

CONSULTATION RESPONSE



OFT Market Study into Housebuilding – General Consultation

17 August 2007

HOUSEBUILDING MARKET STUDY RESPONSE OF HBF TO OFT'S REASONS FOR A MARKET STUDY

A. INTRODUCTION

1. We refer to the OFT's announcement on 22 June 2007 of the launch of its market study into housebuilding in the UK and, in particular, its call for written submissions suggesting areas that the OFT should examine in greater detail.
2. The Home Builders Federation (HBF) is the principal trade federation for the UK's housebuilding industry. Our membership accounts for approximately 80% of all new dwellings built in England and Wales in any one year. As such, we will be pleased to work with the OFT on its study and would wish to draw the OFT's attention to the following issues that we see as key to the working practices of the industry.
3. HBF is not a regulatory body within the industry and thus, on details of regulatory matters, we would refer you to the various regulatory bodies within the sector (NHBC, Zurich and Premier).

B. CONSUMER PROTECTION AND REDRESS

4. There is only one residential housing market. In studying the housebuilding industry, the OFT should therefore compare it to the second hand housing sector as this is the only comparable transaction
5. It should be noted that, in terms of transactions in any one year, the new build sector comprises approximately 10% of the overall housing market. Thus customers have, and clearly exercise, a choice not to buy new build products if they believe that they get better service or a better product within the existing stock
6. Purchasers of all dwellings have considerably more protection than buyers of most goods and services in that, in almost every case, they have legal representation. New-build purchasers obtain a unique benefit, in contrast to the second hand buyers, in that they are able to specify many of the details of their purchase and, should a problem arise with their purchase, they can return to the builder (seller) directly. Because mortgage lenders will usually only lend on new homes with a warranty, warranties provide substantial

protection to all new home buyers. This protection includes formal dispute resolution procedures through the warranty provider for customers unable to resolve problems with their builder. It is a 10 year warranty and, although NHBC is the major provider, it is not the only warranty body. We understand that only around 2% of warranties are taken to resolution and that, of those around two thirds are found in favour of the customer. Thus there is a very high level of customer protection through the warranty procedure which is paid for solely by the housebuilder. There is no such protection for the 90% of annual transactions that take place on second hand homes.

7. HBF has made substantial progress towards the requirements of Barker Recommendation 32 with regard to customer satisfaction. We have introduced a voluntary Code of Conduct that we have encouraged HBF members to adopt. We have introduced, in association with NHBC, a continuous customer satisfaction survey with results published annually. In addition, in discussions with the OFT, we have drawn up model contract terms which, again, we have encouraged members to adopt. We are aware of many individual member companies of the HBF that have initiated significant change within their businesses to improve the experience of their customers.
8. These initiatives are only the start of the process that HBF has put in place with its members. We will continue to build on the initial implementation of a “coalition of the willing” ensuring that the industry is on board with the new initiatives thereby not requiring complex and expensive enforcement procedures.
9. We have responded positively to all of the recommendations of Kate Barker in respect of customer satisfaction issues and are continuing to strengthen the “coalition of the willing” within the industry. In a diverse industry such as housebuilding, it is important that policy and process changes carry the industry forward, neither falling to the lowest common denominator yet still allowing innovation and faster progress at the forefront of the industry.

C. PLANNING ISSUES

10. The lifeblood, or raw material, of the housebuilding industry is not bricks and mortar; it is land. More importantly it is land with implementable planning consent. The biggest constraint to bringing land forward for development in the UK is the planning system and the planning process.
11. We have, therefore, outlined the planning process below in order to demonstrate the complexity of the environment in which housebuilders must operate in order to achieve implementable planning permissions. It is suggested that the OFT should examine all of these elements of the planning system in order to appreciate the difficulties experienced by the housing industry in bringing land forward for development. It should be noted that it is

not just housebuilders who are involved in the process of housebuilding. Other types of developers such as those primarily involved in the commercial sector and local authorities are also engaged in new housing provision. They too, must compete through the planning process for planning permission to develop land.

12. The process of planning can be divided into two distinct sections: (i) the development plan system and process; and (ii) and the development control (now referred to as development management) system and process. We also outline at (iii) in this section the changes which have been implemented in relation to the planning process.
13. The development plan consists of a regional spatial strategy (RSS) and a suite of local development documents (LDDs). The RSS is prepared by the Regional Planning Body (currently the Regional Assembly) and, following an examination in public, modified and adopted by the Secretary of State. LDDs are produced by Local Planning Authorities (LPAs) and consist of a suite of documents including a Core Strategy and a Sites Allocation document.
14. The RSS sets out the regional target for additional housebuilding for a 20 year period and sub divides this regional figure into sub regional and individual LPA housing targets.
15. Sites of regional significance (for which there is no set definition but which are usually in excess of 500 dwellings) will be identified (but not specifically allocated) in the RSS. Other sites will be allocated in LDDs, either in the core strategy if they are of a strategic nature (i.e. central to the delivery of the strategy) or in the sites allocation LDD.
16. The development plan process is, essentially, sequential. The RSS sets the housing targets for each LPA who then prepares and adopts a core strategy. This, in turn, leads to the preparation and adoption of a site allocations LDD.
17. Preparation of an RSS takes approximately three years.¹ The first year is spent gathering evidence, including the availability of strategic sites. The second year is spent drafting the plan and the third year is spent holding the examination in public, reporting on the examination then allowing the Secretary of State to propose and publish modifications before final adoption.
18. LDDs follow a similar process with examination of potential strategies, publication of a draft plan, a public inquiry and final adoption. This process can also take up to three years.²

¹ See Figure 2.1, Planning Policy Statement 11, Office of the Deputy Prime Minister, 2004

² See Figure 4.1, Planning Policy Statement 12, Office of the Deputy Prime Minister, 2004

19. A housebuilder promoting a strategic site for allocation in a development plan through both the RSS process and then an LDD can be faced with a six year lead time merely to have the site allocated and identified in an adopted development plan.
20. The way housebuilders cope with such a drawn out allocation process is through the use of option or promotion agreements with landowners. This allows them exclusive rights over the promotion of the land through the development plan process for a defined period of time with the option to purchase the land once it is allocated. Since the process itself takes many years the option agreements also run for a number of years.
21. Each landowner will require the housebuilder to obtain planning permission at the earliest opportunity and maximise the development value. All housebuilders are, therefore, in competition with each other to promote their sites.
22. The protection of the rights to develop the site reflects the significant investment in terms of time and cost that must be made to promote the site through the complex planning system. Most landowners do not have the ability to finance or wish to take the considerable risks, of promoting land through the planning system. No housebuilder would invest in such promotion merely to allow the landowner to sell to a competitor at the end of the process.
23. To demonstrate that a site is suitable for allocation in the development plan the housebuilder will have to produce a significant amount of evidence regarding the potential for development and sustainability of the area/site. Evidence such as environmental appraisal, sustainability appraisal, flood risk assessment, biodiversity assessment, design concept and often illustrative drawings are all obtained at the housebuilder's financial risk with no guarantee of an allocated site at the end of the process. This investment, often several hundreds of thousands of pounds, is all at the housebuilders risk prior to any allocation being made in the development plan. The presentation of the evidence base at both discussions with local authorities and at the formal inquiry stages of the plan process poses similar financial risks at the developer's expense.
24. Hitherto, outside of London, the development plan system has treated housing targets as ceilings, not to be exceeded. Inevitably this often leads to over optimistic estimates being made by an LPA over the capacity of and speed at which development of identified sites will take place. Similarly, assumptions about the length of time that the development plan process itself will take are frequently optimistic. This inevitable slippage has led to an inability to meet housing targets set out in development plans as plans tend to

be very inflexible in allowing additional sites to be brought forward outside of the plan led system.

25. In order to counter this inbuilt under provision of housing sites, Planning Policy Statement 3 (PPS3): Housing³ has reintroduced the requirement for all local authorities to identify enough sites to deliver a rolling five year supply of housing to meet their targets.⁴ Although not all authorities have yet risen to this challenge, it is the planning system itself that requires a five year supply of identified land which is "deliverable". As defined in PPS3, this means that the site must be available, suitable and achievable. In order to meet these stringent tests it is most likely that all sites within the five year supply calculation will either have planning permission or be allocated within an adopted development plan.
26. Given that the Government's target for England is for the industry to produce 200,000 additional dwellings every year (rising to 240,000 by 2016), the five year "landbank" of deliverable land should be a minimum of 1 million dwellings (rising to 1.2 million by 2016). It is, therefore, reasonable to expect that many (though not necessarily all) of such sites would be under the control of housebuilders.
27. As regards the accusation made by some commentators, that housebuilders "landbank" by not implementing planning permissions, we would refer the OFT to the evidence submitted by HBF to the Callcutt Review regarding this issue. In summary, this stated that, of the 21 companies supplying data:

The combined legal completions for the 21 companies in their latest reporting years were just over 76,000, representing 45% of GB private housing completions in 2006, or almost 40% of total GB housing completions. The latter is probably the better comparison because house builders' reported legal completions include S106 Affordable Housing units.

The figures show the larger home builders have an average reported landbank of 5.1 years. However this total includes land at three stages:

- 1. Implementable, which can be legally built on (47%);*
- 2. Allocated or with an outline consent (36%), which cannot yet be developed;*
- 3. Unallocated (17%).*

The key figure is the first, the number of plots with an implementable planning permission. This shows an average implementable land bank of 2.4 years.

³ Planning Policy Statement 3 (PPS3): Housing, Communities and Local Government, November 2006

⁴ See Paragraph 54, PPS3, Communities and Local Government, 2006

Of the implementable land bank, only 2.6% of plots were on sites where work had not started three months after permission was granted. In other words, as house builders have always argued, there is no evidence house builders sit on implementable planning permissions.

28. Once a site has been allocated within a development plan an application will be submitted for determination by the local planning authority.
29. Although there are two types of application route (outline and detailed) open to a housebuilder, the requirements for information to be submitted as part of the application are becoming increasingly onerous so that there is, in effect, little difference between the two processes. The example of a red line around a field being granted outline planning permission, to all intents and purposes, no longer exists. In any event, outline planning permission must then be implemented through the submission of reserved matters applications which themselves take almost as long to process as detailed applications.
30. Under the General Development Procedures Order 1995 (GDPO) planning applications must be accompanied by multiple copies of a completed application form, a signed ownership certificate, relevant drawings including a location plan, a design and access statement and the relevant fee.
31. However, LPAs also have the power under the Town and Country Planning Acts to require any additional information that they deem necessary in order to determine the application. This power is interpreted by many LPAs as a general requirement to ask for a huge amount of additional information such as general planning statement, transport assessment, travel plan, flood risk assessment, open space assessment, sustainability appraisal, landscaping appraisal, tree surveys, archaeological assessment, biodiversity appraisal, noise impact assessment, utilities statement, energy statement, waste management strategy and many other reports and appraisals. All of these reports are to be obtained at the housebuilders' cost and are required before an application can be submitted to the LPA.
32. As stated above, some of this work will have been prepared as part of the site allocation through the development plan process but the level of detail required to accompany an application is significantly more than that required to support an allocation. In any event, all reports and assessments must be up to date so reuse of reports is uncommon.
33. Many LPAs are now requiring housebuilders to demonstrate the environmental performance of buildings as part of the planning application, even though this is already adequately covered by the building regulations

and the Code for Sustainable Homes.⁵ The industry is currently working towards the stepped introduction of the Code's 6 levels with Code level 3 being achieved by 2010, level 4 by 2013 and zero carbon homes (Code Level 6) by 2016. This is an exceedingly challenging ambition, not replicated by any other country in the world. The increasing incidence of LPAs setting their own timetable and targets places considerable costs on housebuilders since they often involve redesign of standard elements of a proposed development. Such standard elements have been tested and approved by various regulatory bodies and their redesign must similarly be tested and approved before they can be widely used in volume. Local standards and targets also lead to considerable delay within the application process as the housebuilder and LPA discuss and negotiate the requirements for the site.

34. Similar negotiations occur over the planning obligations that should be provided as part of the application. Despite research by Sheffield University that concluded that only 40% of applications were accompanied by a Section 106 agreement (S106 agreement), this hid the fact that (according to an HBF survey), due to the need for a number of applications to be submitted for each site yet only the core application requiring a S106 agreement, over 80% of sites required such an agreement between the housebuilder and the LPA.
35. HBF's planning timeline research (undertaken in 2006 using actual site data from the previous three years) showed that a S106 agreement took, on average, 224 days or 32 weeks. While some of this process is undertaken concurrently with the processing of the planning application the actual drafting and signing of the agreement took, on average, 120 days (17 weeks).
36. The effect of S106 agreements is not, of course, merely to introduce delay to the development process. The cost of contributions is continually increasing, to the extent that an agreement on a large development site may often run into many millions of pounds. While many commentators suggest that these costs come solely from the land value this is not always the case as landowners become more reluctant to sell land for a lower price, with many now insisting on a minimum land value below which they will not sell land for development.
37. Thus, the housebuilding industry has to negotiate and explain to landowners the implications of the planning obligations procedures and their effect on land value.
38. One of the major stumbling blocks to bringing land forward for housing is the constantly changing, and ever increasing, shopping list of S106 contributions being required by local planning authorities. These requirements can change at any time through the planning process, right up until the planning

⁵ The Code for Sustainable Homes, Communities and Local Government, 2006

agreement is signed. This uncertainty affects viability and increases risk to the industry.

39. By far the largest element of most S106 agreements is the requirement for an element of affordable housing. This can place requirements on housebuilders to negotiate with an affordable housing provider to provide the affordable housing element of the project. This, in turn, relies on the level of public subsidy available for the proposed development. It is then the responsibility of the housebuilder to agree the amount and type of affordable housing with the LPA both in terms of its effect on viability of the site's development and the consistency with the local housing strategy. While, under planning legislation, this is supposed to be a transparent process, LPAs often restrict the housebuilder to a specific Housing Association.
40. Even when a S106 agreement has been agreed and signed and a planning decision notice has been issued by the LPA, the consent is still frequently not implementable due to the myriad conditions placed on planning permissions. Ranging from simple issues such as agreement of materials to more complex studies and works such as decontamination programmes or environmental licenses, the majority of conditions must be complied with, or discharged, before development can commence. The average number of conditions on planning permissions analysed in the HBF timeline research referred to above was 16.
41. It is no surprise therefore, that the HBF timeline survey showed an average time from submission of a detailed planning application to a start on site of 475 days or almost 16 months.
42. However, it should be noted that this timeframe evidence excludes the amount of work and discussion that is undertaken prior to an application being submitted. This "pre-application" stage is now embedded within the development management process and, while the HBF timeline research suggested that this added, on average, 187 days (over six months), this may well increase as the process becomes more prevalent under the new planning system.
43. There is considerable uncertainty involved in the planning application process brought about through the late involvement of local elected Councillors in decision making. While a development proposal may gain the agreement of planning officers of an LPA, the views of the elected members of the authority who, through the planning committee or full Council, will make the ultimate decision on whether planning permission is granted or not, are less certain. It is not uncommon for officers recommendations for approval to be overturned by committees.
44. Even when such Councillors have been fully involved in pre-application discussions and application meetings, it is not until the committee finally votes

on an application that an applicant can be certain as to whether planning permission is to be granted or refused. Such political uncertainty is unhelpful to effective forward business planning. It frequently leads to the decision being taken through the appeals process which incurs additional time delays, often of 12-18 months.

45. Delays in the planning application process inevitably lead to slippage in the delivery of houses against a forward trajectory plan, either as agreed with the LPA or for the internal plans of a housebuilding company. This uncertainty therefore leads to most companies having to pursue and promote additional sites to ensure that they can meet their company performance targets. Greater certainty within the application system would mean greater efficiency in the industry as a whole.
46. One further delay in the process of converting an implementable permission into homes on the ground relates to the possibility of an application by a third party for judicial review of a planning decision. The period in which such an application to the courts can be made is three months. On large, often contentious, development schemes the housebuilder will wait for this period to pass before implementing the permission since to commence a development that is subsequently overturned by the judicial review process is too great a risk to take..
47. Other, rather more obscure, pieces of legislation, such as seeking to register a development site as a village green under the Commons Act 2006, are becoming more frequently used by those opposed in principle to development. Such challenges, no matter how spurious, need to be thoroughly heard through the proper channels before any development can take place. This too, can add to delay and uncertainty in the development process.
48. The last ten years have seen unprecedented changes being proposed and made to the planning system, both to the development plan process and to application procedures.
49. These changes impose a requirement for constant revision and adaptation of the working practices of housebuilders. Even relatively simple changes in legislation or planning policy (such as a reduction in car parking provision as required by PPG3⁶) require significant changes in design and marketing to implement. All of these costs must be absorbed by the housebuilding companies since the price of the product (housing) is constrained by the wider housing sector.

⁶ Planning Policy Guidance Note 3: Housing, Department for the Environment, Transport and the Regions, 2000

50. Even the most recent changes to the planning system, brought about by the publication of PPS3, and generally welcomed by the industry, will impose a cost on the industry. Private sector involvement in the agreement of the evidence base such as Strategic Housing Market Assessments and, significantly, Strategic Housing Land Availability Assessments, will require direct resources from the industry to deliver agreed trajectories and identified five year land supplies.
51. While other proposed changes to the planning system will mean a move away from the allocation/application process towards a more integrated partnership approach between local authorities and housebuilders, this too will inevitably involve considerable resources to implement and a process to negotiate. There is no doubt that, ten years ago, gaining an implementable planning permission took weeks rather than months. Changes to the planning system and process described above have led to the introduction of more and more barriers and hurdles to be cleared by any successful housebuilder. The industry has had to constantly adapt and change in order to achieve implementable planning permissions against which to deliver housing completions.

D CONCLUSION

52. We hope that this summary clearly explains the complexity of the process that the housebuilding industry must grapple with on a day to day and year by year basis and that it sets into context many of the practices of the industry. HBF's view is that the planning process, as set out above, is the most significant factor in the low level of supply referred to in the OFT's reasons for a market study and that this low level is therefore not indicative of a lack of competition in the housebuilding sector.
53. There is a clear disparity between the aspirations of central government, using a top down planning process to set targets, and the bottom up process of delivery of housing at a local level.
54. HBF believes that this submission shows an industry that is competitive, flexible, forward looking and adaptable, confident of meeting the challenge for more, new, high quality homes that the Government, and the country as a whole, both want and require.