

Formal Response to the Competition and Market Authority's Housebuilding Market Survey - planning working paper dated 15th November 2023.

Authored by [Redacted]

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Question 4.1

1. Do you agree that planning risk is a key issue for the planning system?

In headline terms the primary uncertainty and risk is whether planning permission can be secured. However this is a calculated risk and central to [Redacted]'s business – the risk creates the value. [Redacted] understands that planning in general, whilst rules led, is not an exact science and accepts (up to a point) the balanced way in which development proposals can be assessed and the subjective way in which policy is applied.

The difficulty however is the policy framework against which the business must measure that risk, and the subjective way that the policy framework is applied, is the subject of constant and unpredictable change. This represents the key area of risk and uncertainty to our business. There is neither stability nor consistency of approach in terms of headline legislation, national planning guidance or local planning policy. The policy framework is constantly moving not only in terms of fact but also in terms of nuance and interpretation. The political nature of the planning process (both nationally and locally) is the key cause of this instability.

The promotion timescales are generally between 5 and 10 years with investment decisions being made taking into account all policy and legislative matters. However, over that span the policy framework can and does change both in terms of fact and interpretation. It can change any number of times even within single Government parliamentary cycles as we have seen over recent years. We have no choice but to react to any situation faced but it can and does mean that investment decisions, soundly based at the time, are wholly undermined by a political motivated, stroke of pen change of course [REDACTED]. The last 5 years have been especially volatile which has made it particularly difficult to make sensible and retrospectively justifiable investment decisions.

In this light our response on the points raised as follows:

a) *Risk varies by type of development. Brownfield development is less risky than greenfield simply by being less controversial but importantly more policy consistent. The support in principle for brownfield development has been longstanding and can be presumed to be applied consistently in the future. There is however limited brownfield land with major questions around what it can actually deliver in terms of much needed family housing in the right areas.*

Greenfield policy is much more volatile and has been subject to significant and random change over the last 3 years (weight and relevance of 5-year supply deficit, application of housing numbers, presumption in favour, application of the tilted balance, ecological constraints, nutrient neutrality etc).

There is limited risk differential by size of site – a smaller greenfield investment faces the same challenges as a larger greenfield site.

2. Do you agree with our analysis of the causes of the uncertainty in the planning system and how they contribute to under delivery of housing?

Yes.

3. Are there any other factors that we should consider?

Yes.

- a) *National top down housing targets should be set and LPAs should be required to cumulatively deliver the national housing target.*
- b) *Land Promotion companies predominantly operating as SMEs, provide a service to delivering national and local housing delivery and to not include their role and the financial risks and investment that are made against a failing planning system have not been taken into account in assessing the causes of uncertainty in the planning system.*
- c) *Statutory Consultee responses are not consistent and often delayed causing further uncertainty to the planning system.*
- d) *If the planning system is failing to deliver housing and under delivery of housing is evidenced at an LPA level, rapid responses to increase the delivery of housing should be in place through policy measures. The amendments to the NPPF remove the tests to establish the deficit and where evidenced, the presumption in favour of sustainable development on additional sites not previously considered under a planning application submission process are potentially going to be removed. This is a retrospective policy, ie it would identify a problem has happened and then seek to fix it. As importantly, the test to establish whether there is a supply of deliverable sites with planning consent to meet the next five years of an LPAs housing requirement is the early warning sign that LPAs and therefore national housing targets are going to be missed. This is a proactive review and again, should the issue be identified early, rapid responses to increase the delivery of housing should be in place. The proposed removal of these two crucial tests will lead to significantly higher levels of uncertainty in the planning system.*

4. Do you consider there to be any significant difference in the level of planning uncertainty between England, Scotland and Wales?

[Redacted] only operates within England and therefore has no comment on the planning uncertainty and causes of such uncertainty in Wales and Scotland.

Question 4.2

- 1. Do you agree that the current level planning, policy and regulatory costs could threaten the viability of development at some sites? To what extent do you think that this is currently happening? Are some sites and areas more at risk than others?**

Yes. Please refer to the HBF publication – Planning Delays and rising costs crippling SME housebuilders – March 2023 as previously submitted to the CMA by [Redacted] in May 2023. This provides a clear indication of the costs involved in promoting a site through the local plan process and the cost of submitting and running an application, all in an arena of high uncertainty that the scheme will navigate its way through the planning system to a successful conclusion. In respect of site-specific viability concerns, all additional costs relating to BNG, Nutrient Neutrality Future Homes Standards etc all add a significant cost to the scheme and in turn the decision as to whether the scheme is worth taking a risk on in respect of seeking to promote it through the planning system.

- 2. Do you agree with our analysis that shows the length and complexity of the planning system may contribute to the under delivery of housing?**

Yes. Without question.

- 3. Do you agree that we have identified the key causes of delays on the planning system? Are there any other factors that we should consider?**

[Redacted]'s identified key causes of delays on the planning system are listed below:

- a) Length Cost and Complexity of the current planning process*
- b) Duration of the current planning process*
- c) Constant amendments to the existing planning policy*
- d) Abundant number of Housing Ministers who have varied in their ability to grapple with this issue.*
- e) Lack of Resource at the LPAs to process applications and set new policies through local plans*
- f) Planning committees which are politically motivated rather than evidenced based when making decisions*
- g) Planning committees which are making evidenced based decisions against local policies that are out of date*
- h) Planning committees which are making evidenced based decisions against constantly changing national policy and guidance*
- i) Lack of action following the White Paper which identifies the same issues which the CMA are starting to identify.*

- 4. Do you consider there to be any significant difference between England, Scotland and Wales in i) the extent to which planning policies and costs threaten the viability at some sites; and ii) the causes and extent of planning delays and their impact on delivery of housing?**

[Redacted] only operates within England and therefore has no comment on the significant differences in England, Wales and Scotland on this question.

Question 4.3

- 1. Do you agree with our analysis that in some cases local targets may not accurately reflect underlying housing need and the reason for this? What impact do you consider this has on housing delivery?**

There is some variation across Local Authority areas mainly in how Councils respond to the opportunity afforded by national policy flip flop and change. Over the last 6 months (as of mid-April) 55 emerging Local Plans have been either pulled or delayed prompted by the Gove announcement of December 2022. These are focussed mainly in the midlands and the south and reflect political administrations responding to constituency concerns expressed in the main by vocal and overly influential minority groups.

The reluctance of these and other Councils to proactively deliver housing so as to assuage the minority view is out of step with the increasing poll data which suggests a majority recognition of the severity of the housing crisis and significant national support for increasing the rate of housebuilding. [Redacted] stand fully behind the Lichfield's evidence submitted to this CMA process and the issues it raises with the standard methodology and urban uplift providing false positions off the underlying need. In addition, the delivery of affordable housing within each region should be as fervently reported and addressed as possible by each LPA. If affordable housing is not being delivered in an LPA, further sites must be delivered which increase the supply of affordable housing. This unmet need is not accurately reflected in the housing targets set by the government or any LPA.

The impact is clear. It is why there has been such under delivery in recent years, such under delivery as independently evidenced in the CMA's planning response working paper in Figure 1.1 on page 9.

- 2. Do you agree that in some the planning system lacks internal consistency within its objectives, meaning that LPAs may be insufficiently focused on meeting housing need?**

Yes.

- 3. Are there any other issues relating to targets, incentives of planning constraints that we should consider?**

Yes. The role of Land Promoters. To ignore their positive role in driving forward sites through the planning process and providing oven ready sites to the market to concurrently deliver short term land to the housebuilders and provide the development sites to deliver housing within an LPA. This role is strategically vital to the function of the market. It also facilitates SME's with a far higher number of development sites to acquire than those under options to the larger housebuilders referenced in the CMA's planning response paper and also the CMA's local concentration and land banks working paper.

- 4. 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 on housing delivery?**

[Redacted] only operates within England and therefore has no comment on the significant differences in England, Wales and Scotland on this question.

Question 4.4

1. Do you agree with our analysis of how the planning system may be having a disproportionate impact on SME housebuilders?

The identified reasons why the the planning system may be having a disproportionate impact on SME housebuilders in the CMA's report are for clarity set out below:

- a) *The complexity, length, uncertainty and cost associated with making a planning application tends to be similar regardless of size, meaning they are disproportionately large for SMEs, since they tend to develop smaller sites.*
- b) *SMEs are less able to mitigate uncertainty, risk and delay in the planning system by having multiple sites in multiple 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 SMEs. This is exacerbated where there is uncertainty about whether a planning application will be approved.*

[Redacted] agrees with all these causes to the disproportionate impact on SME housebuilders. However, it should not be inferred as acceptable that larger housebuilders and land promoters as SMEs within the development sector should be accepting of these fundamental issues and the impacts they have on their business and decision made within a business as to whether sites should be promoted through the planning system.

2. Do you agree that we have identified the key issues faced by SME's due to the planning system?

Yes – cost and delay being the primary issues.

3. Do you consider the current planning system is incentivised to deliver housing on larger sites? If so what are the implications of this for the housing delivery?

There are clearly economies of scale associated with delivering housing on larger sites – the cost per plot range set out at paragraph 4.155 sets this out clearly. The implications are that the delivery contribution from the SME sector is subject to further challenge alongside the wider headwinds. The decline in SME activity set out at 4.158 is testament to this.

4. Are there any other aspects of the planning system that have an impact on SME housebuilders that we should consider?

Nothing material that has not already been set out in submissions nor covered in your report.

5. Do you consider there to be any difference between how the planning system impacts SMEs between England, Scotland and Wales?

[Redacted] do not generally operate outside England so are not best placed to make an informed contribution.

Question 5.1

1. Should the UK, Scottish and Welsh governments be considering changes to their various existing methods of assessing housing requirements? If so, should the providing certainty, stability and consistency to the housebuilding market feature?

A robust and independent calculation of housing need is an essential first step in achieving the eventual delivery of the minimum necessary level of housing. The second step after the calculation of need is clearly to ensure that Councils are mandated to deliver their share of this overall national figure but this is a separate matter. Whatever method of calculation is preferred, it needs to be widely informed and supported so as to be robust; once adopted with wide acceptance, the approach will provide the certainty and consistency that is essential to Councils, professionals housebuilders, promoters and the general public.

2. Are the criteria we set out in paragraph 5.19 appropriate for determining an improved methodology for target setting?

Generally appropriate although with the following observations.

- *Criteria (c) which promotes regular assessment of housing targets runs the risk of undermining the long term consistency and certainty point referred to in q1 above. The suggestion of an adjustment to coincide with every national household projection could have the effect of causing change during a Local Plan preparation cycle causing delay and restarts. The interval between potential target amendments has to have regard to the planning cycle.*
- *Criteria (e) contemplates limited deviation from the agreed methodology in setting local targets. If the national figure is to be achieved however there should be no scope for material deviation.*

3. What is the most appropriate method of forecasting housing need – nationally and locally?

Forecasting methodology and the respective system merits are beyond the technical scope of [Redacted] but whatever method is adopted requires widespread buy in

Question 5.2

1. How could the financial resourcing constraints facing LPAs in the production of local plans be mitigated whilst incentivising LPAs to produce local plans on time?

The resource requirements generated by Local Plan production is acknowledged in terms of both its scale and its constraint on effective Plan making. Making Local Plans easier to produce (National Development Management Policies, mandatory targets and a clear rule-based approach) would simplify Plan production enabling Councils to begin to mitigate resourcing constraints. Addressing resource constraints (through ring fenced financial incentivisation) would make a direct primary contribution.

2. We note in Section 4 above that land supply constraints such as urbanisation or greenbelt land, affect the availability of sites for local plans. These constraints would not be directly changed by financial incentivisation. How could land supply constraints be managed in an effective way?

The land matters identified are largely policy derived constraints. With Green Belt for instance, it could be made clear within national policy that Green Belt review is appropriate as part of Local Plan preparation and that Green Belt land represents a viable land resource in meeting housing targets.

Question 5.3

- 1. What is the most appropriate method for implementing a reformed, rule based system that is designed rigorously and resilient to future changes in planning policy – and which minimises disputes about the lawfulness of developments?**

Paragraph 5.31 (a) – (d) sets out slightly different scenarios on how a rules based (or zoning) system could be implemented. Each has its merits and elements from each could be combined. Whichever is the most appropriate however is a question that can only be answered in the wider context ie understanding the role of a Local Plan, the extent of scrutiny around the rules, the ability to influence the zoning set, the ability to secure exceptions to any rule based or zoning position. When taken in the round it would be possible to assess the merits of a rules-based system over and above the current discretionary approach.

Question 5.4

- 1. To what extent would increased planning fees materially affect the viability of certain developments? Are there particular circumstances where this is likely to occur?**

It would clearly negatively affect the viability of any project in that it is an additional application sunk cost. The increased proportionate impact on the SME sector is clearly acknowledged.

- 2. How could the availability of qualified planners be improved?**

A difficult matter but better focus on achieving visibility to the undergraduate and post graduate student market has to be a good start. The other end of the scale is that candidates need to be able to see a strong career opportunity post-graduation across the widest field – public and private sector opportunities. The public sector component of that potential career incentive is clearly currently compromised by the significant underinvestment and resourcing which is covered comprehensively elsewhere.

Question 5.5

- 1. What measure would be most effective in supporting SMEs to navigate the planning process effectively?**

Anything that affects the key issues faced by SME's namely those of process and cost.