack of large-scale demand. This suggests that if the barriers for SME housebuilders were reduced, more of these sites may be developed, creating additional output.

Figure 10.2: Proportion of sites by size completed by housebuilder size, 2020-2022



Source: CMA analysis of Glenigan data and NHBC data.

Note: Large housebuilder sites are sites with planning applications by housebuilders delivering greater than 1,000 units per year based on NHBC data. Non-large housebuilder sites are sites with planning applications made by non-large housebuilders (ie this may include sites where planning applications were made by land promoters).

10.29 However, a substantial increase in the number of small sites would be required to significantly impact overall housing output and address housing need. In the three years to 30 June 2023, there was an average of 59,500 units granted planning permission each year on sites of fewer than 50 units in England.⁷⁵² Over the same period, an average of 174,800 units were built in England each year.⁷⁵³ This means a 242% increase in the number of units given planning permission on small sites would be required to meet the UK government’s target of 300,000 houses per

⁷⁵² [Planning applications in England: April to June 2023 - statistical release - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/planning-applications-in-england-april-to-june-2023); [Planning applications in England: April to June 2022 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/statistics/planning-applications-in-england-april-to-june-2022); [Planning applications in England: April to June 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/statistics/planning-applications-in-england-april-to-june-2021)

⁷⁵³ [Live tables on housing supply: indicators of new supply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/live-tables-on-housing-supply)

year in England.⁷⁵⁴ This would equate to around 27,800 additional projects.⁷⁵⁵ An increase of this scale appears unlikely, even if the barriers were reduced significantly. This is because, even in a well-functioning market, some factors will always create barriers to entry and expansion (such as the planning system restricting where development can take place). In addition, the ability of an increase in small sites to contribute to additional output will be limited by the number of these small sites that are available and viable to develop. This means that although reducing the barriers to entry and expansion may increase housing supply, an increase in small sites alone is likely to be only part of the solution to addressing housing need.

- 10.30 It is more difficult to quantify the impact of other sites SME housebuilders are more likely to develop (for example, challenging sites, or sites in areas with lower housing demand, and therefore subject to less competition from large housebuilders). However, given the number of such sites that would need to be found to make a meaningful difference to supply, it appears unlikely that pursuing additional supply in this way would, in and of itself, be enough to bring annual supply to the 300,000 target.
- 10.31 Overall, we recognise that a very large increase in supply is required to meet housing need, and this means that increasing the number and output of SME housebuilders is only part of the solution. However, our analysis suggests that barriers to entry and expansion constrain SME housebuilder output, and by doing so overall housing supply, as they would be likely to develop sites which larger developers would not. Therefore, a reduction in the barriers to entry and expansion could lead to some improvement in the overall level of housing output.

Quality

- 10.32 We have considered several sources to understand the effect of SME housebuilders on housing quality, most notably our consumer research (**CMA consumer research**)⁷⁵⁶ and results from the National New Homes Consumer Satisfaction Survey (CSS) of new build homebuyers.

⁷⁵⁴ This figure assumes 15-20% of sites with planning permission lapse or are reapplications. This estimate is based on research undertaken by Lichfields on behalf of the Land Promoters and Developers Federation and the Home Builders Federation (see [Tracking Progress: Monitoring the build-out of housing planning permissions in five local planning authority areas \(lichfields.uk\)](#))

⁷⁵⁵ This figure assumes the average size of projects with less than 50 units is 5.2 units, based on DLUHC planning statistics for the three years to 31 July 2023 (see [Planning applications in England: April to June 2023 - statistical release - GOV.UK \(www.gov.uk\)](#); [Planning applications in England: April to June 2022 \(publishing.service.gov.uk\)](#); [Planning applications in England: April to June 2021 \(publishing.service.gov.uk\)](#))

⁷⁵⁶ [CMA consumer research](#)

- 10.33 We commissioned qualitative research into consumers' satisfaction with the quality of new build properties. The consumer research also explored the role of different factors in consumers' choices, including the developer's size.
- 10.34 Many of the customers of SME housebuilders in the consumer research sample found the 'name' of the SME housebuilder – the specific business – to be relevant to their purchase decision insofar as they believed SME housebuilders would have a certain local reputation to protect, meaning they would be less able to 'get away' with sub-standard work. Meanwhile, participants who bought their new build from a large developer often pointed to the size of the business as a source of reassurance. Overall, however, the specific developer was rarely the main driver for or barrier against a purchase decision, with factors such as location and availability being higher priorities.
- 10.35 In addition, some buyers in the sample showed a preference for moderately sized estates. This is partly because smaller developments were said to provide a more intimate and community-oriented atmosphere, and partly because smaller developments usually mean that the estate is in state of construction for a shorter duration (with all the inconveniences that come with this, such as noise and pollution). Given SME housebuilders are more likely to build smaller estates, this suggests that some consumers value aspects of the offering of SME housebuilders more than that of larger builders.
- 10.36 In terms of the quality of housing produced, our consumer research suggests that the quality concerns participants have or had about new build properties are industry-wide, across all sizes of housebuilding business. However, the consumer research did not uncover any major trends or patterns that are particular to SME housebuilders in relation to any of these factors.
- 10.37 This is consistent with our analysis of the National New Homes Consumer Satisfaction Survey (CSS). Our analysis considered a range of metrics, including pre-completion satisfaction, the number of problems experienced, and the proportion of customers that would recommend their builder to a friend.⁷⁵⁷ Where achieved sample sizes permit comparisons between individual developers, there is a very wide variation in customer satisfaction between developers within and across the size bands. However, if we categorise builders into large housebuilders and SME housebuilders, there is no evidence to suggest that those purchasing from SME housebuilders have a better experience, or are more satisfied, than those purchasing from large housebuilders.

⁷⁵⁷ For more information, see Section 3, where we provide a summary of the information available on quality.

10.38 Overall, our analysis suggests that SME housebuilders do not tend to provide better quality houses than large housebuilders, although there may be some aspects of their offering that some consumers prefer.

Variety

10.39 Some existing evidence and comments from the SME housebuilders we heard from suggest that SME housebuilders build a greater variety of houses than large housebuilders. Our consumer research suggests that many buyers favour estates with diverse aesthetics. This suggests that a greater variety of housing may be viewed favourably by consumers.

10.40 IPPR suggests that SME housebuilders may help to provide greater variety by offering options such as ‘custom build and niche products such as custom housing’.⁷⁵⁸ Some of the SME housebuilders we heard from supported this point. For example, one SME housebuilder told us they target segments of the market not covered by other housebuilders, such as multigenerational houses and houses for dependent relatives. This housebuilder also talked about trying to differentiate their houses by building houses with roof gardens.

10.41 Payne et al. refer to previous research by Hooper and Nicol which suggests that SME housebuilders are less likely to use standardised house types than large housebuilders.⁷⁵⁹ They found that 90% of housebuilders delivering more than 2,000 units per year utilised standard house types, compared with 58% of those delivering fewer than 500 units per year. Hooper and Nicol’s research is over 20 years old, but our own research supports its findings. The large housebuilders we spoke to generally used standardised house types, whereas more than half of the SME housebuilders we received RFI responses from did not use standardised house types (although we note we did not hear from a representative sample of SME housebuilders).⁷⁶⁰

10.42 Our analysis suggests SME housebuilders may have a role in increasing variety in the types of houses being built, both in terms of the aesthetics of the houses produced and in producing more niche housing types.

⁷⁵⁸ [Think small, build big: Lessons from SME housebuilding in Germany | IPPR](#)

⁷⁵⁹ HOOPER, A. & NICOL, C. 1999. The design and planning of residential development: standard house types in the speculative housebuilding industry. *Environment and Planning B: Planning and Design*, 26 (6), 793-805 in [190228-How-does-the-land-supply-system-affect-the-business-of-UK-speculative-housebuilding.pdf \(housingevidence.ac.uk\)](#)

⁷⁶⁰ 8/18 RFI respondents used standardised house types.

Other outcomes

- 10.43 We understand that other outcomes may also be impacted by the barriers faced by SME housebuilders, including build-out rate and opportunities for training in the industry.
- 10.44 Some studies argue that SME housebuilders build out at a faster rate than large housebuilders.⁷⁶¹ This is because SME housebuilders typically build on smaller sites so are less constrained by a location's absorption rate. Several empirical studies support this argument, with all suggesting small sites deliver a greater proportion of their total units in a given period.⁷⁶² We note, however, that there will be a limit to the extent to which increasing the number of small sites would be able to increase the build-out rate of privately sold housing as, regardless of the size of each site in an area, there will still be the constraint imposed by the aggregate level of local demand.⁷⁶³
- 10.45 Some existing evidence suggests that SME housebuilders play an important role in providing employment and training opportunities for people looking to get into the industry.⁷⁶⁴ This suggests that an increase in the number of SME housebuilders may help to increase training opportunities, although the impact on outcomes in the market is unclear.

Conclusion on barriers to entry and expansion

- 10.46 Our analysis suggests that several barriers to entry and expansion exist in the housebuilding market. We understand that the greatest barriers for SME housebuilders relate to the planning system and the land market. Other less significant barriers include access to finance, and labour and materials constraints. To help alleviate barriers related to the planning system, we make a number of recommendations to reduce complexity and uncertainty in the planning process, which should benefit SME housebuilders in particular (see final report, Section 5).
- 10.47 We recognise that a very large increase in supply is required to meet housing need, and this means that increasing the number and output of SME housebuilders is only part of the solution. However, our analysis suggests that barriers to entry and expansion constrain SME output, and by doing so overall

⁷⁶¹ HBF (2017), [Reversing the decline of small housebuilders](#); [davis_web.pdf \(cam.ac.uk\)](#); [Small is beautiful: Delivering more homes through small sites | FMB, Federation of Master Builders](#)

⁷⁶² See for example: Greenhalgh et al. ((PDF) [Does the Diversity of New Build Housing Type and Tenure Have a Positive Influence on Residential Absorption Rates? An Investigation of Housing Completion Rates in Leeds City Region \(researchgate.net\)](#)); Lichfields ([Start to Finish \(second edition\): What factors affect the build-out rates of large scale housing sites? \(lichfields.uk\)](#)); Ball, Cheshire, Hilber, and Yu (2023) 'Why Delay? Understanding the construction lag AKA the build out rate', presented at International AREUEA Conference, July 2023.

⁷⁶³ See Section 9

⁷⁶⁴ HBF (2022), [State of play: Challenges and opportunities facing SME home builders](#); HBF (2017), [Reversing the decline of small housebuilders](#)

housing supply, as SME housebuilders would be likely to develop sites which larger housebuilders would not. Therefore, a reduction in the barriers to entry and expansion could lead to some improvement in the overall level of housing output.

- 10.48 In addition, our analysis suggests that barriers to entry and expansion may adversely impact the variety of new build houses, both in terms of the aesthetics of the houses produced and in producing more niche housing types. Other outcomes that may be adversely impacted by barriers to entry and expansion include the build-out rate of sites, and the employment and training opportunities in the industry, although the impact of barriers on these outcomes is less clear.
- 10.49 Our analysis does not suggest that SME housebuilders provide better quality housing compared with larger builders, and so reducing the barriers for SME housebuilders would be unlikely to lead to an increase in the quality of new houses.

11. The role of competition and other drivers of housing outcomes

- 11.1 In the prior chapters we have discussed the incentives and constraints on private housebuilders to deliver new build housing. Here we summarise our views as to the key drivers of the outcomes we have observed, and the role of competition within this.
- 11.2 A prior condition for building houses is having permission to build them. We set out in Section 6 on planning that the nature and operation of the planning system is exerting a significant downward pressure on the overall number of planning permissions that are being produced across GB. The number of planning permissions that have been granted over the last 10 years across GB, and particularly in England, have been insufficient to support housebuilding at the level required to meet government targets and other measures of need. We have also identified that getting planning permission presents a greater challenge for some housebuilders, particularly SMEs, than others and represents a significant barrier to entry and expansion.
- 11.3 Aside from the ease of receiving planning permission on land, we have considered the extent to which access to land presents a barrier to delivering new houses, either for specific parties or in general. This analysis is set out in Section 7. We have found there is generally land which is potentially available for development in most areas, although this is more constrained in certain parts of GB; however, how much of this land is actually available on the market at any time will depend on landowners' assessment as to when and if it makes sense to try to sell it. Where land is brought forward, we have not found evidence that actors (particularly land promoters) seek to slow this process down unduly. While SMEs may face some disadvantages in being able to secure land, we have found that many different types of market participants, including different types of housebuilder, can get access to land. Further, we have found a significant proportion of land is made available for purchase via a competitive process which involves many different housebuilders, and this is still the case (so far) despite recent integration between some housebuilders and some land promoters.
- 11.4 We have also considered whether the land held by housebuilders specifically may distort the market, by making it difficult for others to identify and secure land or allow them to dominate housing delivery in particular areas (see Section 8). While large housebuilders hold large amounts of land in absolute terms, they do not appear to hold onto this land without attempting to develop it for a disproportionate amount of time, given our understanding of the features of the planning system. We have also not found there to be widespread concentration in land holdings in particular LPA areas and therefore it does not appear that a small number of

housebuilders will have an unassailable competitive position in particular areas for many years to come.

- 11.5 Overall, we do not consider that competition in the land market, or the land holdings of different housebuilders individually or in aggregate, either locally or nationally, is significantly distorting competition between housebuilders in delivering houses. However, this does not mean that it is not having an effect on how housebuilders behave, as we explain below.
- 11.6 We have also found that concentration among housebuilders is not particularly high. As noted in paragraphs 11.4 and 11.5, at local level we have not identified widespread concerns as to the share of land or permissions held by a small number of housebuilders in LPA areas. In addition, at national level we observe that there is a large number of housebuilders, with the largest 11 only accounting for around 40% of completed houses in 2021-22, and a long tail of different sized housebuilders beyond this.
- 11.7 However, this does not mean that competition is necessarily achieving good outcomes for consumers. As discussed in Sections 3, 4 and 9, there are limits to how far the competitive process can be expected to deliver good outcomes, given the constraints and incentives faced by housebuilders.
- 11.8 First, though, it is important to consider the incentives on how much housing in total builders seek to deliver. As we have already highlighted, the planning system represents a constraint on how many houses can be built (we note its purpose is to be a constraint, although we have concerns that it is creating more of a constraint than is necessary to achieve its aims). However, there is a further limit on how much housebuilders are incentivised to build beyond the restrictions of the planning system. As discussed in Section 2, housing availability and conditions can influence socially important factors such as health outcomes, educational attainment, and productivity. As such, ensuring there is sufficient housing to meet the needs of the population is an important government priority. However, housing need differs from housing demand: while housing need reflects the amount of housing required for all households to live in accommodation that meets a certain normative standard, demand reflects how many people or organisations are willing and financially able to buy a property, which is determined by a range of factors including access to credit and the price of that credit, current and future expected income, the financial and tax implications of property ownership, expectations of future returns, and market sentiment. Private sector housebuilders are likely to be far more focused on building homes to meet demand rather than need, as demand will determine what and how much they can sell. Therefore, the amount housebuilders are likely to build is likely to:
- (a) Vary according to the business cycle, with housing output strongly correlated with changes in macroeconomic outlook. This contrasts with need, which is

likely to be much more stable in the short term, although fluctuate in the long term with changes in factors such as population growth and household formation.

- (b) Under-deliver total amounts of housing relative to the socially optimal level, as the wider benefits of adequate housing are not captured by housebuilders (or other market actors). There may also be a disconnect in the types of homes housebuilders are incentivised to build; for example, housebuilders may have less incentive to provide housing aimed at consumers on low incomes, particularly those unable to afford current price levels, even though improving the housing situation of those individuals may have the greatest impact on wider societal benefits.

11.9 In terms of how quickly housing is built and for what price, instead of building houses as quickly as possible, a range of evidence shows housebuilders tend to build them at a rate that is consistent with the local absorption rates, ie the rate at which houses can be sold without eroding prices. In addition, there are feedback loops throughout the housebuilding process which lead to weak competitive pressure for housebuilders to deliver housing more quickly and/or at a lower price.

- (a) The extent to which housebuilders can expand their supply in a local area is inherently limited by the extent to which they can get hold of further land with planning permission in the area. As a result, the effect of lowering their prices is more likely to bring sales forward in time, rather than increase their overall sales over the medium term; therefore, doing this will rarely be a profit-maximising strategy for housebuilders. Given that it is costly for housebuilders to have capital tied up in finished, unsold homes, they are incentivised to control their build-out rate to a level that maintains selling prices.
- (b) Housebuilders' incentives to pursue the strategy of maximising sales prices are reinforced by the way they compete to purchase developable land. Most land is bought under the residual valuation model, meaning that when housebuilders bid for land, they offer a price that is affordable based on their estimate of the value of the homes they can build on it, taking into account the costs of developing a site, and their target rates of return (ie profit). Given the competition we observe for land, housebuilders must offer the highest possible price to secure it. While this is positive in that it increases landowners' incentives to bring forward land for development, it also means that the price paid for the land will be based on the most optimistic (but plausible) assumptions about future market prices. With all housebuilders subject to the same market forces, this further incentivises housebuilders to build out at a rate that supports high prices, rather than (outside of a housing market downturn) reducing prices to increase the volume they can sell.

- (c) The above points mean that local demand, and measures that profitably expand this (for example, through increasing the diversity of housing to appeal to different market segments), have a strong impact on how quickly housebuilders build. In addition, there are some supply-side limitations to speed of build (such as materials shortages and weather) although these tend to be site-specific and more transitory.
- 11.10 We have also seen evidence suggesting that some housebuilders may be sharing non-public information on sales prices, incentives, and rates of sales. While we do not consider this behaviour to be one of the main factors in the persistent under-delivery of the market against government targets and assessed need (and, therefore, in contributing significantly to increasing affordability pressures at a market-wide level), we do consider that it may weaken competition in the market. In light of these concerns, we have decided to launch an investigation into this suspected conduct under the Competition Act 1998.
- 11.11 On quality, our consumer research,⁷⁶⁵ supported by other evidence, suggests a range of limitations in how far competition drives quality.
- (a) Consumers are limited in the attention they give to quality over other factors, such as availability, location, and price.
 - (b) Consumers only have limited information available on quality when making purchase decisions. In particular, the main information available on a systematic basis across builders is from the Home Builders Federation (HBF) Star Rating Scheme, which is based on only one indicator from a wider survey and which housebuilders opt in to sharing (if they participate in the Scheme at all).
- 11.12 Once purchased, consumers should be able to get housebuilders to resolve issues with their home for two years, after which they should be protected by their new build warranty. However, housebuilders can be reluctant to resolve problems where this is costly, for example, when there are many issues, or the issues are more serious. It does not appear that redress routes are sufficiently clear and comprehensive to offer effective consumer protection, given the evidence we have seen of declining levels of consumer satisfaction as time progresses post-sale.
- 11.13 In terms of innovation, our evidence indicates that take up of modern construction methods has been slow to take off, largely due to high upfront costs even where these are expected to reduce costs over time. The key drivers for innovation in energy efficiency have predominantly been government intervention through regulation, stewardship, and funding rather than competition.

⁷⁶⁵ [CMA consumer research](#)

- 11.14 These are not issues which can be solved through simply trying to increase the number of housebuilders competing, either in aggregate or at local level: as we have seen, concentration is already low relative to many other markets. While we have identified a number of barriers to entry and expansion, it is not obvious that reducing these barriers would fix the issues we have identified in themselves: we do not observe systematic differences in the quality provided by housebuilders of different sizes, and while reducing barriers would likely expand output to some degree, it seems unlikely it would expand to the level required to meet targets alone. Importantly, small housebuilders would likely respond to the same incentives in terms of maximising profits and so would not obviously seek to increase output to socially optimal levels.
- 11.15 We have also observed a growing trend in private management of public amenities on housing estates. As discussed in Section 5, these often come with inadequate protections for consumers and create significant detriment for homeowners over an extended period. These raise a number of concerns from the perspective of consumers:
- (a) While homebuyers may have been made aware of the existence of estate management arrangements and charges before buying their home, they may be less informed about important details about those arrangements and their long-term implications, which could have a significant impact, for example, in relation to their ability to sell their home in the future.
 - (b) Amenities that are not adopted by the relevant authority may not be constructed to an acceptable quality (which may be the reason they are not adopted in the first place) or may not be maintained to a satisfactory standard on an ongoing basis by the management company. Customers attempting to resolve issues with estate management companies may also face poor levels of customer service. It may also be unclear to households who is responsible for maintenance, with no party to hold to account, and issues therefore left unresolved.
 - (c) It is often very difficult for residents to switch management companies, and in some cases there appears to be no feasible way for them to do this. As a result, there is limited, and in some cases no competitive pressure on estate management companies to deliver services at a reasonable cost or to an acceptable quality.
 - (d) In addition to regular estate management charges, a large proportion of which can be allocated to management/administration fees, we have heard evidence that some households can face significant repair and maintenance bills. Further, as estates age, and amenities degrade, substantial investment may be required in the future, which homeowners may be unable to predict.

11.16 Overall, while we observe various deficiencies in the outcomes in this market compared with a well-functioning market, in only relatively limited respects would increased competition in itself resolve these issues. As we discuss further in our Final Report, intervention is required to:

- (a) improve quality and redress routes for consumers;
- (b) address the increasing prevalence of private estate management arrangements and the negative effects this can have;
- (c) improve the planning system to counteract the time, expense, and uncertainty associated with negotiating it and the effect this has on the number of planning permissions sought and granted each year; and
- (d) deliver the number of homes required to meet targets which go beyond the level private builders have an incentive to provide.