

Vistry Response to CMA Land Bank Working Paper

1 Introduction

- (1) Vistry welcomes the opportunity to respond to the CMA's working paper on land banking ("**Working Paper**"). We understand that the CMA's local area concentration analysis is ongoing however, based on all available evidence, it is clear that the strategic retention of land for development (or "land banking") does not have an adverse effect on competition.
- (2) Relevantly, the CMA's analysis makes it clear that there is no shortage of developable land at the national level and that the largest housebuilders have a relatively low share of supply. The same holds true for each LPA identified by the CMA, with sites competing against a mix of large and small housebuilders and existing second-hand homes.
- (3) In our view, a MIR is not the appropriate course of action to address any potential concerns relating to land banking. To the extent there are challenges identified which require particular remedies, Vistry believes this would be most appropriately dealt with through Government reforms to improve the efficiency of the planning system (including the impact of environmental regulations), as explained in Vistry's separate feedback on the CMA's working paper on planning.
- (4) This submission sets out Vistry's comments on the CMA's proposed methodology for the local concentration analysis and provides broader comments on the other concerns identified by the CMA in the Working Paper.

2 Comments on the CMA local concentration analysis

- (5) We are grateful for the opportunity to provide feedback on the CMA's proposed methodology for identifying local areas with a high market concentration.
- (6) As a general comment, we note the CMA's findings in the Update Report that indicate the housing market is functioning well at a national level. The largest ten housebuilders are responsible for approximately 40% of new houses built in 2021, indicating low concentration in the market.¹ Further, despite the prevalence of land banking across the industry, there is no shortage of developable land in the UK. As the CMA observes, at least 43.6% of land in England is available for development and "*there is land across all regions of England which in principle could be developed for housing*".²
- (7) In its Working Paper, the CMA is instead exploring whether there are any geographic areas with significant concentration (i.e. through the control of a significant proportion of developable land), which could allow housebuilders to exercise market power by slowing build-out rates, to allegedly enable higher prices to be charged and/or production of lower quality / less diverse houses. This claim is not supported by evidence:
 - (i) **New build housebuilders are constrained by existing housing stock.** Existing and new homes are highly substitutable, with consumers likely to shift away from new builds if the prices are too high. This is consistent with previous findings by the Office

¹ Para 2.115 of the [CMA Update Report](#)

² Para 2.104 of the [CMA Update Report](#)

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of Fair Trading in its 2008 Housebuilding Market Study³ and CMA merger decisions.⁴ Vistry is highly sensitive to the prices of existing homes given that the second-hand market makes up the vast majority of residential property transactions each year (~75% in 2021/22).⁵ The competitive constraints of second-hand property on new developments are clearly shown by [redacted]. To a lesser extent, housebuilders are also constrained by (a) the self-build segment of the market, which is estimated to contribute to 7% of new housing supply;⁶ and (b) conversions of non-residential property into residential property, which contributes c.12% of new housing supply⁷ and is expected to expand significantly in the coming years.⁸

- (ii) **Vistry faces fierce local competition:** Vistry regularly [redacted] in response to market conditions, including in the areas the CMA has identified as part of its local concentration analysis (see further below).
- (iii) **Vistry is not artificially withholding supply:** As previously noted in our submissions to the CMA, the primary factor determining the build-out rate is customer demand. While some stakeholders have suggested that housebuilders are artificially limiting supply to improve prices, housebuilders naturally may reduce their build out rate where there is a reduction in customer demand and in response to broader macroeconomic conditions. All economically rational firms manage inventory in a similar way during periods of reduced demand (as we are currently experiencing). Vistry uses all strategies available to it to manage inventory, which may include [redacted]. For example, Vistry has increased incentives on offer to customers to boost demand, such as stamp duty contribution,⁹ deposit contribution and cashback offers,¹⁰ and upgraded specifications. It is also rolling out the 'Home Stepper' shared equity product with Sage to improve sales to first time buyers (and all home buyers more generally).¹¹
- (iv) **Vistry produces high quality houses:** Vistry does not reduce the quality of its construction based on the competitive conditions in the market. While we note that quality must be balanced against cost – with higher priced, more bespoke housing likely perceived as being of 'higher quality' than higher volume housebuilders' products – objectively, Vistry consistently produces high-quality houses. This is reflected in Vistry's rating as a 5-star housebuilder, with homeowners benefiting from a 10-year builders warranty on all houses built. Importantly, quality should not be viewed narrowly on a project-by-project basis. Vistry is incentivised to keep quality scores high across all its sites to avoid a negative reputation, which can place it at a competitive disadvantage against other housebuilders across all locations.
- (v) **Local housing dynamics fluctuate over time:** To the extent that housing supply is concentrated for a period in an area, this is likely to be transitory only as more

³ OFT, [Homebuilding Market Study \(2008\)](#)

⁴ See paras 20-21, CMA ['Completed Acquisition of Banner Homes Group Plc By Cala 1 Limited'](#),

⁵ In 2021/2022, total of 232,820 net new houses out of a total of 870,780 UK residential transactions: see HMRC ['UK monthly property transactions commentary'](#) (30 November 2023)

⁶ [Customer Build Home, 'Submission to Housebuilding Market Study Statement of Scope'](#)

⁷ See pg 25, House of Commons Library ['Tackling the under-supply of housing in England'](#)

⁸ Financial Times, ['London office shake-up as working from home reshapes market'](#) (12 June 2023)

⁹ [£10,000 on stamp duty | Linden Homes | Bovis Homes](#)

¹⁰ [Deposit Assist | Vistry Homes](#)

¹¹ [Shared Ownership with Home Stepper | Bovis Homes](#)

housebuilders enter the market and/or more land becomes available. We note that the CMA's data shows the vast majority of LPAs with three or less housebuilders have fewer than 1000 plots in either the long- or short-term land bank. Because of the staged zoning of sites within each LPA, and therefore the limited number of plots available at any one time, it is reasonable to assume that the relevant LPAs will release more land to ensure they meet their five-year supply of deliverable housing sites in accordance with the NPPF. Otherwise, the presumption of sustainable development would apply which further opens up avenues for housebuilders to enter the market. Many housebuilders have a broad geographic reach across England, and are able to shift supply to LPAs without significant difficulty.

2.1.1 Comments on CMA methodology

- (8) Vistry has set out its detailed comments on the CMA's proposed methodology in **Annexes 1 and 2** to this submission. Overall, Method 1 is likely to be the more rigorous approach and will provide the CMA with a more complete picture of the housing market. Although it has its shortcomings, this approach is preferred because it (i) relies on more up to date data; (ii) takes into account qualitative factors, which more accurately reflect the competitive realities in that LPA; and (iii) relying on permissions data is more representative of supply and has less of a bias towards larger housebuilders.
- (9) In addition to the specific comments set out in Annex 1 and Annex 2, we make the following general comments on the CMA's methodological approach:
- (i) First, **LPAs are a very rough proxy for local markets**: LPAs may not be an accurate proxy for local housing markets and may be too narrow to provide a meaningful competitive analysis. While we understand that this is the most convenient approach to map permissions data against a housebuilder's land banks, this does not align with the reality of demand for, and supply of, houses. There may be important sources of secondary supply in nearby areas which are being excluded from the CMA's analysis. In some cases, Local Housing Areas can cross several LPAs and the boundaries will depend on a number of factors, including distance, geography, transport links and whether the location is urban / rural. In some cases, permissions data in neighbouring LPAs might be relevant to an assessment (either instead of, or in addition to, the LPA where a project is based). For example, [X]. We recommend that the CMA consider sales and permission data in neighbouring LPAs for a more complete picture of the relevant housing market. The CMA should also not underestimate the competitive constraints imposed by secondary sales in non-neighbouring LPAs, particularly for prospective homeowners who are not tied to schools or other local links.
 - (ii) Second, **larger housebuilders are overrepresented in the CMA's analysis, meaning market positions will be overstated**. The CMA has only focused on the land bank data of the 11 largest housebuilders. As noted above, these housebuilders account for less than half (~40%) of the supply of new build houses. Even if only a small portion other housebuilders maintain a sufficient land bank, it is a material exclusion from the dataset, meaning any market shares will be materially overstated. Similarly, the permissions data does not include development sites that are less than 10 units in size. These sites make up approximately 79% of all projects and 9% of

unit permissions,¹² which is another significant omission. [X], housing output is directly in competition and to exclude this data further misstates the true position. We therefore recommend that an upward adjustment is made to the thresholds set out in the CMA's methodology to limit this impact of missing data.

- (iii) Third, **the CMA's proposed dataset is not up to date**. The land bank data collected from large housebuilders is current as of December 2022 and the permissions data is current up to the end of Q1 2023. Accordingly, the CMA's analysis will be based on information one year old or more by the time the Final Report is published. Given that larger sites take longer to build out, the consequence of this is that larger housebuilders will appear to have a higher number of permissions and land bank plots in an area (and a lower number of completions). Close consideration should be given to more recent data when available. We therefore recommend the CMA closely analyses more recent information and data as it becomes available.
- (iv) Fourth, **the CMA's data ignores significant source of current and future constraints**: the CMA's dataset only provides a static view of the current state of land banks and permissions, and does not account for how the market will evolve in the short to medium term. While permissions data indicates supply that is likely to come online in the near future, it is, in fact, backwards looking. Based on the Working Paper, it does not appear that the CMA has considered other sources of land, such as: (a) each LPA's 5 year / 10 year / 15 year projected land supply; (b) planned release of public sector land, for example sales listed on Homes England's Land Hub;¹³ or (c) private data from real estate agents and land promoters. These are important sources of future competition. Therefore, the CMA's methodology does not take into account the dynamic nature of the housing market, and how developers might respond. To exclude this data will naturally lead to a further misstatement of the true position of housebuilders in any analysis. We therefore recommend the CMA conducts a broader review of the land for sale in each local housing market area.
- (v) Fifth, **there is inherent uncertainty around the size of long-term land banks**. Notably (a) plot numbers for long-term land banks may be revised downwards during the planning process (often due to planning restrictions put in place by the LPA); and (b) not all long-term land bank sites will be built out (for example, where planning applications are rejected by the LPA). As noted by the CMA in the Working Paper, ~19% of all long-term plots are allocated in an LPA's local plan and between 15-20% of major planning applications are rejected.¹⁴ This indicates that a significant proportion of plots face uncertainty over whether they will be developed or not. Additionally, where a planning application is delayed or rejected, it will artificially increase the size of the housebuilders land bank for a longer period of time (i.e. because the plots would have been pulled through and sold at a faster rate). We therefore recommend that an upward adjustment is made to the thresholds set out in the CMA's methodology to limit the impact of this uncertainty.
- (vi) **Permissions data may overstate the number of permissions granted to large housebuilders**. We note the CMA comments in the planning working paper and

¹² See Table 4, Department for Levelling Up, Housing & Communities '[Planning applications in England: October to December 2022](#)'

¹³ Homes England, [Land Hub](#)

¹⁴ Para 3.16 of CMA '[Land Banking Working Paper](#)'

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Lichfield research that between 15-20% of planning permissions either lapse or are reapplications,¹⁵ which might then lead to double counting. In our experience, this disproportionately affects larger housebuilders due to the complexities associated with larger sites. We therefore recommend that an upward adjustment is made to the thresholds set out in the CMA's methodology to limit the impact of this uncertainty.

2.1.2 Comments on areas identified by the CMA

- (10) Vistry considers the sites identified by the CMA to be in competitive markets. In each case, for the original acquisition of land, Vistry competed with other housebuilders and other market participants (such as land promoters) in the upstream market to acquire the land. In addition, Vistry faces strong competition in the downstream market for sale of houses from a mixture of new build sites and existing second-hand homes.
- (11) In relation to each LPA identified by the CMA specifically:
- [X]
 - [X]
 - [X]
 - [X]
 - [X]

3 Other concerns raised by the CMA on land banking

- (12) Although not dealt with in detail in the Working Paper, we note the CMA's broader analysis on land banking and the two other issues that are consequences of land banking.

3.1 Strategic rationale for land banking

- (13) Vistry reiterates its comments in response to the Update Report¹⁶ that land banking is a consistent and necessary feature of the housebuilding sector. There are legitimate reasons why housebuilders develop land banks (often unintentionally), including:
- (i) the length of time it takes to secure planning permission, particularly for the large and complex housing developments that Vistry (and typically also other larger housebuilders) construct; and
 - (ii) the risks involved in the planning system, including (i) continuous changes to the planning system creating delays and uncertainties (e.g. by Levelling Up and Regeneration Bill, National Planning Policy Framework, etc.); and (ii) complexity of (ever) evolving environmental regulation (e.g. Biodiversity Net Gain rules, nutrient neutrality, water neutrality, Special Area of Conservation designations, etc.). This creates a risk that planning permission will be delayed or outright rejected.
- (14) The practice of land banking has been considered numerous times in detail in the past, including by the UK Parliament and the Office of Fair Trading.¹⁷ We do not believe the

¹⁵ Para 4.16 of CMA '[Planning Working Paper](#)'

¹⁶ See section 3, Vistry submission to CMA Update Report

¹⁷ See the [Callcutt Review of housebuilding delivery](#) (2007), OFT's [Homebuilding Market Study](#) (2008), [Letwin Review](#) (2018)

conduct of housebuilders in relation to land banking has changed over time, and, as noted in our response to the Update Report, the size of Vistry's land bank has not materially increased as a proportion of completions over the past five years. We agree with Professor McCallister's research,¹⁸ submitted in response to the Update Paper, which notes that major UK housebuilder's short-term land bank has been relatively stable between 2007 and 2022 when measured in years (between 6-7 years). Additionally, Professor McCallister's analysis on the composition of land banks highlights that UK housebuilders tend to have smaller land banks relative to their output (on a per plot basis) compared with residential developers in the US, Australia, and Ireland.

- (15) Further, we do not consider that the land banking has raised barriers to entry or expansion in the housebuilding market. As noted in section 2 above, there is no general lack of developable land in the UK. While SME housebuilders may be limited to purchasing small/medium sized sites due to a lack of finance, there are various options available. For example, Homes England (a large source of land in Great Britain) accommodates SME housebuilders by splitting larger parcels of land into smaller parcels.¹⁹ Housebuilders looking to expand operations can also manage production through a variety of ways, including by (a) entering into joint ventures or consortiums to acquire land that would otherwise be too large for a single company; and/or (b) entering into option agreements to acquire land.
- (16) Finally, housebuilders have no incentive to hold land for longer than is necessary to build out the site. Housebuilders generate the vast majority of their profits from the sale of houses, not land. Accordingly, Vistry has no incentive to restrict supply by artificially reducing build-out rates or holding land for longer than is necessary. If housebuilders were heavily dependent on the value of land (as opposed to the value of the houses built), we would expect to see housebuilders engage in a large number of land sale transactions. As set out in Table 1 below, [redacted].

Table 1 – [redacted]

Source: Vistry

3.2 Use of option arrangements

- (17) Vistry reiterates its comments on option arrangements set out in its response to the CMA's Update Report.²⁰ We do not believe that option agreements are being used in any greater number today than in the past, and generally provide benefits to both housebuilders (by efficiently using capital and managing risk that permission will not be granted) and landowners (they allow the land to be used in its current form until planning permission is granted).
- (18) With regard to option agreements, we wish to reiterate the following additional points:
- (i) Housebuilders, including Vistry, will generally place a restriction on the land title where it obtains an option agreement, to protect its investment. There are several online platforms which provide ownership and sales data, including any option agreements affecting the land.

¹⁸ Professor Pat McAllister, [Response to CMA Update Report](#).

¹⁹ See Para 2.2, [Homes England – Written evidence \(UKH0115\)](#).

²⁰ See section 3.1.3 of Vistry Response to CMA Update Report

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- (ii) Most Vistry option agreements [~~§~~].
 - (iii) The commercial structure of option agreements require [~~§~~].
- (19) In Vistry's view, there is no evidence that option agreements either obscure ownership of land or confer benefits on larger housebuilders that would disadvantage SME housebuilders or landowners.

4 Comments on next steps

- (20) In view of the above, Vistry does not consider that a MIR is appropriate in respect of land banking. In particular, the reference test has not been met because there are no reasonable grounds to suspect that the practice of land banking prevents, restricts, or distorts competition.
- (21) In any event, even if the CMA finds a reasonable suspicion that competition in any market is being prevented, restricted, or distorted by land banking issues, Vistry believes that the most appropriate and proportionate cause of action would be to provide recommendations to the Government, focusing on reforming the planning system and environmental regulations. This would reduce risks and delays in the planning system, limiting the need for housebuilders to maintain a larger land bank.

Annex 1 – Vistry comments on Method 1

Method 1		
#	Filter	Comments
1	<p>Areas that meeting the following criteria:</p> <p>(a) Using the permissions data, local areas where more than 50% of permissions have been granted to one applicant in the 2021 to 2023 period.</p> <p>(b) Using the land banks data, local areas where there are three or fewer of the large housebuilders who have short-term and/or long-term land banks for the calendar year 2022.</p> <p>(c) Local areas that are close to national parks in GB.</p>	<ul style="list-style-type: none"> An upward adjustment should be made to the 50% of permission threshold, to account for the number of smaller sites that are not captured by the data (that make up ~10% of new housing supply). The three-year time period is too limited (and atypical for the CMA to use such a short period in a market study), given that large complex sites can take between four to seven years to develop. CMA should extend its analysis to the preceding three-year period for a more accurate analysis (i.e. proportion of application between 2018 and 2023).
2	<p>Local areas retained if:</p> <p>(a) Many units have been granted planning permission to one or a few applicants over consecutive 3-year periods (2012 to 2014; 2015 to 2017; 2018 to 2020; and 2021 to 2023);</p> <p>(b) large proportion of planning permissions granted across all 3-year periods have gone to one or a small number of housebuilders; and</p> <p>(c) the total number of planning approval in each preceding 3 year period is also considered (to determine if the market is small)</p>	<ul style="list-style-type: none"> CMA criteria is not objective, and it is unclear what would qualify as “many units” or a “large proportion” of planning permissions”. We request that the CMA provide more information on how it is approaching this step of the analysis.
3	<p>Permissions data cross-checked against land banks data to determine:</p> <p>(a) if there are three or fewer large housebuilders present with short-term and/or long-term sites, and</p> <p>(b) the total number of plots held by each housebuilder across their short-term sites (showing current activity) and/or long-term sites (showing future activity).</p>	<ul style="list-style-type: none"> No assessment of competitive constraints from housebuilders outside the 11 largest housebuilders is contemplated. This overlooks the important competitive constraints imposed from smaller housebuilders.
4	<p>Consideration of qualitative factors, including Geographic factors such as Travel to Work Areas and current news stories on planned developments.</p>	<ul style="list-style-type: none"> Vistry agrees that qualitative factors, including geographic travel to work areas are a relevant consideration to determining accurate housing market areas.

Annex 2 – Vistry comments on Method 2

Method 2		
#	Filter	Comments
1	Land banks data to identify areas where three or fewer of the large housebuilders have land in short-term and/or long-term land banks for the calendar year 2022.	<ul style="list-style-type: none"> Relying on land bank data from 2022 will exclude (a) housebuilders outside the 11 largest housebuilders that the CMA does not have data for; and (b) exclude market participants who were active in 2021 or earlier (who were in competition with housebuilders currently in the market) and any new entrants into the market in 2023, both of whom are a competitive influence on sites over time. These deficiencies support expanding the time period. A single year period of assessment is too limited (and atypical for the CMA to use such a short period in a market study) and backward looking. This is not appropriate given that large complex sites can take between four to seven years to develop. CMA should extend its analysis to the preceding three-year period for a more accurate analysis (i.e. proportion of application between 2018 and 2023). This overlooks the important competitive constraints imposed by smaller housebuilders. Land bank data is not up to date.
2	Local areas retained if: <ul style="list-style-type: none"> (a) the same large housebuilder has both long-term and short-term land (which implies they are likely to have an ongoing strong position in the area); or (b) where one large housebuilder has a large number of short-term or long-term plots (more than 1,000 plots across sites) relative to other large housebuilders with a presence. 	<ul style="list-style-type: none"> In relation to (a), all housebuilders present in an area are likely to have both short and long-term land banks because larger projects tend to pull land out of the long-term land bank over time. This is likely to be overinclusive and will not provide a meaningful filter. In relation to (b), 1,000 plots appears to be an arbitrary number with no relationship to the stock of housing the LPA. The CMA should adopt an approach that factors in the local population density / housing stock so that populated areas are not over-represented in the analysis.
3	Cross-check against permissions data to retain: <ul style="list-style-type: none"> (c) local areas where the same large housebuilders have been granted permission for a high proportion of units that aligns with the land banks data; or (d) local areas where applicant(s) that are not the large housebuilders, have been granted permission for a high proportion of units in each period or overall 	<ul style="list-style-type: none"> CMA criteria is not objective, and it is unclear what qualifies as a “high proportion”. We request that the CMA provide more information on how it is approaching this step of the analysis.
4	Retain local areas where short-term and/or in long-term land banks are high relative to local need (i.e. more than 2x local need).	<ul style="list-style-type: none"> LPAs generally undershoot their housing targets under the Standard Method. This should not be considered a reliable data point to rule in or out an LPA. The data relied on by the will be close to two years old by the time the Final Report is

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Method 2		
		published, ²¹ and therefore is likely to be inaccurate and overinclusive (i.e. because housing needs tend to rise over time as population grows).

²¹ [Standard method for local housing needs - April 2022 \(lichfields.uk\)](#)