

## Response of Chartered Planners in Academic Practice Group to the CMA Housebuilding market study planning working paper

### Introduction

This response is submitted by members of the Chartered Planners in Academic Practice (CPiAP) network. The CPiAP is a group of chartered planners who, as well as currently holding academic posts (including honorary appointments), have also been Chief Executives and Chief Officers of local authorities and/or hold appointments as trustees and non-executive directors of many housing, planning and regeneration organisations. CPiAP members come together to make responses to parliamentary and government consultations on planning and related policy matters and in particular to help ensure that relevant research informs these policy considerations [REDACTED].

We have recently published our concerns and recommendations for changing the planning system particularly with respect to the need to reform the system of local plans. As this is relevant to your market study we have attached a digital version of that paper to the email in which we have submitted this response.

### Our response to your questions

We have grouped your questions together and responded in terms of their themes but our fundamental concerns with our planning system is that there has been very limited coverage of local plans, that the system deals poorly with uncertainty, and is inadequate at integrating national with local policy. These combine to explain the failure to deliver the housing we need in the right places.

### Our analysis of the GB planning system

*Question 4.1 1. Do you agree that planning risk is a key issue for the planning system? 2. Do you agree with our analysis of the causes of the uncertainty in the planning system and how they contribute to underdelivery of housing? 3. Are there any other factors that we should consider? 4. Do you consider there to be any significant difference in the level of planning uncertainty between England, Scotland and Wales*

Our main concern about the system is the lack of local plan coverage (see our attached paper). Despite England having a plan led system where planning applications are to be decided in the light of local plan policies (and other material circumstances) the fact that only 40 percent of authorities have an up-to-date plan means that in effect we have a 'plan-less' not a 'plan-led' system. Notwithstanding the tightening up of the statutory obligation to follow plans in recent legislation it is the lack of coverage that is the main issue creating uncertainty all round.

Thus we strongly welcome the further tightening up of this requirement to follow plans provided for by the Levelling Up and Regeneration Act 2023 and even more we welcome that for the first time since 1947 it will now be mandatory for local authorities to prepare and update local plans (Clause 15C of Schedule 7 of the Act).

Without having this mandatory coverage we have been faced with circumstances where decisions are not based on clear policies, are made inconsistently (and subject to changing elected members' views), and often lead to appeal or to call in by the Secretary of State (creating delays and more costs for applicants).

The lack of local plans has also meant that too many decisions have defaulted to being made by central government reducing the role of local knowledge and democracy in shaping local patterns of development. In addition, the loss of roles for sub regional or regional organisations has eliminated their role in negotiating and mediating on important cross border issues (e.g. where should new housing be located to meet housing market area needs).

Currently there have also been big delays by central government in England responding to its consultations on national planning policy, creating a great deal of uncertainty and delays in plan preparation whilst planning authorities await clarification.

*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? 2. Do you agree with our analysis that shows the length and complexity of the planning system may contribute to underdelivery of housing? 3. Do you agree that we have identified the key causes of delays in the planning system? Are there any other factors that we should consider? 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?*

We generally concur with your analysis and draw out two issues.

First, post consent negotiations on conditions precedent, especially on S106 agreements (S75 in Scotland) do add considerably to time and uncertainty during which market conditions can change impacting on viability. Clarity in local plans should help avoid this (and we are not in favour of the new and now enacted Infrastructure Levy as this will impose further complexity on a system where S106 and the levy will be twin tracked).

But not all delay can be attributed to negotiations between developers and planning authorities: much is also due to discussions and delays with utility companies. This has recently been made more challenging by the new obligations imposed on planning authorities in terms of environmental policies e.g. nature recovery and nutrient neutrality adding to the time taken to get decisions made and adding to the costs of development, often extra costs that cannot be easily offset by reducing payment to landowners since there is some asymmetry at work with land values rising when markets are strong and resilient but not falling in relation to higher development costs.

Second, we draw your attention to the higher level of grants available to social housing providers in Scotland which has made it possible for S75 negotiations between local authorities and developers to secure a wider range of affordable

housing types required, specifically more social rented housing in strong contrast to the position in England. But Scotland has experienced the same problems of integrating infrastructure requirements with planning policies and site specific decisions.

*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 reasons for this? What impact do you consider this has on housing delivery? 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? 3. Are there any other issues relating to targets, incentives of planning constraints that we should consider? 110 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 housing delivery?*

First, we would assert that housing targets do not take sufficient account of the fact that many permissions do not proceed (for a variety of reasons including viability and market changes) and hence meeting agreed need requires a much larger number of permissions in any 'stock flow' approach to this. Therefore, if we are to ultimately build 300k new homes each year there needs to be an allocation of a greater number of new sites into the stock of planning consents up front.

Second, the loss of regional and sub-regional bodies means that the scope for addressing cross border matters in agreeing housing targets has been made much more difficult. It was of course not always easy, but it did mean that there was a more systematic way of meeting needs in appropriate ways in terms of market area demand and capacity. It also means that strategic planning issues such as Green Belt reviews and infrastructure priorities are not dealt with in strategic ways, an important matter since planning authorities are raising considerable sums for cross border infrastructure investment through the Community Infrastructure Levy.

*Question 4.4 1. Do you agree with our analysis of how the planning system may be having a disproportionate impact on SME housebuilders? 2. Do you agree that we have identified the key issues faced by SMEs due to the planning system? 3. Do you consider than the current planning system is incentivised to deliver housing on larger sites? If so, what are the implications of this for the housing delivery? 4. Are there any other aspects of the planning system that have an impact on SME housebuilders that we should consider? 5. Do you consider there to be any difference between how the planning system impacts SMEs between England, Scotland and Wales?*

We generally would submit that SME decline has as much to do with wider macro-economic circumstances than the costs of dealing with planning. Although the planning system may at present have a disproportionate impact on SME builders in places, the planning system must be even-handed in terms of the standards that are expected of any developer. In this context the changes we advocate to improve the efficiency and effectiveness of the system may well have comparable disproportionate benefit to SMEs provided they are aligned with SME needs.

We would also submit that the trend towards larger (and green field) sites is much due to the policy stress on planning authorities negotiating contributions from developers to the cost of infrastructure and especially affordable housing. We do not submit that this form of land value capture to fund these requirements is wrong but it does put pressure on planning authorities to select sites where the maximum contribution is feasible. All the recent analysis of viability shows this to be the case.

#### Your options for reforming the planning system (Section 5)

*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 providing certainty, stability and consistency to the housebuilding market feature? 2. Are the criteria we set out in paragraph 5.19 appropriate for determining an improved methodology for target setting? 3. What is the most appropriate method of forecasting housing need – nationally and locally?*

The key issue here for us is that whatever the methods used to assess requirements, the resulting outcome must integrate national and local estimates. Desirably they should incorporate projections of household numbers, measures of demand and make assessments of the need for affordable homes. There should be no policy variables such as the recent decision by government in England to increase the assessed need in 20 core cities by 35 percent, regardless of need or capacity to meet it. Where need should be met is a matter for planning policy not methods of estimating need. Moreover, whilst there should be an obligation on planning authorities to meet assessed need, account must also be taken of the fact that the boundaries of local planning authorities do not match housing market areas which a proper assessment of supply and demand should be made. In our view this is where we need to involve sub regional bodies (i.e. mayoral and county combined authorities) to act both as depositories of intelligence on housing markets and as bodies to negotiate with and agree the allocation of how the estimated need is to be met by each of their constituent planning authorities. Especially important is to ensure policy on the location of new economic development and housing is well integrated.

*Question 5.2 1. How could the financial and resourcing constraints facing LPAs in the production of local plans be mitigated whilst incentivising LPAs to produce local plans on time? 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?*

In our view there are real risks that local plan preparation work will be held up whilst staff are diverted to meet development control targets which are often difficult to meet because planning fees are inadequate to provide the staffing required. Whilst we applaud the decision to make local plan preparation and adoption mandatory (for the first time since 1947) the jobs involved in plan production and adoption have become far more complicated in recent years as government has added to the wide range of policy issues plans must (and rightly so) address, so that plans now have to become more complicated. We commend to the CMA the approach in our local

plans reform paper which is to formally separate the need to consider long term options related to desirable futures (where the future is inevitably uncertain) from the need for immediate commitments (where need is clear and resources must be allocated) but which do not prejudice long term options. This approach should reduce the time taken to prepare plans. Additionally because plans must be the nexus for integrating development with infrastructure local authorities could be incentivised by linking infrastructure funding to timely production and adoption of plans (at the moment incentives are related to delivery e.g. new homes bonus in England).

In relation to land supply constraints, including Green belt, we think these are better addressed and resolved at a sub-regional level. Green Belts are not a local 'green' protection policy mechanism but a strategic settlement management policy. Reviewing Green Belts on site by site basis as a means of finding more land for new development is not the way to go about reviews and addressing constraints. They need to be done at a wider than site and individual local planning authority level, again a role we foresee for Mayoral and Combined County authorities.

*Question 5.3 111 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?*

All the work we (and others) have done shows that there is no distinction in practice between rules based and discretionary planning systems. Discretionary systems need rules (including local plans) in place to guide decision making and to provide a degree of certainty to developers and infrastructure providers but also need to provide the context within which the necessary degree of flexibility to depart from plans and policies (rules) when circumstances change can be provided. Over the years, the rhetoric of planning policy and law has provided a greater emphasis on decisions following adopted plans (which is why we need plans - which is also one way of ensuring that elected members are more willing to follow policies).

Our work has also shown that rules based (including zoning systems) tend in practice to provide for decisions to be made out-with the rules and policies of the zoning policies where circumstances have changed since the policies/rules/zoning plans were adopted. This usually requires amending the zoning plan so the decisions comply with rules based systems. These (often time consuming) amendments to zoning plans usually follow on from extensive negotiations on new developments between the planning authority and developers/landowners/funders, all agreeing that the zoning system is out of date. Discretionary systems avoid the need to make plan changes before desirable new development (not foreseen when plans were first made) can take place.

Hence the distinction between rules based and discretionary systems (often a contrast between civil law and common law jurisdictions) is more apparent than real. This is why in our proposals for reform (see our attached paper) we have argued for plans to be a mix of site-specific short-term commitments and longer term options

setting out desirable visions in relation to potential futures with the short term commitments not prejudicing these potential futures.

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

Increased planning fees are highly desirable so that planning authorities can deal with applications in a timely, efficient and efficient manner. Much of the work involved is of course of a 'pre application' nature involving extensive discussions with applicants and other parties. Likewise, much of the work is of a post decision nature involving discussions on conditions precedent (including the details of S106 agreements). What this means is that timely effective and efficient decisions require many parties to be able to comply with timetables, especially statutory consultees not the least infrastructure providers. Whilst additional fees (a cost to applicants) will help it needs many others to work to faster timetables. None of this is helped by the growing requirements of central government (and its agencies) to oblige planning authorities to take more and more factors into account (a good example is creating nutrient neutrality) which affect both the speed of decision but also the costs of undertaking agreed development. Speed if of course not always of the essence especially if it prejudices good outcomes but a faster process should in principle enable developers to take advantage of opportunities more easily and limit their debt interest payments (including the costs of options agreements) thus improving viability (but only marginally).

It should also be noted that there are authorities which have turned around their performance by adopting new ways of managing the planning processes, including forms of lean management.

Increasing the numbers of planning graduates coming out of accredited planning schools and entering the planning profession requires several measures. A growing proportion of new graduates are moving into the private sector, not only because of the salaries but also the better career and personal development opportunities. The following will help: (i) more scholarships for students seeking to study planning, given the high costs of fees including for postgraduate courses; (ii) greater use of degree apprenticeships in all UK jurisdictions; and (iii) improved salaries and better career prospects in local government.

*Question 5.5 1. What measure would be most effective in supporting SMEs to navigate the planning process effectively?*

SMEs do not have the staff and other resources to address the growing complexity (policy and processes) of making a planning application as do large volume builders (although also often having the advantage of local knowledge and contacts). The research evidence is clear: planning imposes relatively high costs on small builders because of simple economies of scale, i.e.: an application for a handful of units versus an application for a 100 when the same information is required for both all site sizes. Some authorities have set up special support systems for SMEs both to provide as much information as they can and also to support applicants through the

process but this requires much better funding of planning services so that SMEs can be helped in this way.. Many of the requirements that apply to larger developers have been waived for many SMEs (including not being obliged to provide affordable homes as part of their developments). There is some evidence especially in rural areas that the growing complexity of the process and of policy obligation is making it difficult to build on small sites (e.g. five new homes or less). Moreover, it is a moot point as to whether the struggles faced by SMEs are mainly planning induced as the GFC and the higher interest rate environment have been key contributory factors. We would urge consideration of the Letwin report proposals that permission for large developments should require incorporation of a range of small sites where SMEs are invited to participate in the development. This could involve PIP (permissions in principle) or some sort of passporting arrangement that simplifies what is required for these smaller development within the context of being part of larger ones.