

## **Response to the Competition and Market Authority (29<sup>th</sup> November 2023)**

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities, national park authorities and strategic development planning authorities.

HOPS has had the opportunity to meet the CMA team carrying out its housebuilding market study and to input to previous calls for evidence or comment. The last two papers on land banks and land concentration and the planning system were released earlier this month and have been reviewed by members of HOPS.

Based on the review of the papers HOPS has prepared this narrative response as, given the scope of the papers and the short timescale for responses, answering, in detail, the various questions posed in the papers on land banking the planning system is not achievable.

In summary, HOPS is concerned that the paper on the planning system seems to fundamentally misunderstand not only the scale of change being implemented in the Scottish planning system but also the mechanics of the system and the fundamental change in the outcomes expected of the system.

This response will explore our concerns regarding how conclusions appear to have been reached based on using challenges around house building and issues with the system in England as a cypher for the UK, even though you have recognised that the situation is different in Scotland. It will then explore the recent reforms to the Scottish planning system such as the Planning (Scotland) Act 2019 and National Planning Framework 4 (NPF4) and highlight areas where they either set a different direction for planning or introduce processes which address some of the issues highlighted in your paper.

### **Evidence and conclusions**

#### **Land banks and concentration**

HOPS has had insufficient time to fully analyse the methodology and conclusions in this paper, but concerns have been raised that by taking a UK perspective on who constitutes a large builder the presence of relatively large regional and national builders, within a Scottish context, may have skewed the findings and suggested potential monopolies in the hands of national builders which in reality do not exist. This would appear to be the case in the North East of Scotland which has a range of active Scottish national and local builders but, due to geography, may not be attractive to the large UK national builders the paper seems to have audited. To assess whether localised monopolies exist a much finer grain assessment would be appropriate, reflective of the regional nature described above.

#### **Planning working paper**

HOPS has concerns relating to how the Scottish planning system is represented within the overall document. We appreciate that fully exploring the differences between systems would take a large amount of time but feel it is not appropriate to simply state the standards and processes from the English system and then comparing them across the UK. Examples of this include references to decision-making periods on major applications in para. 1.41 where the Scottish target is 4 months not the 13 weeks quoted.

Similarly, the paper's conclusions on the analysis of "*Issues in the market*" and the "*Impact of the planning system on land supply and housebuilding*" section appear to be largely based on analysis of the English system and Housing Delivery Tests. If this is the case, then it is difficult to understand how

## **Response to the Competition and Market Authority (29<sup>th</sup> November 2023)**

the conclusions can be applied to Scotland and therefore what justification there is for some of the proposed remedies.

Whilst we understand that long period data may not be available for Scotland and there is an attractiveness in using single source reports such as those of the HBF, which refers to but does not operate in Scotland, it is unclear where the Glenigen base data is drawn from (is it Housing Land Audit noted approvals, interrogation of published decisions, Requests for Information, Scottish Government, or industry data) and we do not question its veracity, but it is difficult to compare it to published data sources in Scotland to confirm that the figures, as are we understand them, and base our forward planning decisions on.

What the available data does illustrate is that planning permissions are being approved but the narrative does not address why they are not being implemented whilst contending that further increases would be required to meet the Minimum All-Tenure Housing Land Requirement (MATHLR) requirements. This does not seem to take into account the existing and, more often than not, healthy land supply of sites which do generally exceed the MATHLR, and which have not been delivered by the development industry.

Large parts of the narrative throughout the report deal with 'uncertainty' in the process. Whilst there is an element of uncertainty in the application of new policies in Scotland this is to be expected when reforms are being implemented and there can be no uncertainty around the outcomes and expectations of stakeholders in the system and particularly those preparing new LDPs. Sections 4.77 to 4.79 appear to deal with the impacts of system change and highlight the benefits of having an up-to-date plan which will be the expectation of all Scottish Local Planning Authorities within the next 5 years. Again, it is difficult to square these 'findings' and this narrative with later suggestions of further reform of the system being required.

In relation to the section on the impacts and reasons for the length of time taken to make planning decisions we recognise and are familiar with the issues identified but again are concerned that commentary from the development sector, clearly and without caveat referencing the apparent uncertainty in the English system, appear in a section dealing with UK wide resourcing and operational issues.

### **Setting of housebuilding targets**

As recognised in the paper, there is a housing target for each planning authority, set through the MATHLR and subject to extensive consultation and parliamentary scrutiny and approval as part of NPF4, which includes a generosity allowance and which planning authorities are expected to exceed when setting their own housing land requirements in their Local Development Plans (not Local plans which were replaced in Scotland under planning reform in 2006). The paper also recognises that by simple arithmetic this collectively results in a national requirement. It is difficult to square this reality with comments that a national all tenure target does not exist. It is also difficult to ascertain how this system cannot be considered to take into account the appropriate and evidenced data while allowing planning authorities to introduce local evidence to derive a higher requirement for housing land. The MATHLR figures are already in excess of some HNDAs and, as such, place pressure on local authorities to identify land in excess of identified need and in some cases historic delivery. Holistic need is not reflected in or reflective of housebuilder activity or business models.

## **Response to the Competition and Market Authority (29<sup>th</sup> November 2023)**

The system of HNDA uses an established range of primary data, as is recognised in the descriptor footnote on page 96 of the paper on the planning system. The HNDA has been refined over several iterations and takes account of a range of factors which impact on housing need and demand (need for a house and demand for a particular type of house in a particular location in this context are not the same). We note that criticism has previously been made by the development industry that HNDA does not use ‘appropriate’ secondary data and we would seek clarification on whether the narrative has mis-understood the position.

Scottish local development plans cannot be adopted unless they set a Housing Land Requirement higher than the MATHLR and identify sufficient land in the associated delivery pipeline to meet that requirement. If supply ‘runs out’ during the plan period NPF4 Policy 16f would be activated allowing developers to bring forward additional land for housing with the planning authority also able to review the plan at any point during its 10-year currency should the need arise.

### **Planning system reforms in Scotland**

The recent reforms to the Scottish planning system have been subject to a long period of consultation and scrutiny and, whilst there are challenges in implementing the changes, they are the will of the Scottish Parliament and the implicit criticism regarding the change in focus and removal of the presumption in favour of sustainable development as displayed in paragraph 4.144 is as disappointing as it is concerning.

Further reforms brought forward through the Planning (Scotland) Act 2019 and NPF4 have introduced a focus, in local development plans, on infrastructure first, development briefs, masterplans, masterplan consent areas (MCA) and delivery programmes. These mechanisms, designed to front load the development system, will set out in LDPs, their delivery programmes and through briefs, masterplans and MCAs clear expectations of what is required and expected, and of whom, to enable efficient delivery of development whilst retaining democratic control and discretion in decision making.

Decisions on LDPs and subsequent planning applications are rooted in an evidence-led, democratic process aimed at balancing adaptation to the climate and nature emergencies with meeting the needs of communities and the need for future development to support them.

The purpose of the far-reaching reform of the Scottish planning system was not only to alter the focus and create more up to date outcomes but to change the process by which local development plans are prepared and to front load the system.

The changes to strengthen the plan led system described above should also mitigate against delays in considering planning applications as key consultees, statutory and non-statutory, as well as infrastructure providers will have been deeply involved in the planning process long before applications are submitted and will have already been party to the consideration of sites and delivery requirements.

The paper has a real focus on uncertainty, principally uncertainty over change to the English system and may be well timed to influence the ongoing process of change there, however further disruptive change to a Scottish system in the process of implementation through new LDPs and the implementation of new policies, so-recently approved by Parliament, could potentially lead to further

**Response to the Competition and Market Authority (29<sup>th</sup> November 2023)**

uncertainty and delay, harming attempts to tackle the generational, almost existential, challenges of climate change, the nature emergency and just transition.