

Cutting Red Tape – Sector Review of House Building

Response from the Home Builders Federation

Introduction

This paper and its appendices are the co-ordinated response of the Home Builders Federation (HBF) and its members to the current Review.

The issues and case study details in our response have been provided by HBF member companies and also draw on the Federation's wider understanding of the impact of particular regulations and processes.

The HBF is the primary trade association representing home builders in England and Wales. Our members range from the largest national companies, through regional businesses to smaller, locally based firms. Between them our members build about 80% of new homes annually.

General remarks and issues

It is recognised that there is already much work in train in government and public agencies which has the aim of facilitating the speed and scale of housing delivery. The HBF fully supports this work and is contributing actively to it, including measures that are within the scope of the current Housing and Planning Bill.

Some of the feedback we have received from our members reinforces the need for current work – for example, there remains significant concern about the large number of planning conditions being imposed by local authorities and the time taken to discharge these before work can start on site. Progress on measures to address these concerns remains essential.

An open consultation with HBF members has, however, identified several other areas of regulation and related regulatory process that are of concern to the industry and which are seen to have adverse impacts on the time required and the risk involved in residential development as well as adding to the costs of development. Collectively these adverse impacts cannot fail to be constraining the speed of housing delivery and industry capacity.

The bulk of this submission sets out these areas of concern with supporting evidence provided by our members. Feedback has also suggested, however, that there are some cross-cutting issues that need to be considered.

Cross-cutting issues

(i) Resource

HBF has previously drawn the government's attention to the concerns of its members about the lack of sufficient staff resource in the planning system, which is a major factor in slowing down the end-to-end process for achieving implementable planning permissions.

In responding to the current call for evidence, HBF members have also said very clearly that they have similar concerns about the staff resourcing of other key public agencies, including those that are statutory consultees. It is felt that the lack of sufficient, suitably skilled staff in such bodies is contributing to process delays and practices that create delays and add to costs and risks for home builders in advancing new housing developments.

While appreciating that the need for stringent control of public expenditure remains critical for the government, creative and innovative ways of avoiding unnecessary and unwarranted regulatory process delays must be found.

(ii) Innovative ways of tackling regulatory process delays and inefficiency

HBF has separately proposed to government that concerns about local authority planning resource and process efficiency could be addressed by permitting competition in the provision of planning advisory services that inform the political decision-making on planning applications by local authority members. The Government has introduced an amendment to the Housing and Planning Bill that would allow for such competition.

Our members have made suggestions that their concerns about the speed, efficiency and cost of other regulatory processes might also be addressed in part at least by looking at the scope for introducing competition in the provision of advice and services subject to necessary statutory requirements being met.

In addition, a number of companies have made suggestions that the changes introduced by the government to provide for the deemed discharge of planning conditions could serve as a template for useful reforms in other areas. In particular, we would suggest that the scope for applying a "deemed consent" approach should be looked at for matters dealt with by the statutory consultees so that the time taken is clearly capped in practice. Delays in the clearance of statutory consultee processes featured heavily in the response to our call for evidence. It was also felt there was a need for more consistency in the advice provided by statutory consultees before and after a planning decision is made on applications.

We include more detail on such ideas in respect of individual issues set out below. In broad terms these ideas are similar in principle to the competition that is already established in the field of building control services.

(iii) Proportionality

In relation to a number of issues raised by our members, there is a concern that regulations are implemented in a way that is not sensitive to the degree that a development might actually require consideration in respect of that regulation.

The case for proportionality in implementing regulations should therefore be positively considered as a means to reduce regulatory burdens, costs and delays. There are already moves to look at a more proportionate approach in some areas such as the protection of great crested newts and these should be maintained and further developed.

Again, we make suggestions on such ideas in respect of particular areas of concern set out below.

(iv) Early engagement

The ability to have early and open engagement with regulatory bodies such as the statutory consultees has been identified as important for companies so that they can obtain informal advice on potential issues affecting the development of prospective sites for housing. This could in some cases enable builders to make earlier and more cost-effective decisions on whether to proceed with a planning application for and acquisition of a particular site, so resulting in lower opportunity costs overall and more efficient delivery of sites that do not face undue complications in terms of possible regulatory issues.

Some bodies such as the Environment Agency and Natural England have moved to offer such advice on request on a fee paying basis on the understanding that it cannot pre-empt or prejudice their final advice as a statutory consultee. We broadly support this approach, but it is also important that fees are proportionate and transparent and are used to support the staff resource needed to deliver them in order to avoid unintended adverse consequences – for example, disadvantaging SME builders.

(v) Effective strategic advice to inform local plans

Related to early engagement with home builders on individual housing scheme proposals, it is also important that relevant regulatory bodies provide timely strategic advice to local authorities for the drawing up and revision of their local plans.

The provision of such advice to councils should enable their local plans to be based on sound spatial evidence when determining their five year housing land supply and indicating areas that are suited to development. Getting this groundwork on local plans right will then

reduce the scope for individual planning applications to run into difficulties in respect of regulatory policy requirements.

(vi) SME home builders

The issues raised in our submission are of concern to all sizes of home builder, but tackling the concerns and finding lighter touch, more efficient and less costly means of implementing regulatory requirements is of particular concern and importance to SME home builders.

SMEs have less in house resource and technical expertise in general than the larger home builders so that any regulatory processes and requirements that are unnecessarily burdensome are likely to have disproportionate adverse impacts on the ability of SMEs to deliver their developments and to grow their businesses. Removing and avoiding such adverse impacts for SMEs is key to achieving the government's housing supply objectives and facilitating market entry and growth for SMEs as a necessary part of this.

In this respect it should be noted that regulatory processes other than planning can exacerbate the difficulties SME home builders face in obtaining development finance for their projects, particularly where uncertainty about regulatory decisions and their requirements may hold up confirmation of funding from a lender.

Specific issues

Newts and bats licensing and protection

There is a widespread concern among HBF members who responded to the call for evidence about the delays to development that can arise from these licensing processes.

There are a number of elements involved.

There are perceptions that staff resource in Natural England may be a problem.

This in turn appears to be linked to the time that licensing processes actually take. A period of 3 to 6 months has been widely mentioned by members. This can also result in further delay in construction if, for example, licences are not issued until periods of bad weather such as in the winter.

Where species surveys need to be undertaken and action taken in relation to the protection or movement of species populations on a site this can further extend the period actually required to complete the licensing process because of limited seasons during which this may be possible. In some cases the overall delay can be a year or more.

Members also raised concerns that Natural England will not consider applications for licences until Reserved Matters planning consent has been obtained. Earlier consideration of licence applications would be welcomed as part of an improved process.

There is also concern about the lack of proportionality in the way that licensing applications and related processes are implemented. They are seen as inflexible and unnecessarily burdensome in relation to sites where there is little evidence of the presence of protected species or there is only a very small population of the protected species.

HBF is aware that Natural England is seeking to introduce measures and procedures that have the objective of introducing more proportionality into species protection:

- A pilot scheme is taking place in Woking that has identified strategic zones for the protection of newts that will ensure a favourable conservation status for them in the district. This will enable licensing procedures in other parts of the district to be light touch and minimise impacts on development timescales.
- Tests are being developed that will provide an early indication of whether there is likely to be a significant population of newts on sites which could facilitate site acquisition. Such tests would also facilitate a more proportionate approach to implementing regulatory requirements.

We support these initiatives which should be pursued and further developed. A more strategic approach to species protection that focuses on conserving and promoting strategically important populations in suitable identified areas offers a win-win prospect of more effective species conservation and reduced burdens and delays to development outside such areas.

In this connection, we have also seen the suggestions made by the Wildlife and Countryside Link on species licensing and the implementation of the Habitats and Birds Directives in its response to the Review's call for evidence. We believe that many of these suggestions are consistent with our own views on how implementation of regulations and legislation in this field could be improved to the benefit of conservation objectives and new residential development. We would be happy to work with the conservation bodies as well as government and regulatory bodies to advance the solutions to current concerns that we are respectively putting forward to the Review.

Specific examples of member concerns in the area of species licensing are attached as Appendix 1.

Implementation of the EU Habitats and Birds Directives

The implementation of the Habitats and Birds Directives can be problematic for house building.

Classically, the implementation of new Special Protection Areas in the Thames Basin Heaths in order to protect three species of ground nesting birds some 10 years ago brought

house building activity to a virtual halt in large parts of some 11 local authorities in Berkshire, Surrey and NE Hampshire. The cumulative economic impact was not calculated but cannot have been other than very substantial, leading to significant job losses in the home building industry and threatening the existence of many SME companies in the region.

The problem chiefly arose because the likely impact of the implementation of the SPAs on the home building industry was not well understood or foreseen by English Nature (as it then was) and local authority planning departments. The lesson to be drawn is that in any future cases where the location of proposed SPAs is likely to affect new housing development proposals, there should be a duty on the regulatory bodies and local authorities to plan proactively for strategic solutions that can successfully meet both conservation and development requirements and avoid costly dislocation of housing delivery as happened in the case of the Thames Basin Heaths.

There have been other examples of the implementation of the Directives resulting in adverse impacts on home building. Currently, for example, unresolved considerations relating to a Special Protection Area for the Ashdown Forest mean that Wealden District is unable to meet its objectively assessed housing need.

An underlying issue for home building is that it is characterised by activity spread across a comparatively large number of comparatively small sites for the most part. This makes it difficult to determine suitable conservation solutions in relation to individual planning applications against the cumulative impact tests entailed under the Directives.

This problem has been recognised by Government and the current EU REFIT Review of the Directives has led to wide agreement among Member States that the implementation of the Directives needs to be improved. We understand that following an EU Environment Council discussion on this issue at the end of 2015 Defra Ministers are looking to set in place a Memorandum of Agreement between Government, development bodies and environmental bodies to take forward a programme of work to agree improved implementation arrangements.

HBF attaches importance to this work being expedited. Its scope should take account of the issues and potential solutions set out above in relation to newts and bats licensing and protection. An important focus should be the proactive consideration and agreement of strategic approaches to species and habitat protection across relevant areas – whether within a single district or across larger areas - taking account of the current Woking pilot project and the eventual solutions adopted for the Thames Basin Heaths issues. Identification of agreed strategic locations for species protection under the local plan process could go a long way to reduce the current widespread costs and delays resulting from such requirements.

Highways: Section 38 and Section 278

Many members have raised concerns about regulatory procedures and related matters on highways issues – principally in respect of Sections 38 and 278 of the Highways Act 1980.

On Section 38, the concerns relate to resource in the Highways Authorities, the point in the planning and development process at which Highways Authorities (HAs) properly engage, the lack of joined up working between Highways and Planning Departments more generally, the excessive charges levied on house builders by Highways Authorities and the variation of design standards between Highways Authorities which leads to additional costs and time delays for home builders.

Many HAs do not fulfil their consultation role at the planning stage. Very often HAs only comment on Highway geometry and design once planning consent is in place and a subsequent application for S.38 highway adoption technical approval is made by the developer. In many instances the changes are such that a return to the planning process may be required. HAs should therefore be encouraged if not instructed to participate more effectively in pre-planning application discussions and to sign-off highway layouts as part of the planning process. This would make for smarter regulatory approval and reduce both cost and delay.

Specific areas of concern relating to S.38 include:

- **Planning** - Highway departments are statutory consultees for planning applications yet they increasingly impose additional standards etc post planning consent. We need to find a way of agreeing final designs as early, and quickly, as possible to reduce delays and the potential need to consider late changes to scheme design.
- **Approval of designs**- in many cases it can take significant time to get designs approved by the LA. There should be a time limit for approving designs and it should be based around the planning submission.
- **Approval process for adoption** – in many instances the adoption process can take much longer than the date set out in the Section 38 agreement. There is currently no incentive for LA's to adopt roads in a timely manner, especially in today's economic climate when LA budgets are being cut. Until they are adopted LA's are not responsible for their maintenance. Such delays are compounded by the bonds provided by builders having to be kept in place for longer than is necessary, so adding to capital lock up and costs. These delays cost the developer with the bond provider apportioning overrun charges to the bonds.
- A time limit once a developer has applied for adoption would greatly help. In addition, on large developments that can take years to complete, we would like to see phased adoptions agreed between the developer and LA.

- We also come across unreasonable pre-adoption remedial lists following the statutory 12 months maintenance period. These sometimes get changed even when the works are carried out to the highways department's satisfaction and can add a further 6 – 12 months to the adoption process.
- In addition, we also experience widespread delays in the processing of legal agreements, which can take 6 – 9 months to be executed and put in place.
- Clearly we appreciate there are acute pressures on LA capacity and we frequently hear LAs blaming delays on under resourced legal departments, but ultimately we are wholly reliant on their service provision and need to see action taken to improve the service that we are paying for – or ways found to introduce competition into such service provision to improve outcomes.
- **Commuted sums** - Highway Authority demands for commuted sum payments for future maintenance, as part of the requirements of a S38 adoption agreement, are increasingly becoming excessive. Over the years the commuted sums demanded by LAs have increased significantly and are now often in excess of the cost of the road. As a result, the LAs inspection fees, which are a percentage of the commuted sum have risen accordingly. The rationale for such payments has still not been fully tested in the Courts and it remains a moot point as to whether or not such payments are legal.
- Due to the concerns over commuted sums and inspection fees, developers are increasingly favouring the Section 37 route to adoption over a Section 38. However, this route is not without its risks and difficulties and can create a more adversarial climate between developers and authorities.
- Many Highway Authorities are now requiring separate S38 agreements for simple vehicle crossings in addition to off-site highway works covered by a S278 agreement - despite no changes in Highway legislation since 1980. This is adding both cost and delay in starting works on site. In addition, several Highways Authorities are now seeking open-ended indemnities for any future costs, claims or actions as a key component of a S38 agreement. This is adding further, unnecessary cost.
- On average, S38 Agreements are taking over 6 months to complete and HBF has been informed by members of delays of up to 18 months. In addition, a growing number of Highway Authorities are insisting (as a condition of the S38 Agreement) that on-site sewers are adopted by the WaSC before the estate roads will be considered for adoption. The Highways Act 1980 does not make this a requirement and many Highway Authorities appear oblivious as to the implications arising when it comes to SuDS infrastructure that will not be adopted by the WaSC.

- With regard to the procedure for inspections and the fees charged for inspections, due to the monopoly position that HAs effectively hold, developers can be asked to pay very large inspection fees without which a highways inspector will not visit the site. Questioning of such fees necessarily leads to delay and can contribute to an overall level of frustration which can result in developers proceeding “at risk” in order to avoid further delay to their scheme.
- Highway Authorities apply their own design standards that vary from HA to HA across the country. This is clearly sub-optimal and necessarily adds to the time and costs involved in developers providing and agreeing design solutions. We advocate moving to an agreed single national set of design standards to be used by HAs.

Keynote Recommendation: The Highways Act 1980, is 35 years old and contains many provisions that are out of context with new development in 2016. Moreover, it has been shown that the Private Sector can provide a better and more cost-effective service in terms of the highway adoption process, i.e. design, approval, construction supervision and final attestation. In our opinion, the time has come for a root and branch review of the Highways Act 1980, perhaps with a short section dedicated exclusively to the design and construction and adoption of residential estate roads, i.e. ‘smarter regulation’. (An evidence/information paper produced in November 2009 is attached for further reference – many of the issues identified in this paper remain active.) As part of the review we propose, the case for competition in the provision of inspection and other services needs to be actively considered in order to create incentives for Highway Authorities to discharge their responsibilities with full efficiency and with a clear focus on timely delivery. In the present context the incentives can clearly be perverse with HAs seeing the scope to raise revenue from unwarranted fee levels and to offset their normal risks and future responsibilities through seeking unduly onerous commuted sums.

In response to a letter he received from the Minister (itself prompted by awareness of concerns in this area), the HBF Executive Chairman wrote to the Housing and Planning Minister on 5 November 2015 about HBF concerns on Section 38 and a copy of that letter is attached for reference.

There are similar and complementary issues that arise under **Section 278 of the Highways Act 1980**.

Section 278 Agreements are often required in order to gain access to developments; however the manner in which they are used can add costs, time delays and be used unreasonably.

- **Costs:** When entering into a Section 278 agreement, a developer is bound to accept the advice of the relevant local authority and its team of consultants. The fees charged are often extremely high, considerably higher than the cost of similar advice obtained competitively in the open market. There are also frequent

requests for extra studies to be funded, changes made during the process and extra requirements added after technical approval which add to the costs. There is no incentive to control costs.

- **Time delays:** Delays of weeks or even months to obtain responses and make progress on S278 works are not uncommon and the adding of extras and requirement for extra studies also adds time delays to the process. There is no sanction for delay and no ability to appeal or provision for deemed approval to make progress.
- **Unreasonable use:** The process can be misused in order to obtain highway improvements that are not required solely as a consequence of the development.

Solution: A scale of fees should be introduced with an overall fee cap which cannot be exceeded – or, again, the case for the competitive provision of services should be considered. Once a proposed scheme is submitted, a single response should be allowed within a fixed period. If requirements for change are identified in the response, then there should be a very short period within which to approve the revised plans and no opportunity to introduce further requirements at this stage. If submissions are not approved within the set time period, there should be deemed approval. Once a scheme is built to approved plans, it must not be possible to ask for further works before adoption.

An example of a specific Highways process impact is at Appendix 2.

Water Issues

A further regulatory field in which HBF members have widespread concerns is water and drainage.

There are a number of substantive issues concerning Lead Local Flood Authorities, the growing trend for Water Companies to seek the imposition of additional conditions in Section 106 Agreements and the fees and charges sought by Water Companies.

Lead Local Flood Authorities (LLFAs). Several LLFAs are ignoring the Defra/DCLG non-statutory standards for SuDS and introducing their own hybrid version that has a heavy reliance on the CIRIA SuDS Manual – the latter has not been subjected to public consultation and in many instances represents a ‘gold-plating’ approach, for example when it comes to water quality. (See Cumbria CC, Lancashire CC, Essex CC, and Gloucestershire CC local policy requirements). Moreover, on all four counts, the LLFA/LPA Standards do not appear to have been sufficiently evidenced based, viability tested and subjected to public consultation. This is resulting in delays and increasing costs to home builders in securing planning consent and ultimately, starting on site. Importantly, if LLFAs are allowed to develop their own hybrid standards rather than being required to follow national guidance on standards, this could result in 152 variants of the SuDS Standards. (There are 152 LLFAs at the County and Unitary Authority level). Evidence is also beginning to emerge of LLFAs ignoring what has previously been agreed at planning consent stage. (See example at Appendix 3.)

Section 104 procedures under the Water Industry Act 1991 for the adoption of sewers are a particular area of concern raised. The issues are in broad terms the same as those relating to Highways. Companies complain of delay, excessive fees and charges, and of such adverse impacts being compounded and underpinned by the monopoly position of the regulatory authorities which prevents industry using alternative and more competitive providers or developing solutions itself subject to meeting necessary statutory requirements in a smart regulatory form. The time taken to conclude processes to agreement are commonly reported as taking 3 to 6 months and in some cases a few months longer. A specific example of delays is at Appendix 4.

As part of this set of concerns, our members tell us that there are a growing number of instances whereby Water and Sewerage Companies (WaSCs) are seeking to avoid their statutory obligations under the provisions of the Water Industry Act 1991, by pressurising the Local Planning Authority to impose planning conditions that:

- Demand developer funded network analysis for foul sewers, and;
- Seek developer funded off-site foul sewer and water supply network reinforcement. There is evidence of delays exceeding 6 months before the outcome of a network analysis is known. Similarly, of excessive cost demands for spurious network reinforcement (for example, as a result of using unrepresentative and disproportionate input parameters for assessments), or the imposition of planning conditions that restrict and/or delay development, pending completion of the off-site reinforcement – so called Grampian conditions. In several instances, the ability to complete the off-site infrastructure has no time limit and is often out of the developer's hands. On occasions planning consents are at risk of lapsing before the required network capacity 'improvements' are likely to become operational.

Such demands from WaSCs are leading to pressure for local authorities to include the network reinforcement sought as part of Section 106 planning obligations agreements.

There is a need to rein back over-conservative network assessment criteria used by WaSCs. For example, on the water supply side, new homes built to Part G of the Building Regulations requirements with average occupancy would generate about 350 litres/dwelling/day in water use. The current average demand criteria being applied by several WaSCs is about 1450 litres/dwelling/day. Such disparities clearly lead to unwarranted additional charges to home builders which are in effect cross-subsidising wider network reinforcement requirements.

Assessment and "betterment" charges based on such over-conservative assessment assumptions are also arguably incompatible with the direct impact test that should apply to Section 106 obligations – if water infrastructure investment requirements are being enforced through this mechanism.

HBF has already shared evidence with Defra, DCLG, Ofwat and Water UK on its concerns about water infrastructure reinforcement investment charges levied upon developers (See attached Table 1). It is our view that an integral part of the current work that is ongoing in respect of the Defra/Ofwat Market Reform and Charging Rules covering the Water & Sewerage Sector should seek to have in place agreed network capacity assessment criteria that are reasonable, proportionate and can be consistently applied. The evidence held identifies a number of off-site network reinforcement demands that are having a direct and adverse impact on project viability.

In addition, we would advocate that there should either be one infrastructure charge (determined according to the agreed new network assessment criteria we propose) and no other obligation on developers, **or**, that developers should have the choice of arranging for the delivery of the assessed infrastructure requirement themselves and then hand this over to the WaSCs. This would both avoid the levying of unwarranted fees on developers and introduce competitive pressure into these processes. (We also note in this connection that in Scotland developers are paid for the water and drainage infrastructure assets they hand over to water companies.)

Solution: Despite the present difficulties experienced with WaSCs, albeit in the main specific to foul drainage, there is a growing body of opinion in the development community (and amongst several WaSCs) that WaSCs should become the sole body responsible for surface water drainage in general, including SuDS infrastructure. (The concept of a single body responsible for this function was identified in the 2008 Pitt Report). This may require changes in legislation but the Infrastructure Act 2015 and/or the Water Act 2014 may provide an appropriate way to introduce smarter, and more responsive secondary legislation that deals more effectively with surface water management. Indeed, Section 21 of the Water Act 2014 empowers WaSCs to design, construct manage and maintain SuDS infrastructure in the discharge of their statutory duties under S94 of the Water Industry Act 1991. If we went down this route, however, it would clearly be vital that a consistent use of agreed assessment criteria for network investment in respect of new development was agreed and stuck to.

Remediation of contaminated land

There are a growing number of Local Authorities who are still seeking Part 2A determinations on historic sites, i.e. those developed over 30 – 40 years ago - under the Environmental Protection Act 1990, sections of which did not come into full force until several years later. The retrospective application of modern day scientific understanding is not helping and there is a real prospect of a growing number of expensive appeals being submitted to the Planning Inspectorate. Ill-considered and inappropriate Part 2A determinations will take away much needed resources, including capital expenditure that would otherwise have been invested in new land and development opportunities for residential development. It would be helpful if Government were to reconsider the application of retrospective action under the Part 2A regime. For example, when considering sites developed prior to the changes in environmental legislation, i.e. those

prior to say 1990, and in those instances where developers can be shown to have applied current knowledge and guidance when redeveloping former sites, these should be exempted.

Whilst the Government's commitment is to increase development on brownfield land, Developer's still need far greater clarity on a suite of Soil Guideline Values in support of the investigation and remediation process. The current position is far from satisfactory and much of the work instigated by the Cabinet Office Soil Guideline Value (SGV) Task Force of 2003/4 still remains outstanding. With various bodies, for example the CIEHO and certain consultants, producing their own guidance that is at variance, does not help. There are repeated calls for greater clarity and consistency for contaminated land evaluation and remediation if we are to maximise the development potential of un-used/under used brownfield land.

Related to this issue, the current Cl:aire Code of Practice does not allow for the transfer of suitable for use soil material between brownfield sites even though there is nothing in legislation that says this should not be permitted. Precautionary guidance means that material recovery and reuse is not as extensive as it could be with more soil material being taken to landfill than is necessary. This adds to additional costs for landfill disposal and greater environmental impacts than would otherwise be the case. The Cl:aire Code of Practice should be updated to allow carefully controlled brownfield to brownfield soil transfers.

CDM Regulations

While we are not aware of any significant concerns among larger home builders about the revised CDM Regulations, SME home builders do have concerns and are unsure how best they can comply with the Regulations' requirements. We have raised this issue with the HSE and are pursuing possible solutions, such as improved guidance, with them.

Continuing concerns about issues already under consideration

(i) Discharge of planning conditions

Despite the measures introduced by the Government last year, HBF members continue to be very concerned about the time and effort involved in discharging planning conditions which then delay start on site. Estimates of the delay that can result vary between 3 and 9 months (it is felt the longer delays often arise on larger sites and can result in significant cost).

While we have been supportive of the introduction of deemed discharge of planning conditions introduced through the Infrastructure Act 2015 the list of exemptions from such procedures is too wide and should be re-examined. This is particularly the case where many simple conditions cannot be deemed discharged merely because the permission contains a condition that is excluded from the new regime. It should be possible to include provisions that allow the deemed discharge of these simple conditions even where there are excluded conditions attached to the planning permission rather than excluding all conditions attached to the permission from the new procedure.

We would also suggest that the option of a fast track appeal or arbitration process should be considered as a way of unlocking the position on planning conditions which are proving difficult for home builders to discharge even when they have taken the actions required of them.

(ii) Section 106 Agreements

Our members responding to the call for evidence we issued in order to co-ordinate this response to the Review frequently raised their concern about the length of time it takes to negotiate and conclude Section 106 planning agreements. The delay entailed has been said to be often 5/6 months and up to as long as 13 months in one case mentioned by a company.

Our feedback is that this is often a product of the lack of sufficient resource, particularly legal staff, in local authorities. For example, lawyers only working part-time.

Given this reality, we would suggest that the demand on legal services could be significantly reduced and the Section 106 agreements concluded far more quickly if more work was undertaken to drive the production of standard clauses for use in Section 106 Agreements. While some agreements may, indeed, require bespoke wording we believe that a nationally prescribed set of standard clauses could be published. Adherence to this standard wording would have to be accepted by the local planning authority thereby removing the need to negotiate. This would be particularly helpful with regard to affordable housing provision and starter homes.

The scope for competition in the drafting of Agreements – whether by companies' own legal staff or other legal practitioners – should also be considered alongside the production of standard clauses. This would enable home builders to progress the process of concluding Agreements much more efficiently without prejudicing the decisions of local authorities about what they were happy to agree in terms of specific requirements by way of planning obligations which would continue to be discussed and negotiated in the normal way.

(iii) Implementation of the Housing Standards Review

HBF welcomed the results of the Housing Standards Review, whose details were confirmed in early 2015. Reduction, simplification and harmonisation of the number of technical and building performance standards applied to new build homes through Building Regulations and planning offers real prospects of reducing regulatory burdens, speeding up delivery and achieving supply side efficiency gains in the industry and its supply chain.

In response to our call for evidence, however, HBF members have reported that they are finding Local Authorities:

- applying the national space standards without robust evidence of the need for them.
- On the odd occasion applying different space standards to national space standards
- In some cases still asking for Code for Sustainable Homes levels in spite of the fact that the government indicated in its written statement of 25th March 2015 that the Code is withdrawn.
- One LA has asked a member to pay a sum of money instead of reaching an energy performance target they had set. This amounts to an allowable solution type payment, which again was not envisaged under the government statement.

These instances are causing delays and increased costs to home builders and are undermining the purpose of the Housing Standards Review's implementation plan.

John Slaughter

Director of External Affairs

27 January 2016

Appendix 1

Examples of problems with newts and bats licensing

- A) “We have a virtually derelict building on one site which cannot be knocked down due to 1 Bat. This can now not be demolished until summer next year causing a minimum of a year’s delay. It is unsightly and potentially unsafe, and is putting purchasers off, what will be a lovely development. This will mean phase 2 will not come through as quickly and the 19 affordable houses will now be delayed at least 6 months or more.”
- B)
1. We bought the site with Outline Planning Permission in March 2015.
 2. The site had GCN and required archaeological investigation work.
 3. We got reserved matters planning consent on 29th July.
 4. Natural England won’t look at a GCN Licence Application until REM approval has been granted.
 5. We applied for our GCN Licence on Friday 31st July which is supposed to take 30 days to determine i.e. 30th August.
 6. We got our GCN Licence on Thursday November 12th – 103 days later
 7. Because we got it so late, the weather has now changed and we can only access part of the site so will only be delivering 5 plots rather than 20.
- C) [Example from March 2015] “We have applied for some changes to our licence. One of which is to re-align a short length of newt fence approx 1m. The decision on this was due on 23 February. We are now a month on from this and as you will see from below, caught up in some internal issues over resources at NE and no nearer a decision. Meanwhile I have 6 homes, 4 of which are affordable at an advanced build stage that I cannot sell or pass to the Housing association to rent. The delay on the other modification is having a negative impact on our ability to develop a wider part of the scheme and will in time put jobs at risk. When we obtained the licence in the first place (after much too and froing and 2 years work), the officer assured us that small changes such as this could be dealt with by modification and not to be too concerned about them. This has proved not to be the case.”

Case (C) was raised with Natural England at the time by HBF and this led to a satisfactory resolution.

Appendix 2

Example of Highways issues

A)

Section 38: Wakefield Council delay in issuing comments – 13 weeks for first set of comments which were resubmitted. We have now waited 12 weeks for a response or technical approval. Overall delay estimated at 18 weeks. Home builder at risk while undertaking build.

Appendix 3

Local Lead Flood Authorities - example of LLFAs ignoring what has previously been agreed at planning consent stage

Lancashire CC have sought to overturn a previous Environment Agency acceptance that a degree of minor watercourse culverting is a necessary requirement for a particular residential development. Moreover, despite approval of a site specific FRA and a surface water drainage strategy that is 'sustainable' the LLFA has insisted on the Developer undertaking a further catchment analysis. This is despite the fact that the EA have stated, in earlier correspondence, that this was not required. In addition, the LLFA has sought to impose its own subjective requirements in respect of culvert design – in the example cited this has unnecessarily increased development costs by circa £420,000 – an un-budgeted additional cost that is threatening project viability. Furthermore, with outline planning consent having been granted in 2012 and subsequent clearance of reserved matters approval secured in July 2015, a 7 month delay in starting the site has resulted to date. This is directly attributable to the inappropriate position taken by the LLFA together with the subjective demands it has imposed. More recently, the officer dealing with the matter has left the Authority without advising who of the two remaining officers will assume responsibility for granting formal culverting consent under Section 23.

Appendix 4

Example of delays under Section 104 procedures under the Water Industry Act 1991 for the adoption of sewers

[Position as reported on 18 December 2015]

We submitted details to obtain a Section 104 on the site on 12th June, it was chased on 13th July, 7th August, 7th September and we finally received comments on 23rd September. The details were re-submitted on 8th October and it was subsequently chased on 15th and 22nd October. We then received further comments and re-submitted on 29th October. As this was going on we also had to amend the pumping station details due to a revised addendum which was issued by Severn Trent Water. The drawings have been re-submitted on 11th December and we still await technical approval.