

## **Annex 1 - Crest Nicholson's response to questions 4.1 to 5.5 of the CMA's Planning working paper issued on 15 November 2023**

**6 December 2023**

This document sets out Crest Nicholson's response to the CMA's Planning Working Paper consultation, dated 15 November 2023, which forms part of the CMA's wider market study into housebuilding, launched 28 February 2023.

### ***Analysis of the GB planning system (Section 4)***

#### ***Q4.1.1 Do you agree that planning risk is a key issue for the planning system?***

Yes.

Planning risk is one of the most fundamental factors affecting the land market and housing development industry within the United Kingdom. Strategic land exists as a concept largely as a market reaction to the complexity, uncertainty and costs associated with the planning system.

#### ***Q4.1.2 Do you agree with our analysis of the causes of the uncertainty in the planning system and how they contribute to underdelivery of housing?***

Broadly, the analysis set out in the "Planning working paper" reflects a good assessment of the causes of uncertainty and their relationship to the speed and quantity of housing delivery; it is a good diagnosis of the problem. However, there are elements of the analysis that Crest Nicholson does not recognise as an accurate reflection of the situation and we note that the working paper references that these views have been advanced by other participants in the Housebuilding market study. A fuller analysis is outlined below.

The planning system is unpredictable, it lacks consistency, and it creates a risk to reward decision making framework for participants in the land market. That uncertainty may impact on the willingness of developers to submit planning applications. Where land with planning permission is more scarce it is likely that the risk will increase and where land with planning permission is more plentiful the risk is likely to decrease. The outcome is not within the control of the housebuilder. It is controlled by the administrators of the planning system.

The planning process is lengthy, complicated, costly and in many ways unnecessary. Although the National Planning Policy Framework (NPPF) had initially signalled some improvement in progress with Local Plans and Planning Permissions pursuant to those Local Plans, the cost, complexity and time taken to secure planning permission has increased.

The working paper identifies insufficiently clear incentives for Local Planning Authorities, citing internal inconsistencies with the objectives and targets resulting in an insufficient focus on meeting housing need. This is correct. However, in addition, consideration should be given to whether there could ever be sufficient incentive for some local decision makers in some circumstances and the mechanism required to ensure a rules based approach is adhered to. A more nuanced explanation and recognition that Local Planning Authorities do not all behave homogeneously would create a more comprehensive understanding. Some authorities are willing participants, other would be willing with incentives and yet more do not wish to deliver housing. Different carrots and sticks need to be applied appropriately.

The overview of the planning system in England set out in Section 3 summarises the number of national planning legislation, policy changes and political interventions since 2012. The impact these changes have had on Local Plan making have been significant. The working paper identifies that as of May 2021, less than 40% of LPAs in England have an up-to-date Local Plan, and as a result these locations have fewer planning applications, permissions and lower housing delivery. This situation has deteriorated further since then as evidenced by

Savills research - [Savills UK | Planning Data Update 2023<sup>1</sup>](#) / [Savills UK | Planning Research 2023<sup>2</sup>](#).

The changing environmental constraints based on Natural England's strict interpretation of the Habitats Regulations resulting in Nutrient Neutrality, Water Neutrality and Recreational Impact Zones add to the unpredictability and delays in progressing Local Plans and decision making. It should be noted, that in respect of nutrient neutrality, the principal polluter is farming and the competent authorities responsible for the abstraction of water and discharge of wastewater are the Water Companies. We would refer you to research conducted by [Brookbanks on behalf of the Home Builders Federation in November 2023<sup>3</sup>](#) for more on this point. Despite these facts, the focus of legislation, policy and political decision making is directed towards the delivery of new homes.

It is suggested that housebuilders may threaten to withhold the delivery of sites to assert structural power over LPAs. This suggestion is underpinned by the argument that the land asset does not depreciate over time and cuts to local authority funding have increased reliance on S106 revenues. With regard to this assertion, we would comment as follows:

- This ascribes motivation without evidence to a set of facts and bears no relationship to Crest Nicholson's experience of the practical or commercial reality. In circumstances where a developer asserts that a site is not viable, then an assessment of the viability should be undertaken to ascertain the objective reality.
- Where land has been purchased and the costs of securing a planning permission have been expended, a rational actor will be commercially motivated to secure a return as quickly as reasonably practical.
- The asset may not depreciate. However, the cost of finance bears on the expended capital and the housebuilder will be motivated to achieve development revenue to maximise returns.
- S106 revenues are unrelated to local government funding in the way implied because, in order for S106 revenues to be secured, they must be compliant with Regulation 122 of the Community Infrastructure Levy Regulations (2010). These require developer contributions to be necessary to make development acceptable, directly related to development, and fair and reasonably related. Without development there is no cause for the expenditure, or the obligation is unlawful.

It is argued in the working paper that under-delivery against the government's housing target is reflective of a slower than necessary build out of new homes by housebuilders. This claim is not correct and is not supported by the evidence and facts. The Lichfields research referenced in the working paper refutes the point eruditely. The working paper concludes that, whilst not making an assessment on the quantitative findings of the research, the principle of lapse and reapplication rates and the time lag between the grant of planning permission and sites being built out will necessarily need to be reflected in the figures. The working paper correctly identifies that a higher stock of planning permissions than 300,000 per annum is required to service the 300,000 per annum figure (Table 4.2).

The working paper correctly diagnoses that the number of planning permissions and allocations contained within Local Plans is inadequate to service this requirement and that there are significant regional variations contained within the national analysis. It is a fact, set out in the working paper, that housing delivery performance is poorest within the South East of England and that there is a strong correlation to those authorities with Green Belt.

Further, the analysis clearly identifies at 4.42 and Table 4.4 the evidence of the relationship between performance of the planning system and delivery of housing, in as comprehensive and clear a way as possible given the volume of data available. Although this entirely reflects our

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<sup>1</sup> [https://www.savills.co.uk/research\\_articles/229130/338073-0](https://www.savills.co.uk/research_articles/229130/338073-0)

<sup>2</sup> [https://www.savills.co.uk/research\\_articles/229130/347959-0](https://www.savills.co.uk/research_articles/229130/347959-0)

<sup>3</sup> [https://www.hbf.co.uk/documents/13061/Brookbanks\\_-\\_Research\\_Report\\_Nov\\_2023.pdf](https://www.hbf.co.uk/documents/13061/Brookbanks_-_Research_Report_Nov_2023.pdf)

experience and the representations made initially, the analysis provided is empirical verification of the situation.

There is an example identified at 4.71 indicating that despite the adoption of a Local Plan, some of the strategic sites identified for development had not come forward in the times anticipated. Large scale strategic development sites with substantial infrastructure burdens are well understood, by the planning profession and development industry, to be the most challenging planning applications to administer through the planning process. The analysis of this example and the implied lesson to be learned (that enthusiasm for Local Plans is the solution to the problem) ought to be tempered and should be treated with caution.

As a matter of principle, this provides indicators to deeper issues concerned with the planning judgement applied in the preparation of Local Plans and the consequences these can have on the determination of planning applications later in the process, it also concerns:

- **A balanced spatial strategy** – a well-considered, well evidenced and balanced Local Plan should identify the housing requirement for an area, the hierarchy of the settlements where growth can be accommodated and allocate a balanced mix of housing sites to meet that requirement. This will necessarily include committed sites (those under construction, with planning permission and existing allocations), windfall sites (smaller sites that deliver units based on past trends), strategic and non-strategic allocations. The purpose of strategic allocations is to provide the backbone (or 'firewood') to meet the housing requirement across the plan period. It also provides the vehicle for strategic physical, social and environmental infrastructure delivery, which increases the cost of development. The non-strategic sites exist to provide the short term delivery (or 'kindling') to provide housing supply until the strategic sites are fully operational. Too often LPAs focus on large challenging strategic sites and avoid identifying smaller non-strategic sites, possibly for political reasons because they can often be contentious and closest to existing communities. These are the circumstances that give rise to strategic allocations not delivering quickly enough and a swift deterioration in housing delivery rates. A more balanced strategy would also give rise to greater opportunity for SMEs.
- **Policy aspirations, viability and flexibility** – Crest Nicholson considers it important to also highlight the impact that the role of viability assessments have on the time taken to secure planning permission on strategic sites. This is frequently a problem because the Local Plan infrastructure requirements and affordable housing provisions will be established based on viability assessments that assume unrealistic development finance assumptions (most frequently these inflate sales values, depress build costs and make inadequate assumptions in respect of abnormal infrastructure costs). Local Authorities and Planning Inspectors have limited professional competency in development viability and, as a result, unviable policy requirements frequently materialise in adopted Local Plans. This requires a viability assessment process to be undertaken which is costly, time consuming and unnecessary. An assessment of the % of affordable homes delivered in each local authority against its policy requirement would yield evidence of this issue but in many local authority areas none of their strategic allocations meet the affordable housing requirements.

#### ***Q4.1.3 Are there any other factors that we should consider?***

There are two factors that do not come through in the assessment and analysis within the working paper that contribute to the under delivery and slow delivery of housing.

##### Cross Boundary Housing Needs

There are a number of larger cities and towns in the UK where the administrative boundary of the LPA is largely contiguous with the urban edge of the settlement, or they are built up to their boundaries. This means that in order to deliver their housing requirements, they need to rely upon brownfield redevelopment, which is more costly, higher density, often flats/apartments and there is not enough of it to meet housing needs. It is recognised within national policy that

adjacent LPAs should cooperate with one another to seek to accommodate unmet housing need.

Aside from Green Belt, which is often also a component in this cooperation conversation, this is one of the most politically contentious interfaces in the planning system and despite many attempts to construct Joint Plans and an appropriate mechanism to allocate unmet need in adjacent authorities, this remains a key failure of the planning system. It results in an under provision of housing, in particular family housing and it distorts Housing Market Areas creating the context for those seeking family accommodation to travel greater distances to work because that housing type is not available in the bigger cities. LPAs will often cite a “Duty to Cooperate not a Duty to Agree” and the Planning Inspectorate does not have the tools necessary to rectify deficient Local Plans for not adequately addressing the issue. Examples of where this has been attempted and failed include [REDACTED].

It is vital that a signal is made in recognition of this issue. The use of LPAs as proxies for HMAs within the Housebuilding market study risks perpetuating the repeated overlooking of this problem and the serious consequences it has for housing delivery at England’s biggest cities.

### Green Belt

No analysis of the current planning system is complete without full recognition of the distorting effect of Green Belt on the quantity and distribution of housing. Green Belt policy and legislation exists to fulfil five purposes; preventing urban sprawl, preventing coalescence of towns, safeguarding encroachment into the countryside, preserving the setting and character of historic towns and to support urban regeneration. It is not an environmental designation, as it is widely believed to be publicly.

Green Belt is politically charged and treated as sacrosanct. The golden thread and key objective of national planning policy is stated to be sustainable development, encompassing the balance between environmental, economic and social outcomes. The key consideration is balance, because there is always a degree of tension between these considerations and it is a long established principle that planning judgement is required to interpret that balance. There is no reason, however, why national planning policy cannot require the delivery of a quantum of housing for social and economic purposes in the same way it requires environmental protections. At present, it does not.

Green Belt policy is given primacy in decision making and in effect it makes sustainable development the servant of Green Belt, when national policy states the outcome should be in reverse. In practical terms this means that locations with large areas of Green Belt, especially where there are also environmental constraints, claim that they cannot meet their housing need in full. In other examples it may result in development being directed beyond Green Belt boundaries, to locations with fewer services and facilities, poorer transport links, or increasingly dense outcomes within an urban context. All of these outcomes impact on the quantity and pace of housing delivery. There is no prospect of meeting the national housing need, or seeking to rebalance the affordability gaps in the areas of lowest affordability, unless an alternative approach is taken to the release of Green Belt sites for development.

#### ***Q4.1.4 Do you consider there to be any significant difference in the level of planning uncertainty between England, Scotland and Wales***

Crest Nicholson does not operate within Scotland or Wales and cannot comment on a comparative basis.

#### ***Q4.2.1 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.

The expectations in respect of planning gain, regulatory costs and policy requirements already exceed what is viable in many locations. This can be evidenced most easily by the number of sites that do not meet the affordable housing policy requirement and LPA monitoring reports on affordable housing delivery. Where a viability concern is identified the most common outcome is that the amount of affordable housing, or the mix is adjusted downwards. This is therefore the most easily accessible and publicly available indicator that a viability concern has been raised. It should not be assumed that the only locations where this occurs are areas where sales values are lower. Often in areas of higher value, LPAs will seek to establish higher planning gain and affordable housing requirements resulting in viability assessments being commonplace across the South of England.

There are a number of regulatory changes that are expected to come into effect in the near future that are likely to have an impact on development viability and / or require affordable housing provision to be reduced further in order to make sites viable for development. These include Biodiversity Net Gain, Future Homes Standard, Nutrient Neutrality/Offsetting and Alternative Natural Recreational Greenspace.

As these increased regulatory burdens emerge, the sites that are most likely to be threatened in viability terms are urban brownfield redevelopment sites, which carry higher costs of redevelopment, areas where sales values are relatively low and therefore less capable of accommodating depression on land value and large strategic sites, which carry higher than average abnormal infrastructure costs, such as schools, community buildings, and highway infrastructure.

***Q4.2.2 Do you agree with our analysis that shows the length and complexity of the planning system may contribute to underdelivery of housing?***

Yes.

The working paper correctly identifies that the length and complexity of the planning system is a key contributor to underdelivery of housing and the evidence presented in the paper is compelling. There is recognition within the working paper that policy and political choices go beyond the remit of the market study. However, recognition that these are political choices and that they do have a consequence is in itself a powerful conclusion.

Figure 4.7 evidences clearly the increase in time taken to determine planning applications from 2012 onwards, both in terms of extension of time and decisions within the statutory determination period. It is difficult not to conclude by reference to 4.115 that government spending on local government has a direct impact on this outcome. This can only have an adverse impact on how quickly allocated sites and sites subject to planning applications outside the Local Plan process (where there is a presumption in favour of sustainable development and the tilted balance applies) come forward for development and are reflected in housing numbers. The reasons set out in 4.113 are fully supported.

The working paper correctly identifies that the responsiveness of statutory consultees is a major constraint to the pace of decision making once a planning application has been submitted. However, this constraint is not limited to the statutory consultees. Often the most tardy of the consultee responses can come from Local Authority departments, such as highways, landscape and heritage.

Care must be taken in relation to any proposed changes to the timeframes for the responses of statutory consultees to avoid unintended consequences. Although care and time is taken to ensure that planning applications are well prepared by the consultant teams instructed by developers, it is important that there is independent assessment of those planning applications for democratic accountability and appropriate rigour is brought to the decision-making process. Faster participation is essential to the pace of decision making. However, if a 21-day statutory period is ascribed, there is a risk that the automatic response becomes an objection to protect their position until they can prioritise their final response. Perverse behaviour in the planning process in response to government targets has been exhibited in the past and this should be fully thought through prior to implementation.

**Q4.2.3 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?**

Yes. The causes identified are all agreed with.

In addition, the volume of material that needs to be produced in support of a site that is allocated in a Local Plan and granted planning permission is excessively large, repetitive, often not read and serves only to proliferate a consultant and legal profession who benefit in fees from developers and LPAs alike. It is unnecessary and generates no better outcome than a simplified, faster process.

The volume, depth and complexity of the process can be highlighted within this context by way of example. The LPA is required to assess the environmental, economic and social benefits and harms associated with all the sites it assesses, in the preparation of local plans in its Sustainability Appraisal, Strategic Environmental Assessment and Appropriate Assessment. This includes ecology, landscape, noise, air quality, historic environment, transport, flood risk and many other factors. This is most often prepared by a consultant and informs the Local Plan. Following adoption of the Local Plan, the applicant is then required to assess this all over again in the Environmental Statement and if large enough Environmental Impact Assessment. Frequently much of the content is subject to further Planning Conditions requiring a third assessment of this process. If being asked to design a planning system lacking common sense, consistency and transparency, it would be hard to construct a better example.

Secondly and partly linked to the production of material necessary to pass them, the number of stage gates that a site must pass through prior to construction is substantial, unnecessary and contributes enormously to the time it takes to build new houses. The potential milestones are set out below:

1. Joint Strategic Plan / Spatial Development Strategy
2. Local Plan
3. Supplementary Planning Document / Development Plan Document
4. Masterplan
5. Outline Planning Application
6. Viability Assessment
7. Design Code
8. Reserved Matters Submission
9. Planning Conditions
10. Technical Approvals
11. Environmental Licensing

**Q4.2.4 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?**

Crest Nicholson does not operate within Scotland or Wales and cannot comment on a comparative basis.

**Q4.3.1 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?**

Yes. Local targets substantially underprovide housing allocations relative to the national requirement.

The urban uplift target identified in 4.124 is an ineffective political gesture to make it appear that housing targets are closer to those required than they otherwise really are. There is no prospect that the urban areas identified to meet this need can do so, or can do so in a way that is consistent with housing market demand. LPAs are right to identify that there are not enough brownfield sites to accommodate this level of need and that the density at which development

will need to be delivered within our urban areas will not deliver the family housing that most Strategic Housing Market Assessments demand is required for our biggest towns and cities.

London is almost a planning system in its own right, and cannot be compared to the rest of England given the impact and role of the London Plan. However, the majority of major urban towns and cities do not have areas of greenfield land within their administrative boundaries, that are within their gift to deliver housing on. The urban uplift directs housing to areas where it cannot be delivered. Adjacent authorities, who should be required to accommodate unmet need from these towns and cities, where the housing requirement cannot be met, often refuse to do so, citing a duty to cooperate, not a duty to agree. Consequently, the areas of highest housing demand are the areas where housing remains undelivered most frequently and the gap between average earnings and average house prices increases. This cross boundary problem is the most significant part of the narrative absent from what is otherwise a very well evidenced and balanced analysis of the planning situation.

The working paper correctly identifies that the Standard Method for calculating housing need only allows for deviation in exceptional circumstances but that LPAs are frequently able to assert this and the amount of land allocated is often significantly below the amount required by the Standard Method. This would be accommodated in adjacent LPAs if the system was working effectively, but in most cases this demand for housing goes unaccommodated, which is part of the reason why the Housing Delivery Test figures from 2021 show approximately 225,000 homes delivered.

***Q4.3.2 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. LPAs consistently exhibit behaviours consistent with alternative priorities to housing need, including environmental protections, affordable housing delivery and political preference.

The analysis contained within the working paper at 4.132 is a concise and accurate reflection of the challenges facing LPAs in the preparation of Local Plans. Part of the answer to that challenge is to allocate more development sites and land for development. Housing need should be mandated in national policy and must be delivered by Local Plans.

In respect of affordability and affordable housing policies, it is correct to suggest that the number of affordable housing units is being driven down because the cost of other policy objectives and regulation necessitates this outcome. If more development sites were delivered then this would not only deliver more affordable housing but would help to address the ever increasing affordability of market housing relative to average incomes, known within the Local Plan making process as the affordability ratio.

The most effective decision a LPA can take in Local Plan preparation to respond to the challenge of climate change is to allocate development land in the right location with good access to existing services, facilities, infrastructure and transport links. This is a long established principle of the UK planning systems. Unfortunately, where cross boundary cooperation is required between LPAs and / or where Green Belt is concerned, the LPAs give precedence to Green Belt ahead of the principles of sustainable development that would indicate that the most appropriate location for development is often within Green Belt. This makes climate change and sustainable development the servant of outdated Green Belt policy, rather than central to decision making, and results in less sustainable development patterns and patterns of commuting. Therefore, whilst it is accurate to say that there is tension in government objectives, LPAs are the victims of their own politics in not pursuing the most effective outcomes and instead choosing to focus on building standards and energy generation, which are administered by other processes such as Building Regulations.

The English planning system seeks to impose a carrot and stick approach to Local Planning Authorities. The carrot incentive is to get an adopted Local Plan in place, which will identify development needs to establish a five year housing land supply. The stick incentive is that if the LPA is not able to maintain a five year housing land supply or the plan is more than five years old without having been reviewed, then the presumption in favour of sustainable

development or tilted balance applies. This is a relatively effective mechanism to “reward and punish” appropriately. However, it does not apply to Green Belt in the same way, and the latest government consultation on national policy has indicated an intention to dilute the effectiveness of the five year housing land supply test, which will inevitably worsen the planning situation.

The Planning White Paper published in 2020 came as close as any government has come to effectively diagnosing the problems and advancing solutions including the recognition that housing should be delivered in the areas of lowest affordability. However, unfortunately, following the Chesham and Amersham by-election, there was a departure from this strategy.

The most significant constraint to the effective delivery of housing in the areas of greatest need in the South East in particular is Green Belt. There is no prospect of a substantial increase in housing delivery to meet the challenges of the 21<sup>st</sup> Century in the South East, in a sustainable way with climate change at its core, unless there is a fundamental change in approach to Green Belt and this can be evidenced simply by a review of land that is not located within Green Belt, AONB or areas of flood risk in the South of England.

***Q4.3.3 Are there any other issues relating to targets, incentives of planning constraints that we should consider?***

Yes. Cross boundary planning issues relating to unmet housing need from the biggest towns and cities in England are one of the most significant reasons, aside from Green Belt protections, affecting housing delivery. It is vital that where cities and towns cannot meet their housing need in full, or where the proportion of their housing demand that is not apartments and flats cannot be accommodated that those targets are applied, and quickly to neighbouring authorities. At present this need simply goes unaccommodated.

***Q4.3.4 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?***

Crest Nicholson does not operate within Scotland or Wales and cannot comment on a comparative basis.

***Q4.4.1 Do you agree with our analysis of how the planning system may be having a disproportionate impact on SME housebuilders?***

Yes.

It is asserted throughout that the planning system, from Local Plan making, through the planning application process and S106 agreements, is more difficult for SMEs (and by implication new entrants to the market). This is asserted to be because they have less resources, less experience and the length of time it takes impacts more heavily upon their business model.

This may well be the case and the market would benefit from a range of participants. SMEs play an important role within the mosaic of land and development options in the UK. However, this direction of thinking masks the broader problem that this is true for all participants in the development and housing market. The system takes up too much resource for the larger housebuilding companies too, it requires levels of experience and expertise that exist only because the system is so complicated, and it also takes too long for larger housebuilders. This is not to reduce the importance that the impact on smaller businesses but the goal should be to fix the planning system for everyone because the planning system doesn't work very well. Make it faster, less complicated and less expensive.

***Q4.4.2 Do you agree that we have identified the key issues faced by SMEs due to the planning system?***

Yes.



**Q4.4.3 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?**

Partly. Crest Nicholson considers there needs to be a balanced strategy.

SME respondents have identified that there is a bias in the planning system towards bigger sites. There are a number of issues packed within this that warrant further evaluation to aid understanding, and they straddle the themes identified within the working paper.

The Local Plan making process is necessarily influenced towards sites of scale because LPAs are looking for sites that make a more significant contribution to the housing requirement. 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. Pragmatically, the LPA is required by legislation to comparatively assess every development site in the Sustainability Appraisal, which is why they often establish minimum thresholds.

A balanced housing strategy should identify a proportion of the housing requirement to be accommodated on non-strategic sites, whether within the Local Plan, or a subsequent Development Plan Document (DPD). Many LPAs do include this as a component within their strategy but the following DPD can take years to prepare following the adoption of the Local Plan. SMEs and housebuilders alike would welcome a faster outcome.

The situation is substantially amplified in areas containing Green Belt. The main vehicle for removing land from the Green Belt is adoption in the Local Plan, which must demonstrate the exceptional circumstances to justify it. Despite the rhetoric around Green Belt, this does occur through Local Plan adoption, but not frequently enough or in sufficient numbers. Small sites in the Green Belt are usually considered too small to be considered in Green Belt Reviews and after the Local Plan is adopted the test for release is a higher bar of Very Special Circumstances, which in reality is difficult to achieve. National policy could meaningfully be improved to assist the pace and contribution that small scale sites can make to the housing supply for the benefit of SMEs and all.

**Q4.4.4 Are there any other aspects of the planning system that have an impact on SME housebuilders that we should consider?**

No.

**Q4.4.5 Do you consider there to be any difference between how the planning system impacts SMEs between England, Scotland and Wales?**

Crest Nicholson does not operate within Scotland or Wales and cannot comment on a comparative basis.

**Options for reforming the planning system (Section 5)**

**Q5.1.1 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?**

Yes. Unless the UK government changes its approach to assessing housing requirements and the way in which it priorities constraints relative to the housing requirements identified then England will continue to deliver fewer houses than it needs.

Certainty, stability, and consistency are absolutely essential to effective reform. The government had taken a substantial step in this direction in August 2020 when it published the Planning White Paper. The White Paper proposed to establish a housing requirement for each Local Authority and required them to accommodate that housing number within their Local Plan. Although the White Paper continued to emphasise Green Belt protections, the way that could, should and hopefully would have manifested itself in Local Plan production would be that the

national housing requirement allocated to the LPA was the exceptional circumstances required to justify Green Belt release.

**Q5.1.2 Are the criteria we set out in paragraph 5.19 appropriate for determining an improved methodology for target setting?**

Yes. All of the criteria set out in 5.19 are appropriate and necessary for establishing an improved methodology. However, there are additional requirements that Crest Nicholson considers need to be taken into account, if the criteria set out in 5.19 are to be effective.

- a) **Ease of understanding** – ease of understanding will be welcomed by all, not just SMEs and local communities. The cost, time and complexity associated with arguing about housing numbers is completely unnecessary and counterproductive. Its only beneficiary is delay resulting in fewer houses being built. The criteria should be stated as mandatory minimum requirements and implemented accordingly.
- b) **Reliable evidence** – publicly available statistics published by the Office for National Statistics, should be used to establish the mandatory minimum requirements. Consideration should be given to whether any adjustment should be made in the evidence based figures to achieve policy objectives.

Two policy objectives that should be applied, where appropriate, are (i) any upward adjustment should align with UK economic growth forecasts (for example, if the government targeted annual growth of 2% per annum, which relied upon migration, the housing was required to accommodate that migration needs to be factored in); and (ii) in response to a misalignment in the affordability ratio, linked automatically to bank lending criteria for mortgages (if lending criteria were 4x income and the affordability gap between house prices and average incomes were 8x then an automatic mathematical adjustment should be made to the housing requirement). This will be evident in suppressed household formation rates, where households do not form in the 25-35 age cohort. Both of these adjustments have been made to housing numbers informing Local Plans historically and it is critical that these tools are deployed, especially in areas of lowest affordability.

- c) **Regular assessment** – the need for regular assessment is undoubtedly correct. However, the working paper correctly identifies the risks and signals that LPAs have sought to 'game the system' in the past by slowing down Local Plan production in the hope of a lower housing figure emerging in times of economic decline. Household projections are a historic trend based method of assessing housing need. Stock based projections are more appropriate.
- d) **Unadjusted outputs** – in principle this should reduce scope for disagreement and in response to b) it has been highlighted that upward adjustments should be applied where they reflect UK economic strategy or where there is a misalignment in the affordability ratio, itself a product of decades of underdelivery. Nevertheless these adjustments should be baked into the methodology and transparently applied rather than being an adjust output.
- e) **Local alignment with national target** – this is the most obvious and unexplainable inconsistency in the application of housing numbers through the planning system and self-evidently led to failure to achieve 300,000 homes per annum. For reasons outlined in respect of lapse and reapplication, this figure necessarily must exceed the national target.

In addition to the features set out above, there are practical realities that must be acknowledged or the application of these will necessarily fail.

- f) **Cross-boundary unmet need** – this point will be addressed here and in methodology because it is so significant to the effectiveness of the proposed approach. LPAs that are built up to their administrative boundaries and authorities with unavoidable environmental constraints, such as flood risk and highly sensitive environmental sites, will not be able to meet their housing requirement (especially for family housing which will be expressed as a

% and number) because it is not physically possible to do so. A mandatory requirement must be established to re-allocate that need to neighbouring authorities.

- g) **Green Belt** – it must be asserted that the housing requirement takes primacy over Green Belt or unsustainable patterns of development will emerge and / or LPAs will state that they cannot accommodate the need (without consequence). If not, the impact of this will be most acutely experienced in areas of greatest need and in the South East of England.

**Q5.1.3 What is the most appropriate method of forecasting housing need – nationally and locally?**

A completely new approach is required. The current system has failed absolutely.

Housing stock should be used to forecast both Local and National housing needs, as proposed in the government's consultation in August 2020, 'Changes to the Current Planning System'. This change is one of the most effective policy measures any government could take in responding to housing supply and affordability challenges. In the stock element of the baseline, 0.75% of existing stock is appropriate.

Reference to household projections should be avoided entirely. Household projections are based on past delivery trends and are not the correct benchmark for housing need in the future. This is particularly the case where past delivery trends have not met housing need, resulting in suppressed household formation in younger age cohorts and an imbalance between housing supply and housing demand. This in turn has influenced the increasing gap between average incomes and average house prices. Continued reliance upon them is to continue to plan for under-delivery and the inefficiencies of the past.

An affordability adjustment to reflect changes over a 10-year period would represent significant progress towards redressing the mistakes made historically. A workplace-based median house price to median earnings ratio from the most recent year should be used to adjust the housing forecast's baseline and it should be linked to bank lending criteria for mortgages. Affordability of market housing is an important indicator of failure to deliver enough housing in the past. If the challenges within the housing market are to be addressed, then an adjustment is essential. This approach ensures that the affordability adjustment takes place in the location where the affordability problem exists. To do otherwise would perpetuate affordability problems in areas of least affordability.

A further adjustment is necessary to reflect policy objectives supporting economic growth. Failure to provide an economic uplift risks population growth in an area exceeding the housing supply, which could undermine the purpose of the affordability adjustment and act as a barrier to economic growth. This effect can be seen in the Oxford-Cambridge Arc, which is why the government identified it as a target for 1 million homes. Economic forecasts have been used ineffectively in the past and should be avoided. Job density is a more stable indicator and areas with higher numbers of jobs now and in the future would plan for more housing. This would support delivery of development in the most sustainable locations and ensure that there is no mismatch between economic growth and housing growth, which could distort the effectiveness of the affordability adjustment.

**Q5.2.1 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?**

The working paper demonstrates a clear grasp of the issue. It is in the interests of all to incentivise LPAs to make progress but if penalties are applied this will further denigrate their ability to perform and deliver the outcomes needed. As the working paper hypothesises, rewarding the adoption of a Local Plan, consistent with the housing requirement must be the most appropriate mechanism to incentivise LPAs.

Non-financial incentives will also need to be deployed (set out below).

**Q5.2.2 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 relevance of political and non-financial disincentives cannot be overlooked or understated. There are LPAs in the South East of England that effectively have no professional planning capability because the elected decision makers exist to oppose development. The most obvious example is [REDACTED], which is administered by a coalition of Residents Associations opposed to development. No incentive, financial or otherwise will influence that LPA.

Ring-fenced funds would be an effective reward mechanism in more responsible LPAs. However, non-financial incentives and disincentives are likely to have a greater effect on political decision makers and the residents that elect them. This is effectively what led to the five year housing land supply test in the NPPF.

With respect to the delivery of planning permissions, the 5 year housing land supply test is a much more effective tool than the Housing Delivery Test because it acts in anticipation of failure rather than once the failure has occurred. Both tests are valuable but by far the more effective is measuring the number of immediately available and deliverable planning permissions. This must be retained, and rather than weakening it as proposed by government, it should be strengthened.

In respect of Local Plan progress, a complete rethink is required. The government set out in the Levelling Up and Regeneration Act and proposed changes to the NPPF that there is an expectation that plan making will take 30 months. There is no reason why a simplified process cannot take a shorter time than that and the determination time for the Local Plan must be mandatory, with consequence. The period within which the Local Plan process must commence must also be mandatory.

In respect of both Local Plan making and decision taking there must be a meaningful incentive, such that if progress is not achieved that decision taking authority will be removed. For the politically motivated, seeking to avoid delivery of housing, this must be the ultimate incentive. There are a range of credible options for administering this incentive and the correct application could depend on the geography of the local area. They could include:

- a) Central government recovery.
- b) Transfer of planning responsibility to a County Council, in non-Unitary authorities.
- c) Transfer of planning responsibility to a neighbouring authority.
- d) Directing the LPA to tender the preparation of their Local Plan to a planning consultancy.

**Q5.3.1 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?**

The assertion of a reformed, rule-based system designed to be resilient to future changes in planning policy is fully supported and could not be more fully welcomed.

In respect of the options set out in the working paper options (a) or (c) would be most effective, this is expanded upon below.

Although, not perfect, a starting point for consideration would be the Planning White Paper published in August 2020, which has a lot to commend it. The White Paper recognised that the discretionary elements of the UK Planning System are a recipe for inertia and failure to deliver. A comparative analysis of other planning systems from around the world creates a strong context to suggest a zonal or rules-based system is a more effective route to achieving the housing delivery needed by society. The White Paper proposed an internal inconsistency in this objective by continuing to advocate for Localism, the principle that local communities would

drive the housing development required, which is not in any way credible or borne out by experience.

A rules-based system cannot establish a democratic deficit. The effectiveness of decision making will only be accepted if rooted in democratic legitimacy. However, it must not be presented as a quasi-referendum on whether housing is needed. The right to a decent home is a basic human need, and in the same way that democratic participation cannot overturn environmental protections, the need for housing delivery in accordance with a standard, transparent and consistent method must be established as the starting point, and that can only be achieved by legislation.

It is right, proper and necessary to ensure the local ownership of decisions. Locally elected decision makers and their professional advisors should be given the opportunity to approach the requirement to prepare a local plan, which meets the housing requirement in full. Where this is not achieved within a specified timeframe, then their authority should be immediately removed and reallocated (for example, to central, sub-regional or neighbouring government, or directed to professional consultancy accountable to central government).

It has been suggested that a streamlined decision-making framework will necessarily require a trade off with the democratic process and participation. This is not so. The objective should be making decisions once, in alignment with national planning objectives, and then implementation administered by professionals. National government, which is democratically elected, should establish the housing requirement. This is as necessary to ensure social and economic outcomes as environmental protections. The distribution of that housing should be directed through local decision making, involving consultation and democratic participation. However once the decisions have been taken then there is no further need for democratic participation, as the development should proceed to be implemented on agreed timeframes.

The simplification of Local Plans and the establishment of pre-approved zones with a specified set of rules, should immediately remove a substantial proportion of the bureaucracy and replication of work associated with the current planning system. There is no reason why sites allocated within the Local Plan should need to prepare planning applications. Such sites should be governed by a masterplan in the Local Plan and a professional process of compliance with the Local Plan should be established (without the involvement of planning committees), with specified timeframes and automatic referral to independent bodies where timeframes are not met.

The need to address cross-boundary and strategic planning is recognised as essential. A binding housing requirement incorporating unmet need, incorporation of cross-boundary sustainability into the sustainable development test for Local Plans and a potentially greater role for County Councils and Combined Authorities could all contribute to ensuring these are appropriately addressed.

Additional tiers of plan-making should be resisted in the short term because they will introduce delay to the delivery of housing. However, following the adoption of the first Local Plan – a high level regional or sub-regional plan should be prepared on a fast-track timetable to establish strategic priorities including planning for UK economic requirements, infrastructure and key transport corridors to neighbouring sub-regions. Alternatively, the UK government should prepare a Plan for England which identifies these components. On the first review of the Local Plan, which must be prepared to coincide with expiry of the last Local Plan, it must be consistent with the national, regional or sub-regional strategy.

Plan periods must be a minimum of 15 years, to provide opportunities for long term strategic planning, but sites must be capable of being identified to deliver beyond the 15 year period.

The 5-year land supply test should be retained. It is an effective sanction and the housing delivery test is an ineffective substitute, which is retrospective and intervenes too late in the process. The introduction of a reserve sites list could assist in providing a swift response for local authorities with plans that are not up to date or cannot demonstrate required land supply or delivery rates.

Design guides and codes can assist in providing the parameters for good placemaking, but these must retain flexibility and avoid prescriptive detail.

***Q5.4.1 To what extent would increased planning fees materially affect the viability of certain developments? Are there particular circumstances where this is likely to occur?***

An increase in planning fees could generally be accommodated within the viability of developments, particularly if the planning process has been simplified and decision are being taken in good time. However, this could have a more material detrimental impact on SMEs.

***Q5.4.2 How could the availability of qualified planners be improved?***

There is no fast solution to this issue. A substantial number of experienced planning and development professionals have left the sector. There are a limited number of training opportunities and planners are increasingly overworked and treated poorly.

Ringfenced government funding for university, college and day-release places at LPAs would assist but it will take time to train planners to the levels necessary. Additionally, incentives could be provided to attract professional planners from other countries.

***Q5.5.1 What measure would be most effective in supporting SMEs to navigate the planning process effectively?***

The measures proposed in our response would support all , including SMEs, to be able to more efficiently and effectively navigate the planning system.