

CONSULTATION RESPONSE



HBF Response to OFT trade association questionnaire

17 September 07

The following response covers the OFT's questions on Warranties, Building Regulations and Planning and Competition. We will submit additional comments on the Consumer questions shortly.

1. Warranty Matters

We believe the UK's new home warranty system is an outstanding example of self regulation and offers UK new home buyers world-class protection. We would be uneasy about changes to a system which works so well.

We would repeat the comment in our 17th August submission that new home buyers are at a major advantage compared with second-hand buyers who have no warranty protection. In addition, we are unaware of any other product which offers the same scale of protection, for such a long period. And we would note that the UK warranty system is considered one of the best in the world and we understand other countries often seek to learn from the UK experience.

We have occasionally heard the assertion that NHBC is a "builders' club". This accusation is without foundation and displays a complete misunderstanding of NHBC's role which is to protect new home buyers and to maintain and drive up standards of new home construction. NHBC is an insurance organisation. As with any insurance body, its practices are governed by actuarial considerations. Were NHBC to overlook house builders' failures because it was a "builders' club", it would run up insurance losses and put the financial health of the organisation at risk.

HBF does not have direct experience with warranties and feels it would be inappropriate for us to try to answer the OFT's detailed questions.

16. Whether the minimum performance standards set out in building regulations ensure quality for consumers.

The term 'quality' in housing development has a number of different dimensions: build and product quality, urban design quality, architectural quality, customer service quality.

Building regulations have a clearly defined objective which covers part of one of these areas of quality (i.e. build quality). To quote the CLG web site:

"Building Regulations promote:

- Standards for most aspects of a building's construction, including its structure, fire safety, sound insulation, drainage, ventilation and electrical safety. Electrical safety was added in January 2005 to reduce the number of deaths, injuries and fires caused by faulty electrical installations
- Energy efficiency in buildings. The changes to the regulations on energy conservation proposed on 13 September 2005 will save a million tonnes of carbon per year by 2010 and help to combat climate change
- The needs of all people including those with disabilities. They set standards for buildings to be accessible and hazard-free wherever possible.”

While the definition does not refer explicitly to consumers, consumer protection and benefit is clearly a key objective of the regulations. Similarly, while there is no explicit reference to ‘quality’, the regulations are clearly concerned with quality, although in the somewhat limited context of health and safety, energy efficiency and accessibility. We are not aware of any evidence to suggest current building regulations standards fail to ensure quality for consumers in these areas.

Of course, over time, as social, economic and environmental demands change and rise, building regulations are reformed and standards raised.

17. The efficacy with which compliance with, and enforcement of, building regulations is ensured.

While it is sometimes claimed that house builders do not meet building regulations standards, as far as we are aware there is no evidence to support this assertion. We believe that in almost all instances house builders comply with building regulations, and that the system of inspection and enforcement ensures compliance.

We should note that, in the case of Part E of the building regulations (sound insulation), the industry took the lead, and companies made a major financial investment, in proposing a new approach to enforcement based on ‘robust details’. We believe this has worked very well and provides a valuable model which should be applied to a number of other parts of the regulations.

The purpose of building control is to ensure compliance with the building regulations at design stage, during construction and at completion of the building. Upon completion of a new home to building regulations standards, a completion certificate is issued to the builder which has to be passed on to the purchaser’s solicitor. In effect, legal completion cannot take place until this certificate has been issued, and certainly mortgage lenders will not release a mortgage loan until it has been issued.

As well as formal checks by building inspectors, housebuilders continuously check that work is progressing to the specification that was submitted to building control, not least because they have a contractual duty to their purchasers. In addition, they do not

want a failure to meet building regulations to delay legal completion and release of mortgage funds as this would have an adverse impact on profitability. Their own internal checks must be sufficiently robust to ensure the building control body will issue the completion certificate.

This process of checking and enforcement is further reinforced by regular checks by warranty organisation inspectors for the new home warranty.

18. The factors affecting the nature, extent and development of competition to provide building control.

Viewing building regulations from the consumer perspective, it is essential that the minimum standards required by the regulations give adequate protection to consumers, and that these standards are properly enforced. This argues strongly in favour of a national system. A plethora of potentially 350 individual local authority technical standards, imposed through the planning system (see Q19 below), could put at risk both the standards themselves and their enforcement.

Competition in the provision of building control brought significant improvements to the speed and efficiency of the system. Therefore we fully support the principle of competition. This requires not only common standards, but also a properly trained and qualified pool of building control inspectors, and a range of organisations offering building inspection control services.

There is currently competition in the provision of building control, but there are some concerns about future resources and expertise, especially as annual new home production is to be increased significantly over the next decade.

The average age of local authority building control (LABC) officers appears to be increasing and authorities are not able to ring fence their building control fees. This does not create a good financial structure or career path and seems likely to make it difficult to attract new building control inspectors. The NHBC however has developed a very good career structure through its organisation that attracts potential building control inspectors.

HBF is working closely with CLG on the future of building regulations, and has had discussions with the Callcutt Review. We have taken a pro-active stance, suggesting how the structure of building regulations could be simplified and the process of review undertaken according to a structured, long-term plan. We have also suggested wider adoption of the 'pattern book', or 'robust details' approach, especially in relation to the building structure, which the CLG discussed in its consultation on the future of building regulations. A robust details approach has already been adopted very successfully for Part E of the building regulations. This approach, where appropriate, would reduce the workload burden on building inspectors, thus addressing the problems discussed above. It should also speed up the process for developers and reduce costs.

It is essential that the current approach, and any alternatives (e.g. robust details) maintain consistent national standards and ensure compliance with the standards in order to offer full protection to consumers.

19. The relationships and interactions between the planning process and building regulations.

The relationships and interactions between the planning process and building regulations has been a cause of concern for the industry for some years. These are two quite distinct disciplines, requiring different training and expertise, and with quite different objectives and methods.

However there is an increasing tendency for the planning system to be used to impose technical conditions, some of which are in excess of current building regulations requirements, some of which fall outside building regulations altogether. For example, flood risk is a highly technical issue which is covered by planning, not building regulations. EcoHomes standards, sometimes imposed as a planning condition, impose higher technical standards than building regulations. Lifetimes Homes design requirements, which fall outside building regulations, are imposed as a planning condition.

Local authority sustainability requirements, many of which relate to technical requirements covered by building regulations, have proliferated in recent years, in particular renewable energy demands.

Our primary concern is that building regulations matters should not be included within the planning system.

Technical requirements are often attached to a planning permission as a planning condition. Yet local authority planners are rarely qualified to understand the technical aspects of these issues, or judge whether the house builder has met the technical requirements of the condition. The local authority's objectives in imposing the condition can be poorly defined and they may try to impose particular technical solutions rather than define their desired outcome and leave the solution up to the developer. Planners are not qualified to judge whether the conditions they impose are in fact the most cost-effective way to achieve the objective. At worst, such conditions may in practice be unimplementable.

In the case of on-site renewable energy provision, local authorities may impose a requirement with no regard for the long-term viability, ownership, management and replacement of plant, and the likely cost to home buyers. The renewable energy sector is in its infancy and the large energy suppliers have not yet had any significant involvement. Therefore, in order to obtain a planning permission, house builders find themselves having to become energy providers, despite having no prior expertise in this area and, usually, no wish to take on such a role.

While in theory a housebuilder can appeal against such conditions, the appeal process is expensive and frequently takes many months. It is, therefore, very costly in terms of time and money and would hold up delivery of new homes. In practice, conditions are frequently unchallenged as the cost of such a challenge would far outweigh the cost of meeting the condition. The result may be a solution which meets the condition, but in truth is not satisfactory for the home builder or home buyers, may not be cost effective, and may in fact not even achieve the local authority's overall sustainability objective.

The current situation, in which technical issues are being imposed through the planning system, is highly unsatisfactory, is not, we believe, the best way to achieve the Government's housing, environmental or other objectives, and can add unnecessary delay and cost, and may not be in the best interests of consumers.

Additional Comments

As discussed above, we believe it is essential to maintain a system of national building regulations. This benefits consumers because it ensures common standards and proper inspection and enforcement. Also it brings certainty to the development industry, keeps down costs, ensures efficiency and means the industry competes for land on a level playing field. A national system does not stop a developer building in excess of the minimum standards, assuming this is a financially viable option.

The tendency, noted above, for local planning authorities to impose their own technical sustainability requirements is likely to reduce efficiency, add to costs and could be to the detriment of consumers if inspection and enforcement are weakened. Planning officials do not have the expertise to monitor and enforce technical requirements, the planning system does not have procedures for monitoring or enforcement, and the requirements are often based on poorly thought-out objectives and flimsy evidence. Local authorities adopting policies such as a requirement for 10% renewables simply hand over responsibility to developers without adequate regard for viability, cost-effectiveness or impact on consumers. (We await with considerable interest the CLG's forthcoming climate change PPS which will address these issues.)

We should note that HBF has taken a leading role in proposing reforms to the building regulations. The current system has become increasingly onerous as the frequency with which regulations are reformed has increased, and the process by which revised regulations are introduced has sometimes been mismanaged, leading to unnecessary delays and additional cost. HBF has put forward its own reform proposals, and is working closely with the CLG on a new approach both to the regulations themselves, and to the process by which they are revised. As noted above, we also took the initiative on Part E and introduced the 'robust details' solution which has been very successful and offers a template for other parts of the building regulations.

3. Planning and Competition Matters

HBF drew attention to a number of the issues surrounding the planning system in our previous submission to the OFT general consultation, submitted on 17th August. Although this is a complex process, we are aware that the OFT study will concentrate primarily on the impact that the planning system has on competition between undertakings, rather than considering overall policy concerning land use, and have tried to limit our comments on the questions posed to that specific aim.

20. The process for drawing up development plans including local development documents and regional spatial strategies.

The plan-led system promotes intense competition among those who own or control development opportunities to promote their sites for inclusion in plans.

Regional Planning

The draft RSS is prepared by the regional assembly. The assembly will usually hold a number of stakeholder events to gather evidence that will assist in the development of options and policies. One of the key issues is in regard to the regional quantity of housing and the distribution of that housing among the local planning authorities within the region. Both the HBF and, often, individual housebuilders known to have landholdings in the region, will be consulted by the regional assembly in this formulation period. Site specific allocations in an RSS must be of strategic importance and, although there is no statutory definition of what constitutes “strategic”, it is commonly sites of over 500 dwellings that would be identified within an RSS.

Thus, those who are promoting sites in excess of 500 dwellings (whether developers or land owners) will seek to promote them through the RSS process. One major benefit of this process is that because the sustainability principles of spatial development require professional expertise, those promoting large sites, who will employ planning professionals, will follow similar decision paths to the regional assembly’s own planners when deciding which sites to promote through the RSS process.

Strategic sites for several thousand houses will often be promoted by consortia of developers and landowners in order to spread the financial burden of promoting the site for development. The RSS process commonly takes approximately 3 years from the decision to review, through the various stages of the process, to final adoption of the strategy by the Secretary of State. Upfront investment is, therefore, considerable since a great deal of technical evidence is required to promote a site’s sustainability and suitability for inclusion in an RSS.

The process is almost always competitive, with a number of strategic sites being promoted. However, since the overall level of housing provision within the RSS is constrained, not all sites that are promoted will be allocated. Those sites that fail must wait for the next review of the RSS before promotion can be revisited. Without a specific reference in the RSS it is unlikely that a strategic site (certainly one of thousands of houses) will be brought forward through the local development plan process.

An RSS must be tested at a public enquiry. Therefore the promotion of large strategic sites for inclusion in an RSS is transparent and the evidence base on which a final decision is made is thoroughly tested.

The promotion process for strategic sites also transfers most of the cost of deciding which sites are the most appropriate onto the private sector because each developer has to fund preparation of a strong case for its strategic site. However the final decision is down to the regional planning body and RSS enquiry panel.

Local Planning

The local development plan process involves an intensely competitive process of site promotion, covering sites of all sizes – from large strategic sites down to those as small as perhaps 10 dwellings - and also a debate over the spatial strategy of how the housing targets set by the RSS will be met. This frequently takes the form of a discussion between the local planning authority and land owners and/or developers over the potential for growth in a number of towns or villages. This process is now assisted by the requirement for LPAs to undertake housing land availability assessments and to demonstrate that they have a rolling 5 year supply of housing land.

There will almost always be more sites than required to meet the local housing target. Therefore those owning or controlling potential development sites must compete against each other in persuading the LPA that the strategy that includes their site is preferable in planning terms to a strategy that excludes their site (and therefore includes a competitor's site). (This process of site promotion used to be known as a 'beauty parade'.) All of the proposed sites and strategies are published by the LPA for public consultation through an 'issues and options' paper, with the preferred option of the LPA being taken forward to a draft local development document (either a core strategy or a site allocations document). A public inquiry ensures that the local strategy has been adequately tested, has a robust evidence base, conforms to the RSS and other national guidance, has been adequately consulted upon and is deliverable. And like an RSS, because the strategy is subject to a public enquiry, this process is fully transparent.

Once a strategy has been adopted, sites within it can be granted planning permission for development, moving land owners and/or developers from the site promotion-stage to the development-control (or management) process. The effects of this process are discussed below.

It is not clear how exactly the new planning system will work at local level. However it is likely that there will be a continuous flow of windfall sites coming forward for development which were not included in the relevant DPD, but which developers will promote as making a sustainable contribution to meeting local housing need. In other words, the competitive process built into the plan-making process will continue after the plan is adopted.

21. Whether land that is suitable for development is being effectively brought through the planning process, from development plans through to full (i.e. implementable) consent.

As discussed above, the plan-led system ensures that sites are promoted through a competitive, transparent process, it means that most of the cost falls on the private sector, but the decision about which sites are included in the plan is made by the regional or local planning authority and EIP Panel.

Clearly, in order to follow a particular planning strategy there may a considerable amount of land that is suitable for development, but that does not get developed because housing targets in local authority areas are treated as ceilings. Also, even for those sites identified in an RSS or local development plan document, development timescales will differ from site to site. Some will be started early in the plan period, whereas others may be developed much later in the period.

The new requirement for local authorities to undertake housing land availability assessments of all land suitable for housing development in their areas will ensure that they are able to draw down from this source of identified land in future reviews of their development strategies.

While there is intense competition in the land market, an important aspect of competition in the housing market is the number of development sites (or 'sales outlets') active at any one time in a local market. To ensure potential buyers have access to a range of new home types and prices, built by different developers competing with each other for buyers, the LPA needs to ensure a range of sites is being developed in the local market area.

In other words, LPA decisions about the quantity of housing it will accommodate in the local area, which sites to adopt in the DPD, and which sites to grant planning permission, have an important role to play in promoting competition, and in offering home buyers choice.

If developers are actively competing for buyers in a local market, they will seek to offer a broad range of house types and prices, and they will compete on quality of product and service. An LPA adopting a highly restrictive approach to land release will restrict competition and limit consumer choice.

We outlined many of the stages of the planning process, from development plans through to full, implementable consent, in our earlier submission to the OFT and would draw your attention to the planning timeline study, undertaken by HBF in 2006, which sought to quantify the time taken for various stages of the development process. We attach a copy of the study report.

22. Whether delays occur at particular phases of the planning process, such as negotiating s106 agreements or otherwise.

Once again, HBF would refer you to our planning timeline study that examined this process. The study demonstrated that it took, on average, 104 days (more than three months) between the submission of heads of terms of a proposed S106 agreement to the actual draft agreement being prepared, and a further 120 days (more than four months) before the draft agreement was actually signed off.

HBF understands that the National Audit Office is conducting a similar study to the HBF's timeline work and we would refer the OFT to the NAO.

Our timeline study also found that it takes, on average, over 15 months between submitting a planning application and receipt of a fully implementable detailed planning permission. In fact this timescale is an understatement because it excludes pre-application discussions, as well as the discharge of planning conditions once a permission has been granted, both of which may be very lengthy.

23. Whether delays in the planning process are different on developments that include an element of affordable housing than on purely private ones.

It is difficult to address this question since almost all developments over 15 dwellings will have to address the issue of affordable housing provision. Developments of less than 15 dwellings (the national threshold at which an element of affordable housing is a legitimate element to be sought by a local planning authority) will, by their nature, possibly be less contentious or problematic, and will be handled more efficiently and quickly than a much larger application.

Similarly, developments of over 15 dwellings are likely to have a S106 agreement for many other elements of the development, not just the affordable housing provision. It is, therefore, difficult to separate out the delay caused by the requirement for affordable housing and that of the wider S106 agreement.

It is however worth noting that the Sheffield University study of S106 agreements for the CLG found that affordable housing is by far the largest element of S106 agreements (approximately two thirds by value). Anecdotal reports from house builders suggest affordable housing negotiations are often the most time-consuming element of S106 agreements.

24. The reasons behind any pattern of delays in the phases of the planning process and the effect of this on competition.

The development plan phases of the planning process are controlled entirely by local planning authorities. Although all LPAs adopt and publish a local development scheme, setting out their timetable for the production of development plans, few, if any, have stuck to their published scheme. This was a major problem with the plan-led system introduced in 1991. Although this required all LPAs to have an adopted plan by 1995, by the early 2000s the Government announced that a large majority of LPAs had either an out-of-date plan, or no plan. The new system, only new being introduced, is already suffering significant delays. According to the latest Planning

Inspectorate Annual Report, LPAs had an 84% failure rate in submitting DPDs for public enquiry in 2006-07. (Only 77 were received by the Inspectorate, whereas LPAs had planned to submit 496.)

These lengthy delays inevitably lead to delays in the allocation of sites within the development plan upon which planning applications can be made. Since the only way to promote a strategic project is through the development plan process, such delay in plan production delays all new strategic sites from coming forward.

The development control process has statutory performance targets set by CLG under Best Value Target 109. However, such is the desire of local authorities to meet these targets in order to be rewarded with additional funding from central government that there is evidence, in the form of increased refusal rates, that some LPAs refuse applications within the statutory time target rather than exceed the target by further discussion with the applicant over issues such as details of design or elements of the S106 agreement. CLG quarterly planning performance statistics show that the refusal rate for 'major' (10+ units) residential applications rose from the range 14-18% between 1993 and 2000 to the range 33-26% between mid 2004 and the first quarter of 2007. While initially this rise might have been put down to developers getting used to the new requirements of PPG3 (March 2000), the fact that the refusal rate has remained at this high level for three years suggests some other influence is at work.

The receipt of a refusal of permission requires either an appeal to the Secretary of State or a re-submission of a further planning application. The delay caused by the appeal process varies according to the type of appeal procedure and the performance of the planning inspectorate at the time of the appeal. On average, the HBF timeline study placed this delay at 309 days, or around 10 months. However, current performance figures from the Inspectorate are known to be less than this.

The submission of a new planning application restarts the processing target clock and the process itself. Thus, the delay can be 13 weeks for a new decision on a major application. Often it is much longer as pre-application discussions will be necessary.

There are very few instances of sites, other than very large sites, where a phasing policy is in place, meaning that allocated sites can be brought forward at any time by the developer. Thus, within the confines of the restriction on those sites not within the planning strategy, sites can be brought forward at any time. The constraint, therefore, lies with the resources of processing planning applications by the local planning authority and other statutory undertakers who comment on, and are part of, the development process.

We would also note that delays are also encountered around the time of local or national elections, and following changes in legislation or when new Government guidance is pending or issued.

25. The rate at which homes are built on sites (including the time between start on site and the sale of first and last units) and the reasons for this.

The vast majority of new housing delivery in Britain is market based. Land is bought competitively in the land market (even public sector land, which may have conditions attached to its development, is usually 'sold' under competitive conditions); most housing is built by private sector companies dependent on the financial markets and answerable to shareholders; and the vast majority of new homes are sold to private buyers in the housing market, whether owner occupiers or private investors. New home prices are largely governed by local second-hand prices, given that on average new homes account for only about 10% of the total housing market, and add only about 0.7-0.8% annually to the housing stock.

The rate at which new housing sites are developed can only be understood in this market context.

Our recent landbanking research for the Callcutt Review found that in 97% of sites with a fully implementable planning permission, house builders had started work within three months. In other words, house builders – for financial reasons – do not delay starting work on site.

The period between start on site and first completions will depend on the specific requirements of the site. Abnormal preparation costs, such as decontamination, demolition, flood defences, etc. may be necessary before any building can begin. Some level of site infrastructure will be required before building work can begin, and certainly before initial occupations. There may also be S106 requirements, on and off site, which have to be met before the house builder can progress beyond defined stages in the built process – e.g. provision of affordable housing, or off-site transport improvements.

There will also be limits to the pace at which dwellings on a site can be built efficiently and cost effectively, depending on the types of dwellings, size of site, etc.

In addition to these construction and land constraints, there is a range of external influences on the rate at which a new housing development can be built and sold:

- General market conditions will influence the rate of sale, and therefore the development time. For example, sites can be developed faster in a strong market with low interest rates than in a depressed market;
- At any given level of prices, there will be a limited number of potential buyers in any local market at any one time looking for the type of product being offered by the house builder at the price being charged. Therefore the local housing market will have an influence on the pace of sales. Sales, and therefore production, will depend on the size of the local market, the strength of demand, the level of competition from other new home sites and the second-hand market, and the size of the site in relation to the local market. For example, a small scheme of first-time buyer properties near a railway station in a large settlement, with very few comparable properties on the market, is likely to sell

much faster than a development of expensive detached houses in a rural village with an existing stock of second-hand detached houses some distance from any major settlement.

- The rate at which homes are built and sold will be influenced by the types of properties being built. Flats, for example, incur a considerable delay between start on site and the first sales since the entire block must be substantially complete before the first occupations. A development of houses can be built in multiples of units since the occupation of the first unit does not depend upon the completion of the last. According to CLG statistics, the flat proportion of private housing completions in England rose to 45% in 2005/06.
- The pace of sale will also depend on the mix of housing being offered for sale in relation to the size of site. While small sites will inevitably have a limited range of house types (e.g. a block of 12 flats will have a mix of one and two bedroom flats), house builders will usually attempt to have a broad range of types on larger sites to appeal to as broad a range of market demand as possible. Too restrictive a mix of house types on a large site may constrain the pace at which the site is developed and sold, to the financial detriment of the house builder.
- The sales pace may vary over the life of a scheme. A new development may achieve a rapid pace of sales initially, meeting pent-up demand in the local market. However the sales pace may then slow once this pent-up demand has been met and the normal flow of demand in any market takes over.
- In some cases, local planning authorities will impose phasing requirements on a planning permission limiting the pace of development.

The shortage of land with planning permission means that any policy attempt to accelerate the rate at which the industry is developing sites would have only a temporary impact. If a company is building and selling say 500 dwellings per year, it must acquire land and planning permissions of 500 units per year to 'top up' its land and work in progress (more if it is seeking to expand). Because it is so difficult to obtain planning permission, a company expanding production and sales would risk running short of land with permission one or two years ahead, leading to volatile fluctuations in turnover and profits.

The only sustainable, long-term way to achieve an increase in total housing output is to convince development companies that if they expand output they will be able to obtain sufficient land with planning permission to maintain this expansion.

Also, as discussed above (Q21), the number and size of sites in a local market area is likely to have an influence on the rate at which new homes are brought onto the market.

It is sometimes argued that house builders should develop sites faster, especially larger sites, and by implication sell the dwellings faster. The house builder's pace of development of a site, and therefore the sales pace, is a balancing act between sales prices and volume of sales, all within the context of the site and external constraints discussed above and maintaining a stable market in the local area.

It is important to realise that a house builder will often have paid for the land once the planning permission is obtained, so that the land price becomes a fixed cost, incurring carrying costs which have an impact on the return on capital. The need to achieve the company's required return on capital is a powerful incentive to begin development of a site as quickly as possible and to proceed with the development at a sensible pace.

Cutting prices to speed up the pace of sales may erode the profit margin and reduce the return on capital. While this might be a necessary response to a downturn in the market, it is not a viable long-term strategy. Any company operating such a strategy would go out of business. Conversely, if a site is developed too slowly, this may dilute the return on capital, given the holding cost of land. The constraint on prices is the local market. A house builder trying to boost profits by pushing up prices too high in relation to local market prices will reduce, or even stop, the pace of sales.

Because every site is different for different reasons, and every local market is different, there is little meaning in trying to impose some notion of an "average" or "usual" development rate of a "typical" site.

As part of the demonstration of a local authority's 5 year supply of housing land, it is required to produce a trajectory plan, assessing the development rate of each site that contributes to this 5 year supply. Such a plan should be produced jointly with the development industry in order that a robust trajectory can be included in the supply figures. It is at this stage that any constraints on the delivery of houses can be discussed with the LPA and explained within the trajectory plan.

It should also be noted that house builders developing large strategic sites will often divide the site up into separate sections or phases, and open several different sales offices and/or sell phases to other developers, so that the site will have a number of competing sales outlets. These outlets may offer different products, appealing to different segments of the market, or they may compete directly with similar products at similar prices.

We would also note that sometimes a land owner, or a planning permission, will restrict the rate at which a site can be developed. A local authority might require 'phasing' of the development of a site in order to control the overall pace of development in the district and avoid some sites being built out more quickly than indicated by the district's housing trajectory.

26. The impact of the size of parcels of land released for development on competition and the delivery of homes.

The choice of whether to release one large site for development in a specific area, or to rely on a greater number of smaller sites to contribute to the housing target, is an integral part of the local authority's development plan strategy. Part of the examination of the strategy is the consideration of whether the strategy will deliver enough homes, at the right time, to meet the housing targets for an area.

Thus, although one site may have capacity for 250 units and an authority's housing target may be 250 dwellings per year, it would not be sensible to rely on this one site to meet its target in a single year because the site may only be developed at a pace of, say, 50 or 75 dwellings per year. Issues such as market choice of consumers and financial and physical constraints on the development of a site (see 25 above) would make such a target unachievable. Such a strategy would be found to be unsound at the development plan public inquiry stage.

Market choice is an issue that has, previously, been recognised in national planning policy. Although there is no specific reference to it in current planning policy, the reintroduction of a 5 year land supply requirement, and the publication of an agreed trajectory plan, should ensure that there is a choice of sites for potential purchasers of new dwellings. If a local authority were to have unrealistic expectations of the number of sales that could be achieved from a site, this would become obvious in the discussions with developers in preparing the 5 year land availability assessment.

We would add that sometimes land owners, particularly public agencies, control the rate at which land is released onto the market to maintain land prices and avoid flooding the local market with too much housing.

27. The impact of policy on density (the number of dwellings per hectare) and how it might be improved.

The impact of planning policy on density has been both direct and indirect.

The direct target of central government is to increase densities from a long-term average of around 25 dwellings per hectare to an indicative minimum national density of 30 dwellings per hectare. This is set down in PPS3.

The earlier PPG3 (March 2000) imposed a one-size-fits-all national density range of 30-50 units per hectare, reinforced in southern England by density directions.. PPG3 played an important role in raising the average density from around 25 dwellings per hectare to a provisional 41 per hectare in 2006.

CLG statistics show that housing completions in England rose by 24% between the post-war low of 2001 and 2006. CLG land-use statistics also show that the annual area of land for residential development, which began to decline from 1994, fell further between 2001 and 2004 (the latest available data). Taken together, the statistics for completions, land-use and average density reveal that higher densities were the sole reason for the rise in housing completions between 2001 and 2006. Indeed, if the average density had remained unchanged at its 2001 level, completions would have

fallen in line with the decline in land-use. The rise in densities was almost entirely a result of a switch out of detached houses into apartments.

Looking ahead, there is a strong case to be made that average densities have peaked, and indeed we may see some easing as developers reduce their reliance on flats and increase their output of attached housing. If we can no longer rely on rising densities to boost output, then we will be entirely reliant on increased land use, which will require an increase in the area of land with implementable residential planning permission. (For example, if housing completions were to rise by 50% at the 2006 density, the annual land area with residential permission would have to rise by 50%. However if the average density were to fall from 41/ha to 35/ha, the average annual land area with permission would have to rise by around 75%.)

PPG3 also had an indirect impact on density because it put a priority on brownfield land, which led to a sharp cut in the amount of development on greenfield land. On average, densities are higher on brownfield urban land than on greenfield land. Therefore we might have expected the average density to rise somewhat, and the proportion of apartments to increase, even before taking account of the impact of the density target.

An unintended consequence of PPG3 and the plan-led system of 1991 was to restrict the supply of land for housing which, as already noted, steadily fell between 1994 and 2004. This in turn constrained the supply of housing. Inevitably, if the total supply of a product is constrained, the range of products and prices within the market will be limited and distorted. Conversely, if the supply of land with implementable planning permission for housing was significantly increased, so that house builders could increase housing output, the range of products they could offer to the market would have to broaden. There is a feeling within the industry that the market for flats is probably being met, and in some local markets there may even be an over-supply. Therefore a significant increase in land supply would probably lead to an increase in the supply of houses, which would have an impact on densities.

Similarly, if land release is restricted largely to sites within existing urban areas, rather than a choice between such sites and urban extensions or new settlements on new, greenfield land, the overall amount of available land will be limited. This leads to a very competitive land market (since development land becomes a very scarce commodity) and, in order to achieve the best possible price for the landowner, the housebuilder will seek to maximise the floorspace developed on any given site. In other words, land supply restrictions, as well as PPG3's density and brownfield policies, have tended to force up densities by intensifying competition for the very limited supply of land.

However density is ultimately constrained by the demand for higher-density dwellings in any particular local market. Without a market for the product, housebuilders will not wish to go on producing just higher-density dwellings.

The planning system must, therefore, offer both sufficient land in total, and a choice of sites to ensure a choice of products for new home consumers. This is starting to be addressed through the new government policy set out in PPS3 and the new requirement for a 5 year land supply and robust trajectory plans.

28. Views on how the market for homebuilding should be defined (including whether the market is national, regional or local).

Recent changes to government planning policy guidance in PPS3 have resulted in a new appreciation of housing markets. Local Housing Partnerships (made up of both public and private sector partners) are required to undertake strategic housing market assessment to both determine and quantify housing market areas. Such assessments should be undertaken as part of the regional spatial plan and the local development plan process.

Housing market areas are not complete substitutes. It is not possible to stop the supply of new housing in one market area, and simply replace it in another, without affecting the affordability of housing.

Thus, although the national housing market is (subject to international migration) a zero sum game, the spatial choices and demands of households are reflected or constrained through the spatial planning process. Similarly, regional markets, or sub-regional markets, while broadly definable, provide little to the debate over which sites should be developed in a local planning strategy.

The main problem associated with planning for housing market areas is that markets do not respect local authority (or regional) boundaries. Thus there is considerable tension between providing dwellings within a housing market area and reflecting that market area within the planning strategy housing targets that are based on administrative boundaries.

Housebuilders have a much keener sense of market demand, through both knowledge and experience, than local planning authorities. The most recent government guidance in PPS3 is seeking to bring that knowledge into the spatial planning system through more partnership working between the public and private sectors. HBF is helping to facilitate that process.

29. Concentration levels of homebuilders (how many firms are competing in the market) at the local/regional level.

The number of housebuilders operating in any given area is a product of the availability of sites, the size of sites and the local housing market. In strong market areas with large housing targets and a range of sites, one would generally find a high number of housebuilders competing in the area. In low-demand areas, small markets or areas in which planning policy constrains the number of sites that come forward for development, there may be fewer housebuilders operating.

The important question is whether or not there are any barriers to entry for new housebuilders entering a geographic area, whether at a regional or local level. The HBF is not aware of any such barriers other than those that are a product of the planning system limiting the number of sites that have planning permission for development, and the regulatory complexity and cost of development.

We understand that, at the land purchase stage, open market tenders typically have between 10 and 20 home builders competing for sites, depending on site size and nature. These may be major national companies, regional companies or small local businesses. Competition for land is intense at the local level.

30. The level of competition at each stage of the supply chain of producing new homes (including competition to acquire land and gain planning permission, build homes and sell homes).

Competition to get land accepted in RSSs or local development plans was discussed in Q20.

Land is purchased in a highly competitive market. Land value depends upon the probability of gaining an implementable planning permission on the site. In general, land is sold to the bidder who creates best value for the landowner. This is not necessarily the highest price in monetary terms as some landowners (particularly public sector landowners) will consider the provision of social or environmental benefits as offsetting some element of monetary value, although these sites will still usually be sold under competitive conditions.

Although there are complex procedures for compulsory purchase of land within the planning system, there is generally no compulsion on landowners to dispose of their land for housebuilding. Thus, in order to persuade a landowner to sell, a purchaser must generally offer the best possible price for the land.

Land value is usually calculated through a residual value model. While there is often a small premium in the fact that a home is brand new, the market value of the finished dwellings is governed not by the housebuilder but by the general market, which is dominated by transactions in the second-hand stock.

Out of the total sales value (TSV) of a site must come infrastructure and build costs, any abnormal costs (e.g. decontamination, demolition, flood defences, etc.) profit, overheads, professional fees, interest charges, S106 contributions and any other deductible costs such as marketing. Over the next decade, sustainability costs will add substantially to costs. This leaves a residual land value that can be offered to the landowner. In a competitive land market housebuilders must keep these deductible costs to a minimum in order to offer the best possible price to the landowner against competitors' offers. All housebuilders are, therefore, constantly monitoring all of their costs along the entire supply chain in order to ensure that they are meeting the best possible balance between TSV, costs and residual land value.

With the focus on brownfield sites, and more frequently in the case of specialist housebuilders who pursue sites within, or on the edge of commercial centres (e.g. retirement home builders), there is competition for sites from non-residential developers who do not face the same costs as the house builder in terms of affordable housing obligations, the Code for Sustainable Homes, flood attenuation/management, etc.

Sales competition, which depends largely on the number of sites granted planning permission in a local market, is discussed elsewhere in this document.

31. The impact of mergers between homebuilding firms on competition in the market and on the delivery of new homes.

The private housebuilding industry currently produces around 170,000 new dwellings per year in Great Britain, while total housing completions reached 194,000 in 2006. The larger companies do not appear to account for a disproportionate share of housing output, despite a series of mergers and acquisitions by larger companies since the end of the 1990s.

Taylor Wimpey, the largest housebuilder in the sector following the merger of Taylor Woodrow and George Wimpey, is projected to complete approximately 22,000 new dwellings in 2007. Forecasters expect total completions to rise to just above 200,000 in 2007. Thus, the industry leader will produce approximately 11% of new homes output in Great Britain in 2007.

Until recently, consolidation had not significantly increased the market share of the larger companies. Taking the annual completions of the top 12 companies each year as a proportion of GB total housing completions, their share rose from 24% in 1991 to just over 44% in 2002. (Total completions are the best comparison, rather than purely private completions, because companies' reported annual sales figures include Affordable Housing units.) This share then hovered in the range 43-45% up until 2005. The recent round of mergers will probably raise the share of the top 12 to about 45-46% this year.

A similar picture emerges for the top 6 companies which accounted for 35% of total GB completions in 2005 and probably about 38% in 2007, with the top three accounting for about 30% of GB completions.

NHBC statistics for the size of companies present a similar picture. The top 25 companies' share of NHBC registrations peaked at 59% in 2003, then fell to 54% in 2006. The 13 companies registering more than 2000 units in 2006 accounted for 47% of registrations.

Consolidation over the last seven or eight years has been largely a response to falling land supply with planning permission and the difficulty of achieving volume growth organically. In other words, it is a consequence of restricted land supply, not a cause. Even Barratt, which had managed to hold its position as one of the top three

companies through organic growth, recently acquired Wilson Bowden, its first significant acquisition for several decades.

Even if consolidation continues, we do not know whether there is a limit to the new home share a single company could achieve in Great Britain because its share of new housing output would have to be reflected in its share of the residential land market and residential planning permissions. Maintaining production of, say, 25,000 homes per year would require acquisition of land for 25,000 plots per year, and planning permission for sites with 25,000 plots per year.

If the Government's planning reforms and other policies to increase housing supply are successful, so that the amount of land coming through with residential permission increases, we believe pressure for consolidation will ease as companies will be able to grow organically, and the quoted companies will be able to satisfy the City with organic volume and profit growth.

32. The (vertical) integration of land assembly and building functions within housebuilding firms.

Most larger house builders in the UK are vertically integrated, beginning with land assembly or site identification, obtaining planning permission, designing and building a scheme (often sub-contract construction) and selling the dwellings. Some companies assemble land and take it through the planning system, but then sell the land, either as a whole or in parcels, to house builders who design, build and sell the dwellings.

We understand that other countries, such as the US and Australia, have higher proportions of land developers and house builders than the UK, as well as vertically integrated companies. However we suspect these differences may reflect differences in the size of local housing markets, geography, planning, etc. In other words, there is no 'right' approach. Each country will have its own solution to its own special circumstances. We suspect that a highly restricted planning system probably pushes the industry towards a more vertically integrated approach because companies need to have good visibility of the whole pipeline.

33. The extent and effect of companies' landbanks and option agreements (and the terms of these) on competition in the market and on the delivery of new homes.

As part of our submission to the Callcutt review of the housebuilding industry we collated information from the largest HBF members regarding their landbank. We have made this evidence available to the OFT already.

On options, in our evidence to the Barker Review (August 2003), we stated:

"It has been suggested that house builders may sometimes option more than one site in an area in order to restrict competition. There are two reasons why this is highly unlikely. First, option agreements usually contain a "best endeavours" or "reasonable

endeavours” clause requiring the developer to progress the site through planning as quickly as possible. Contracts also usually contain an anti-competition clause to ensure house builders do not buy other competing sites. Failure to progress the site through planning, or buying a competing site, would breach the terms of the contract. None of those consulted during the preparation of this submission knew of cases where options had been used to restrict competition.”

We would add that in some cases individual companies will progress more than one site in an area which, if successful, will mean the company will be competing with itself on different sites in the same market area.

For examples of terms of option agreements we refer the OFT to house builders.

Option agreements can create a highly competitive situation in areas where a large site is likely to be designated for housing. A number of companies will option sites and then promote these to the local planning authority. The private sector incurs all the cost of selecting and promoting potentially suitable housing sites, but the LPA will make the final decision about which site is to be developed. Without options, the local authority would have to undertake a great deal of work selecting a range of sites and assessing their suitability for housing before it could make this decision. In effect, the option system, within a plan-led system, harnesses private sector competition to the benefit of the LPA and the local community. The suggestion that developers use options to restrict competition is without foundation.

34. Attempts by firms to enter the homebuilding market (including factors that may deter firms from entering and the level of entry).

HBF has no direct evidence of barriers to entry into the housebuilding sector. However it is often stated that the difficulties of obtaining land and planning permission, the increasing complexity of the planning system, the growing number of additional regulatory demands – S106 agreements including Affordable Housing, sustainability and zero carbon, etc. – and the focus on brownfield sites which are often complex and difficult to develop, mean that it is increasingly difficult for smaller companies to enter the market or expand. The switch to apartments, following PPG3, has also increased the cost of development because of the funds locked up in work in progress on an apartment block.

NHBC statistics (see quarterly *New House-building Statistics*, Tables 13, 14) show there is still a very large number of smaller companies active in housing development. In 2006, there were 4,566 companies registering between 1 and 10 units, and another 844 registering 11-20 units.

It is striking that the shares of total NHBC registrations by companies in the 1-10, 11-30 and 31-100 size categories (Table 13), which might be regarded as ‘smaller companies’, have not changed significantly in the last decade. The corollary to the increase in the 2000+ category share has been largely a decline in the 501-2000 category share. It is also notable that the numbers of companies in the 1-10 and 31-

100 size bands have been broadly steady over the last decade, while the number in the 11-30 category has increased. Within each category, there must have been new entrants – whether brand new companies, companies moving from other areas of construction into residential development, or non-developer entrants – along with companies exiting house building altogether and companies moving up into larger size bands. Such detailed flows are not visible in the NHBC's stock statistics.

The most high-profile new entrants into residential development in recent years have been commercial developers and housing associations, both of which already have development expertise. Some commercial developers have built up quite large residential land holdings, although their annual accounts do not present land bank and housing completion data comparable to the data published by house builders, so it is difficult to assess the scale of activity. In addition, a number of large housing associations have entered the private housing market, and some have announced quite ambitious expansion plans, although again we do not have comparable land bank and sales data.

The biggest constraint on new entrants must be the access to the basic raw material: land with planning permission. As we have sought to demonstrate, the promotion of land for development through the planning system is complex and costly and, as such, is likely to have been a deterrent to new entrants to the sector.

35. The scope for commercial developers and other firms to switch into the homebuilding market.

Current planning policy encourages the development of mixed-use development. Thus, housebuilders are beginning to collaborate with commercial developers to deliver the residential element of such projects, or to develop their own expertise in mixed-use development. Similarly, commercial developers, whether in the office, retail or leisure sectors, are entering into partnerships with traditional housebuilding companies to meet the new challenges that such policies bring, and in some cases developing residential schemes themselves.

36. The scope for smaller homebuilders to expand within the market (including barriers to expansion and economies of scale).

We have addressed this in Q34 above.

37. The impact of risk and the availability of capital on decision making in the market.

HBF would draw attention to the significant element of risk involved within the planning process, as set out in our general submission to the OFT.

We have to defer to our membership and others to provide evidence of the availability of capital.

However we note that in response to a quarterly question in the HBF Monthly Survey asking about constraints on production, the proportion regarding development finance as a 'major constraint' has remained below 5% for more than a decade. By contrast, over 80% of house builders consistently regard planning delays as a major constraint.

38. Difficulties and delays in obtaining infrastructure including roads and utility connections and the impact of this on the market.

There are many examples of planning permission being granted subject to the timely provision of infrastructure, whether major or minor. Through the use of Grampian style conditions it is not always within the control of the housebuilder to provide such infrastructure, meaning that infrastructure providers themselves delay many developments. Government Agencies such as the Highways Agency, Local Highways Authorities and the Environment Agency have statutory powers to place holding directions on developments that have received planning permission until the infrastructure has been provided. This can delay projects for years rather than months, and can mean that local authority spatial strategies are unimplementable.

The delivery of infrastructure to service new developments is also seriously impeded by organisations like the Local Highways Authorities, Utility Companies and Sewerage Undertakers applying levels of service which do not fit in with the development process, coupled with a lack of accountability for the levels of service they actually do provide. This is further exacerbated by an approach where the detail appertaining to the infrastructure for a development is not joined up between the many organisations.

Another very worrying aspect of delays to infrastructure is the inability of Utility Companies and Sewerage Undertakers to plan the provision of their infrastructure. Because they are not involved in the planning process, they are dependant on house builders making applications to them so to ensure that the relevant infrastructure will be constructed. In many cases they will not even accept the need to accommodate the new infrastructure for a site until planning consent has been granted. This constitutes a major problem in that initial house completions in many cases are delayed while the relevant infrastructure is provided.

This was demonstrated when the HBF undertook an investigation into utility connection problems in the first half of 2006 and produced a complex flowchart of the difficult process and the results of a member survey. We attach copies of each. This research found that, in some cases it took 33 weeks for connections to be made after an initial request had been made to the utility supplier. The average was 25 weeks, close to the average time taken to build a new home. This leads to delays not just in completion rates, but also in the date of occupation following the completion of the fabric of the dwelling itself. HBF has made representations to Ofwat of Ofgem on utility connections.

Individual house builders will be able to provide many examples of delays caused by the above issues on infrastructure.

39. The prevalence of the use of sub-contractors and the availability and cost of skilled labour and the impact of these factors on all aspects of the supply chain in the homebuilding sector.

The HBF has previously commissioned research which demonstrates that labour supply and skills issues should not be a major barrier to increased house building output.

In the light of Recommendation 34 of the 2004 Barker Review of Housing Supply on skills, HBF and the then CITB-ConstructionSkills jointly commissioned Professor Michael Ball to look into whether skills capacity would constrain the industry's ability to deliver Barker's and the Government's vision of a significant increase in housing supply.

In his report published in September 2005, Professor Ball found that, based on an extensive survey of the industry, if the business conditions required for a significant increase in output – including a better and more consistent supply of land with planning permission for residential development – were met, the industry would be able to achieve sustained improvements in labour productivity. On modest assumptions these might amount to 2% annually. In turn a UK increase of housing output of around 60,000 units would, on these assumptions, entail an increase in the workforce of only some 40,000 compared to an existing workforce of around 285,000 - perhaps half of which was likely to be met by people choosing a growth sector such as residential development as a career above other options, as well as skilled crafts and professionals entering the UK from other EU countries.

Professor Ball's overall conclusion was that:

"...while training issues are important in the expansion of housebuilding, it can be concluded at the same time that skills shortages are unlikely to represent a barrier to expansion of the housebuilding industry."

The findings of this study would seem to have been borne out by the falling proportion of companies finding labour availability a major constraint on output in the last few years at the same time as increasing output by some 25%. HBF's monthly survey asks a quarterly question on production constraints. In the most recent survey (2007 Q2), labour availability was quoted by only 11% of companies as a 'major constraint' on production.

No doubt the inflow of migrant EU labour, which is generally good quality and benefits from training received in its home nations, has helped. The availability and contribution of new EU entrants to the UK home building workforce is in itself a testament to the flexibility with which the market can respond to the demands of increasing output.

There are probably many reasons that contribute to the high proportion of indirect or sub-contract labour used by the industry. The important consideration in this respect

is, however, the competence and skills of those working in the industry, rather than their employment status.

HBF and the industry have been working to improve skills provision and to encourage new entrants from the indigenous population to enter the industry. HBF has also been working closely with ConstructionSkills to ensure that its wider work for the construction sector takes proper account of home building requirements. Building on Professor Ball's report, HBF launched a skills strategy - *Skills for Homes* - in February 2006 setting out how it proposed to develop existing initiatives and commence new areas of work to benefit future entry and skills in home building. Within the strategy, key areas include:

- the Qualifying the Workforce Initiative adopted by the Major Home Builders Group - this aims to have a fully CSCS (or equivalent) carded workforce on company sites by the end of 2007, and a fully qualified workforce by the end of 2010;
- increasing the number of apprentices and trainees entering the industry;
- developing new fit-for-purpose vocational qualifications for the key role of residential site management - we are on course for the new NVQs to be available from early 2008;
- ensuring that new qualifications such as the Specialised Diploma for Construction and the Built Environment take full account of home building requirements in the options they offer students.

40. The scarcity of other key inputs to the homebuilding process.

Apart from land, planning permissions, development finance and labour, all addressed above, the only other potential constraint is materials. In the 2007 Q2 HBF Survey, only 3% of companies quoted materials availability as a 'major constraint' on production, a figure that had been zero in four of the previous five quarterly surveys.

However there are concerns over the availability of products with the right technical requirements, and in sufficient volumes, to enable house builders to meet the zero-carbon target by 2016. This is why it is critical that everyone, including local planning authorities, works to the 10 year timetable agreed between the government and the industry so that the supply industries can develop and test appropriate products, install new plant and build up industry capacity sufficient to supply the home building industry's needs by 2016.

41. Who owns land that is suitable for development?

The planning process is neutral over land ownership in the allocation and strategic choices that it makes.

However, planning policy that favours redevelopment of previously developed land for housing means that much of the land for development in development plans is owned by non-developers, including the public sector. Sites previously used for public

facilities that are no longer required, such as defence establishments, are, under planning policy, prioritised for development. According to CLG evidence from the National Land Use Database, 12% of previously developed land suitable for housing is owned by local authorities and another 15% is owned by other public bodies, putting more than a quarter in public ownership,

Recent research by Savills (*Property Week*, 29 March 2007) suggested that traditional house builders owned only 8% of strategic residential sites, with another 21% owned by commercial/mixed-use developers. The largest category of ownership, at 64%, was 'other owners (non property industry)'. (Strategic sites are defined by Savills as "sites over 4 hectares, more than 250,000 sq ft, or more than 250 dwellings".)

At the stage at which such sites are developed, Savills claimed 34% were developed by traditional house builders, 45% by commercial/mixed-use developers, 15% by 'other (housing associations, partnerships, SPVs, etc.)', and 6% by land developers.

42. The availability and ease of procuring land suitable for development and the time and cost of this process.

The discussion and evidence presented above suggests the key problem is obtaining an implementable planning permission so that land suitable for housing can be developed. There is a shortage of land with planning permission, and long delays in bringing land through the system, both at the strategic planning stage (RSS, LDF) and at the development control stage. Both causes of delay lead to significantly higher costs for bringing sites forward for development. Uncertainty also adds to delay and cost. The refusal rate for applications, now running at more than one third, means companies must progress more sites through the system to ensure a given output of permissioned sites and housing production, thus increasing costs.

As HBF has argued many times, there is not a shortage of land, only a shortage of land with implementable permission. In the 1947 Act, the state took control of development rights. Since at least the early 1990s, tightening control over the supply of the total quantity of permissioned land flowing out of the system has led to an under-supply of new housing.

HBF
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