

# Completed Acquisition by Barratt Developments plc of Redrow plc

## Decision that undertakings might be accepted

ME 7089/24

The Competition and Markets Authority’s decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 21 August 2024. Full text of the decision published on 28 August 2024.

Please note that [§<] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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### INTRODUCTION

1. Barratt Developments plc (**Barratt**) acquired Redrow plc (**Redrow**) on 21 August 2024 (the **Merger**).<sup>1</sup> Barratt and Redrow are together referred to as the **Merged Entity**, and for statements relating to pre-completion, the **Parties**.
2. On 8 August 2024, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it was or may have been the case that the Merger consisted of arrangements that were in progress or in contemplation which, if carried into effect, would have resulted in the creation of a

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<sup>1</sup> On 21 August 2024, Barratt acquired the entire issued and to be issued ordinary share capital of Redrow, by way of a court-approved scheme of arrangement between Redrow and Redrow’s shareholders under Part 26 of the Companies Act 2006. As such, Barratt and Redrow have ceased to be distinct for the purposes of the Enterprise Act 2002. The CMA issued is Phase 1 Decision when the Merger was still anticipated.

relevant merger situation, and that this may have been expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 15 August 2024, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Merged Entity that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

## THE UNDERTAKINGS OFFERED

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from the merger parties concerned undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of new-build private residential housing (**new-build housing**) in one local area centred around the Barratt development at Tilstock Road, Whitchurch, which includes Redrow's development in Kingsbourne, Nantwich. To address this SLC, the Parties have offered to give undertakings in lieu of a reference relating to Redrow's entire overlapping area in the Kingsbourne, Nantwich site (**the Kingsbourne Development**) that has planning consent for the development of 324 houses (**the SLC Units**).<sup>2</sup> In particular, the **Proposed Undertakings** would commit the Merged Entity to:<sup>3</sup>

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<sup>2</sup> The number of houses comprising the SLC Units have been confirmed by the Parties by email on 31 July 2024.

<sup>3</sup> Parties' Remedies Form for offers of undertakings in lieu of a reference (**Remedies Form**), 15 August 2024, paragraph 4 to 6.

- (a) **Sell unsold houses using an independent third-party agent:** The Merged Entity will appoint a single third-party agent on a fixed fee basis to manage the sales process of the (i) remaining unsold houses and (ii) houses where the sale has not been legally completed yet (for example, homes that have been reserved but where contracts have not been exchanged, or where contracts have been exchanged but the sales process has fallen through during the divestment period) (**Unsold Plots**).<sup>4</sup> This third-party agent will be appointed via a mandate from the Merged Entity to set the asking price (including any price and non-price incentives) and to negotiate the final sales prices for the Unsold Plots (subject to certain pricing floors).<sup>5</sup> Any price and non-price incentives (such as kitchen worktops, wardrobes, etc.) offered by the third-party agent will be at least equivalent to those that have been offered by the Merged Entity (under the Redrow brand) in its normal commercial practice for private or bulk sales across the UK.<sup>6</sup> The Merged Entity committed that this mandate would be subject to review by the CMA.<sup>7</sup>
- (b) **Build out of unbuilt houses and unbuilt infrastructure to Redrow's quality standards:** The Merged Entity (under the Redrow brand) will complete the construction of homes that are not yet built or are partially built at the Kingsbourne Development (**Unbuilt Plots**), to the same specifications and quality standards as the other plots constructed by Redrow in the Kingsbourne Development. The Merged Entity (under the Redrow brand) will also complete the construction of the relevant development infrastructure (eg roads access, common areas, connection to highway, schools, etc.) that are not yet built or are only partially built (**Unbuilt Infrastructure**) by the planned timeline and in compliance with applicable standards under the relevant agreements under section 38 of the Highways Act 1980, section 106 of the Town and County Planning Act 1990 and planning permission with Cheshire East Borough Council.<sup>8</sup>
- (c) **Provide after-sales service to a level meeting or exceeding Redrow's pre-Merger standards to all homebuyers:** The Merged Entity (under the Redrow brand) commits to abide by its post-completion obligations and to provide prompt and comprehensive after-sales support to all homebuyers that have purchased or will purchase a house at the Kingsbourne Development, to a level meeting or exceeding each of its pre-Merger

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<sup>4</sup> Remedies Form, 15 August 2024, paragraph 5(iii).

<sup>5</sup> The net price for each of the Unsold Plots cannot be lower than either a reduction of: (i) [x<] % for a single plot sale; or (ii) [y<] % for a multi-plot sale (excluding additional stamp duty payments), below [z<] of the same house type or a similar Redrow home (eg by way of number of bedrooms, terraced/semi or detached, and/or square footage) and [w<] (from the date of the mandate) in the Kingsbourne Development.

<sup>6</sup> The non-price incentives include contributions to stamp duty payments, contributions to legal fees, upgrades or discounts to the cost of a range of appliances or features such as kitchen worktops, wardrobes, mirrors and flooring; contributions to deposits; and other incentive schemes which are currently available for the Unsold Plots (Help to Sell, Readymade Homes, Part Exchange, Gift Deposit and Recommend a Friend).

<sup>7</sup> Remedies Form, 15 August 2024, paragraph 11.

<sup>8</sup> Remedies Form, 15 August 2024, paragraph 5(i).

standards and benchmarks.<sup>9</sup> These benchmarks include, among other things, a commitment to respond to any issues raised by customers [~~30~~] of notification, and to resolve non-complex and non-structural issues within [~~30~~] and more complex issues promptly.<sup>10</sup> These commitments are in addition to the legal and contractual obligations the Parties are subject to under the NHBC and the NHQC standards (**Regulatory Standards**) to provide after-sales protections, which set the minimum requirements for housebuilders with respect to after-sales support.

8. The Merged Entity will appoint a Monitoring Trustee and an independent Professional Quantity Surveyor (approved by the CMA) to monitor and provide oversight over these commitments. In particular, the independent Professional Quantity Surveyor will inspect each stage of the construction of the Unbuilt Plots and Unbuilt Infrastructure to ensure that it has been completed to required specifications and quality standards.<sup>11</sup> The Monitoring Trustee will monitor the Merged Entity's compliance with its post-completion obligations to benchmarks agreed with the CMA for the duration of the relevant post-completion obligations, which is a period of two years from legal completion.<sup>12</sup>

## THE CMA'S PROVISIONAL VIEWS

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>13</sup>
10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that the Merged Entity would be committed to address the competition concerns identified at the local catchment area centred around the Barratt Development at Tilstock Road, which includes Redrow's Kingsbourne Development (the area affected by the Proposed Undertakings). This covers the entire increment identified in the SLC Decision, in relation to the price of Unsold Plots, the quality and completion of the build-out of Unbuilt Plots and Unbuilt Infrastructure and the after-sales service to all of Redrow's customers. The CMA considers that the Proposed Undertakings will provide protections to customers that have already

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<sup>9</sup> Remedies Form, 15 August 2024, paragraph 5(ii).

<sup>10</sup> For example, the Merged Entity (under the Redrow brand) commits to: (i) offer customers of the SLC Units a survey conducted by the NHBC which will gather feedback in relation to the quality of the houses at three intervals following legal completion. As part of these surveys, customers will be provided with the contact details of the Monitoring Trustee and New Homes Ombudsman Service in case they have any complaints; and (ii) respond to any issues raised by the customers in the SLC Units within [~~30~~] of notification and use its best endeavours to resolve (a) non-complex and non-structural issues within [~~30~~] (subject to certain factors outside of the Merged Entity's control such as availability of materials); and (b) complex and/or structural issues promptly. Remedies Form, 15 August 2024, paragraph 71 to 74.

<sup>11</sup> Remedies Form, 15 August 2024, paragraph 5(i).

<sup>12</sup> Remedies Form, 15 August 2024, paragraph 9.

<sup>13</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

bought their houses, or will buy houses from the Merged Entity (under the Redrow brand) at the Kingsbourne Development in the near future. Specifically, the CMA considers:

- (a) **Sale of Unsold Plots.** The appointment of an independent third-party agent to manage the sale process of Unsold Plots on a fixed-fee basis mitigates the Merged Entity's incentives to increase prices for the Unsold Plots or reduce the level of non-price incentives available to homebuyers. The CMA considers that the third-party agent's mandate to act in accordance with commercial practices reduces the risk of wider market distortions, for example, by negotiating below-market prices that may have an unintended impact on the prices of other houses in the local area.
- (b) **Completion and build quality of the Unbuilt Plots and Unbuilt Infrastructure.** The Merged Entity's commitment (under the Redrow brand) to provide the same specification and quality standards that Redrow has provided on other plots it has developed at the Kingsbourne Development ensures that the future owners of the Unbuilt Plots would receive the same level of quality as they would have done absent the Merger. The CMA also considers that the Merged Entity's commitment (under the Redrow brand) to complete the Unbuilt Infrastructure in a timely manner ensures that residents at Redrow's Kingsbourne Development and surrounding areas would benefit from the amenities to the same extent they would have done absent the Merger. As discussed in more detail in paragraph 11, the appointment of a Monitoring Trustee and Professional Quantity Surveyor to oversee the Merged Entity's commitment provides assurance that the same quality standards will be offered to homebuyers and residents in the local area.
- (c) **After-sales service.** The CMA does not consider that the existence of the Regulatory Standards is sufficient to mitigate in full the Merged Entity's incentive to reduce the level of after-sales service to its customers. The Merged Entity's commitments to provide after-sales service to a level meeting or exceeding Redrow's pre-Merger standards gives additional assurance that its customers will not be disadvantaged because of the Merger.

11. The CMA considers it necessary for the Merged Entity to appoint a Monitoring Trustee to oversee the build-out of the Unbuilt Plots and Unbuilt Infrastructure (with the support of the independent Professional Quantity Surveyor) and to: (i) confirm that the quality of the construction is equivalent to the other plots built by Redrow at Kingsbourne Development; (ii) confirm that the Unbuilt Infrastructure is built in compliance with applicable standards under the relevant agreements under section 38 of the Highways Act 1980, section 106 of the Town and County Planning Act 1990 and planning permission with Cheshire East Borough Council; and (iii) monitor the Merged Entity's (under the Redrow brand) compliance with

their post-completion obligations and the agreed benchmarks (for the duration of the relevant post-completion obligations).<sup>14</sup>

12. The CMA currently believes that the Proposed Undertakings amount to a sufficiently clear-cut and effective resolution of the CMA's competition concerns in the context of this case. By accepting a quasi-structural remedy, with the sale of the Unsold Plots being facilitated by an independent third-party agent, the CMA considers that there are safeguards in place to ensure appropriate prices are obtained for these units. Further, and in light of the monitoring mechanisms built into the Parties' Proposed Undertakings through the appointment of Monitoring Trustee and independent Quantity Surveyor,<sup>15</sup> the CMA considers that the quality of build of Unbuilt Plots and Unbuilt Infrastructure, and the provision of post-completion after-sales service will be suitably guaranteed. Taken together, it is the CMA's view that these measures will address the circumstances presented by the Kingsbourne Development.
13. Further, the CMA believes that the Proposed Undertakings are more practicable in addressing the SLC than a divestiture for the following reasons:<sup>16</sup>
  - (a) **Construction status at Kingsbourne Development:** the SLC Units are not at a uniform stage of construction, where some have been completed while others are partially built.<sup>17</sup>
  - (b) **Likelihood of purchase:** given the partially built status of some of the SLC Units, there is only a limited pool of purchasers who would be willing to acquire the Kingsbourne Development.<sup>18</sup>
  - (c) **Lack of impact on existing planning permission:** change in the ownership status of the SLC Units at this stage would necessitate amendments to the existing planning permissions.<sup>19</sup> Consequently, there could be delays in delivering these homes to end consumers.
14. At this stage, the CMA also believes that the Proposed Undertakings may be capable of ready implementation, in particular because allowing the Merged Entity (under the Redrow brand) to finish out the Unbuilt Plots and Unbuilt Infrastructure, and allowing it to sell the Unsold Plots through an independent third-party agent, will quickly and practicably address the SLC since the difficulties associated with selling partly-built sites would not be encountered. In particular, the Proposed Undertakings would not face the delays associated with seeking

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<sup>14</sup> Remedies Form, 15 August 2024, paragraph 68.

<sup>15</sup> [CMA87](#), paragraphs 7.5 and 7.7.

<sup>16</sup> [CMA87](#), paragraph 7.2

<sup>17</sup> Parties' email to the CMA, 31 July 2024.

<sup>18</sup> Parties' response to the CMA's UILs RFI 1, question 1, section 1.2.

<sup>19</sup> Remedies Form, 15 August 2024, paragraph 14(a). Parties' response to the CMA's UILs RFI 1, question 1, section 1.1.

additional/amended planning permissions for different specifications and other consents, warranty implications, allocation and transfer of responsibility for site-wide facility and infrastructure, and accommodation of affordable housing and other local planning authority obligations.<sup>20</sup> For the reasons set out in paragraph 10, the Merged Entity would not be in a position to affect the pricing of Unsold Plots or be able to decrease the quality of the build of Unbuilt Plots and Unbuilt Infrastructure, or deteriorate the provision of service to Redrow's customers.

15. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
16. The CMA's decision on whether ultimately accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

## **CONSULTATION PROCESS**

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.<sup>21</sup>

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<sup>20</sup> Remedies Form, 15 August 2024, paragraph 14(a).

<sup>21</sup> [CMA87](#), paragraph 4.27–4.28.

## **DECISION**

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 18 October 2024 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 13 December 2024 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

**Joel Bamford**  
**Executive Director, Mergers**  
**Competition and Markets Authority**  
**21 August 2024**