Competition and Markets Authority: Housebuilding Market Study

Evidence of the Royal Town Planning Institute

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The RTPI operates in all four Nations of the United Kingdom but due to pressure on time this response is confined to England.

General Observations

We appreciate the importance of ensuring that there is competition in the sale of new homes. However in a wider context the sale of homes to owner occupiers cannot be regarded as the only means of meeting housing need and this does not seem to be recognized by the CMA in the opening statement: “Finding somewhere to live is important to all consumers.” We appreciate that reference is made to other tenures, for example in paragraph 1.21, but this seems quite secondary.

We appreciate that home ownership is falling, and that many who would wish to are prevented from buying their own home. However holistic housing and planning public policy needs to be realistic about how the needs of people who will never be “consumers” of housing, even if home ownership were to reach hitherto unreached levels such as 80%. Moreover one reason for aspiration to home ownership is the poor offer in the rented sector. In countries where the rental offer is of high quality there can be less pressure on the sale market.

CMA Questions

We have selected certain questions within the scope where we feel we can offer useful insight.

4. How can competition in this market be strengthened

One issue is the possibly high concentration of land ownership in England. This is particularly pertinent in relation to the areas needed for the sustainable expansion of towns and cities which are in need of additional housing development. Many public policy debates are founded on the

assumption that there is perfect competition in the land market, and if more homes are needed, somehow automatically more land will be brought into the market to make this happen. However there is little evidence to back up this assumption. For example a survey of Oxfordshire (a county under high housing pressure) revealed that Oxfordshire has a total of around 250,000 landowners out of a population of close to 700,000. But most of these own very small areas of land, essentially their own private home or business. Only around 800 landowners have holdings over 20 hectares (about 30 football pitches). And in all, 170 landowners own half the county and just 26 own a quarter of it.

One problem with formulating policy on housing land and planning is that getting accurate information on land ownership is fiendishly difficult – and yet the assumption of satisfactory competition underlies much economic policy in this field.

The sustainable expansion of cities (for example along public transport corridors, and avoiding areas of landscape or natural value) depends on the release of very specific parcels of land – probably in a specific order. The owners of such land are in an extremely strong bargaining position because their land is effectively unique.

Moreover land is, as the CMA has acknowledged, not merely a factor of production, but a unique factor of production because it does not deteriorate. Unlike home owners, who may need to sell up in order to change jobs, or to deal with financial difficulties, the owners of land for conversion to urban use are often in no hurry to sell, and can hold out for decades. This adds to their strong bargaining position. On the other hand housebuilders must have land in order to continue their businesses. Local authorities are put under immense pressure by central government to "release" land for development (although it is not theirs to release, usually) and landowners know this. We would commend consideration of alternative means of conversion of land from agricultural to urban uses which more strongly support sustainable patterns of development. And which allow for forms of development which include important elements of quality to take place. By elements of quality we would include:

- Building design (see answer to Q5 page 5)
- Sustainable urban drainage
- Community facilities
- Public transport provision
- Arrangements for active travel

Many commentators have observed that as a country we are getting poor outcomes because for various reasons we do not have a patient capital approach to land development . For example the Government's independent study of "Living with Beauty" observed in 2020 that we need to

"replace the existing incremental addition of 'units' development model with a long-term model, that will encourage effective stewardship. We are persuaded, from a wide pool of evidence, that on-going involvement by the landowner very often leads to development which is better for residents' well-being, more popular and, ultimately, more valuable. Currently, however, most landowners sell or 'option' their land to developers or sign deals with land promoters."

The report recommended that

1. We need to encourage management structures that can guide longer-term placemaking projects or stewardship projects, as well as the expertise to staff them;
2. We should support and encourage sources of patient capital investment;
3. We need to address ways in which the tax code unintentionally discourages landowners and developers from putting together stewardship projects;
4. We need to use the spatial planning system to encourage the right stewardship projects and infrastructure in the right place (using improving geospatial data where possible);
5. We need to help public bodies pool their land with private landowners for long-term schemes; and
6. We need to encourage competent long-term stewardship (or trusteeship) of the result. (page 81)

7. Have any of the following aspects changed over time? If so, how and why?
a. The role of land promoters and land agents in transactions.
b. The propensity for land promoters and land agents to be used as part of securing planning permission and land transactions.
c. The structure of the market for land promoters and land agents.

There has been an increase in the role of land promoters and they even now have their own trade body. This means that a lot of land is being purchased from original owners by bodies which have no intention of developing it. There are therefore potential risks to the public interest and difficulties in securing wider benefits from development.

Sir Oliver Letwin's investigation (see Q21 below) reflected on the role of land speculators:

"I have heard anecdotes concerning land owners who seek to speculate in exactly this way by obtaining outline permission many years before allowing the land to have any real development upon it – and **I am inclined to believe that this is a serious issue for the planning system"** (*Draft Analysis* 5.41, italics added).

8. Have any of the following aspects changed significantly over time? If so, how and why?
a. Time and cost for developments to go through different stages of the planning process.
b. Likelihood of success in securing planning permission.
c. Propensity for developers to negotiate s106 requirements to reduce affordable housing requirements.
d. Propensity for developers to be successful in negotiating s106 requirements to reduce affordable housing requirements

We are frequently told by developers that the time taken to apply for planning permission has been growing. There could be several reasons for this.

1. Increasing mission creep and information requirements loaded onto the planning system.
2. Disastrous resourcing situation in the public sector, with around 43% fall in spending in since 2009/10.

3. Severe resource constraints in the statutory consultee bodies such as the Environment Agency and county highways departments.

On the other hand the official figures (See Table 1 below) suggest that the planning application process has been speeded up since 2010. The proportion of **major** residential applications which were granted within the official timescale of 13 weeks was 60% in 2010/11 and 84% in 2021/22.

The reason for the discrepancy between the official figures and the perceived experience may lie in the phrase used in the statistics: "within 13 weeks *or agreed time*". Applicants can be asked to agree extensions of time for their applications. It is argued that they may do this in the expectation this will help them get a permission. The alternative is to appeal against non determination.

The official figures (See Table 1) say that the proportion of **minor** residential applications which were granted within the official timescale of 8 weeks was 68% in 2010/11 and 77% in 2021/22. Again the caveat "or agreed time" applies.

Planning permission is no more or less likely to be granted nowadays than before. 80% of major applications were granted in 2010/11 and 84% in 2021/22. 72% of minor applications were granted in 2010/11 and 73% in 2021/22.

Table 1: Statistics on Residential Planning Applications

Year	Major applications				Minor Applications			
	Total	Permitted	%	% <13 weeks	Total	Permitted	%	% < 8 weeks
2011/12	5266	4198	84%	60%	46474	33247	72%	68%
2021/22	5790	4754	82%	84%	45438	33202	73%	77%

Source:

https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics

Table 120A

There is a need to add some clarity to the CMA documentation. "Failure to secure" planning permission is likely to be because schemes are of poor quality. The CMA needs to be aware that the public interest is not served by permitting poor quality schemes. There is one nuance here: a number of schemes receive a recommendation to approve from professional planners which is overturned by councillors.

And one issue of general concern is the refusal of schemes which have already been allocated in plans.

The reference to Section 106 and affordable housing also requires some context. Section 106 was devised in 1947 to provide a means for local planning authorities to grant planning

permissions which otherwise would have to be refused due to their unacceptable impact on matters such as traffic. After 1990, and especially after 2010, it has become increasingly used as the main means of subsidizing affordable housing, replacing the direct social housing grant used previously. This places a large burden on the planning system in terms of transaction costs. It also means that the original purpose of S106 is somewhat compromised.

So it is not only an issue if developers negotiate lower affordable housing contributions, it is also a problem if developers reduce other aspects of their contributions. As we said above, this can happen where sites change hands, with the quality of the scheme falling on each occasion as each subsequent owner extracts value from the land. We documented this tendency in Delivering Design Value a report we contributed to as part of the work of the Collaborating Centre for Housing Evidence:

"Outline planning permission for new housing is also increasingly sought by **land promoters** who …. prepare sites for development before selling them to housebuilders, often at a significant profit. This happened on a number of the housing developments we examined and meant that, in some instances, housebuilders pay over the odds for land with outline permission, and the actors involved in securing outline planning permission were not involved in taking the project through to reserved matters or a full planning application. This tended to mean that the design ambitions for the site were altered or 'value engineered', typically for the worse, by the time the application was reviewed in full further downstream."

"… significant changes do still occur between outline permission and reserved matters which can impact design value. These changes can happen because there is a **change of landowner** (e.g. from a land promoter to a housebuilder) and thus a different viability assessment of the site that is influenced by the amount the housebuilder paid for the land with outline permission. An example of this in our research was the Sycamore Rise scheme in Thame, South Oxfordshire. Here, the land promoter applied for outline permission and produced an award-winning design brief, design guidelines and a pattern book. Although the local authority intended to translate these documents into supplementary planning guidance this did not fully occur. When the site was subsequently purchased by a volume housebuilder, some of the award-winning design was compromised, however, many of the changes they proposed were also rejected."

This one of the reasons given for public opposition to future housing schemes – and for a general fall in trust in the planning system.

9. How do the aspects referred to in questions 7 and 8 vary (if at all) by:
a. Size of development the application is for?
b. Size or identity of applicant (eg small developer, large developer, land promoter)?

The Department for Levelling Up publishes information on the relative likelihood of getting planning permission for large or small schemes (see Table 1 above). Over time the chances of getting permission for "minor" residential development have remained around 73% whereas for "major" residential development the figure has remained around 80%. One clear reason for this is that major schemes will tend to be on allocated sites in the plan, and therefore there will be a presumption in favour of permission.

But there is no information on the nature of the applicant.

Our research into Design Value further indicated that:

"…smaller developers are more likely to produce well-designed homes and neighbourhoods than volume housebuilders. Participants across our case studies reported th.at larger housebuilders tend to be driven by a profit-focused model which does not prioritise design value and are mostly interested in identifying 'the path of least resistance' to gaining planning permission. This view was confirmed by some of the housebuilders we spoke to. For example, one shared their view that volume housebuilders only hire design consultants for the purpose of identifying a viable market for their product and securing planning permission. Others explained that housebuilders balance design investments against commercial considerations, and the latter usually end up carrying more weight."

15. What are the key factors or objectives LPAs need to balance in taking decisions on housebuilding, and what drives these requirements? To what extent (if any) do these factors conflict, either with each other or with housebuilders' objectives?

LPAs are bound legally to make decisions according to the development plan unless other material considerations (including national government policy) indicate otherwise. The Government wishes to change this in the Levelling Up Bill so that its policy takes legal precedence. (This has never happened before.)

It can be a challenge to balance different considerations within the development plan such as between the protection of residents' amenity and the plan's intentions with regard to provision of housing. If it is felt that the LPA has not judged this balance correctly, an applicant may appeal to the Secretary of State (Planning Inspectorate). Members of the public may only challenge such a decision in the Courts.

16. Are there differences in the bargaining power between LPAs and developers when negotiating with each other? If so, what are the key differences and why do they arise?

It is not easy to obtain a clear answer to this question as either side of the argument tends to claim it has the poorer hand. However we would stand by the view expressed in Q4 that the real bargaining power lies neither with LPAs nor with developers but with those landowners occupying privileged geographical positions – often through no particular risk taking or investment of their own.

19. Do any of the participants in the market (including but not limited to housebuilders, land agents, and land promoters) have market power? If so, what drives this and how (if at all) do they exploit it?

See our answer to question 4.

21. Have any of the following aspects changed significantly over time? If so, how and why?
a. The concentration of housebuilding at local level, in particular whether concentration is high in specific local areas.
b. The size of land banks held by developers and differences between developers in this respect.

c. The rate at which new properties are built-out.
d. The propensity for land with planning permission not to be built-out.

Sir Oliver Letwin was commissioned in 2018 by the Prime Minister, Theresa May, to look into the rate of build out of the largest (over 1500 unit) sites with planning permission. Following a well-resourced and considered review taking place over the best part of a year, he found that the median build out period for 15 very large sites in areas of high housing demand from the moment when the house builder has an implementable consent is 15.5 years. To put this another way, the median percentage of the site built out each year on average through the build out period in one of these 15 large sites is 6.5% (*Draft Analysis* Ch 3).

Sir Oliver looked into a suggestion which has frequently been made to force local authorities to "provide more small sites". This is very significant in this context.

"Although not within the scope of my Review, there may well be advantages in attempting to adopt the second approach by encouraging the use of more individual small sites within local planning authority land supply plans. But there are reasons to believe that doing this without also increasing the rate of build out on large sites by "packaging" those sites in ways that increase the variety of supply is *not* desirable. The reasons are that:

• to increase housing supply as a whole over the long-term, we require increased infrastructure – and it is often the large sites that unlock values and short-term demand sufficiently great to support major new infrastructure with the help of grants, Section 106 agreements and the like…;

• to meet the needs of people seeking homes in high pressure areas, we need *both* high rates of build out *and* high levels of allocation. … it would be an unfortunate irony if the effect of efforts to improve build out rates by concentrating exclusively on smaller sites actually led to reduced allocations in some local authority areas; and

• given that, in many areas, we have seen very large sites that are clearly suitable for development (e.g. major brownfield sites of derelict post-industrial land), it seems counter-productive (to the point of absurdity) to allow only small bits of them to be developed at any one time in order to accelerate build out rates; the rate on *permitted* sites might well (indeed, probably would) increase sharply – but the rate of build out across the remainder of the undeveloped brownfield land still begging to be developed would, paradoxically, reduce to zero.

My conclusion is that we cannot rely solely on small individual sites. This cannot be a question of "either / or". We will continue to need more new housing *both* on smaller sites *and* on large sites." (*Draft Analysis* 4.20)

He concluded that as regards policy interventions:

"...if either the major house builders themselves, or others, were to **offer much more housing of varying types, designs and tenures (and, indeed, more distinct settings, landscapes and street-scapes) on the large sites and if the resulting variety matched appropriately the desires of the people wanting to live in each particular part of the country,** then the overall absorption rates – and hence the overall build out rates – could be substantially accelerated" (*Final Report* 2.1. italics added)

And he stressed the vital need for much more pro-active behaviour on the part of local planning authorities, moving away from simply acting as regulators granting permissions, to partners in delivering private sector development as is the case in many other European countries.

"I therefore recommend that, [an] … amendment to primary legislation should make it possible in future for a local planning authority (or a group of local planning authorities) in an area of high housing demand

to establish a new form of development vehicle to develop the site through a masterplan and design code which increases the diversity and attractiveness of the offerings on site and hence its build out rate."

"I can envisage two possible structures for such a development vehicle:

a. the local authority could use a Local Development Company (LDC) to carry out this development role by establishing a master plan and design code for the site, and then bringing in private capital through a non-recourse special purpose vehicle to pay for the land and to invest in the infrastructure, before "parcelling up" the site and selling individual parcels to particular types of builders/providers offering housing of different types and different tenures; or

b. the local authority could establish a Local Authority Master Planner (LAMP) to develop a master plan and full design code for the site, and then enable a privately financed Infrastructure Development Company (IDC) to purchase the land from the local authority, develop the infrastructure of the site, and promote a variety of housing similar to that provided by the LDC model described above" (*Final Report* 4.12).

On accusations of land banking by major housebuilders, Sir Oliver found that:

"It is of course true that, although the land market can be highly volatile, land (unlike most assets) does not depreciate, and has generally tended to increase in value across the cycle, and has a 'real option' value. By holding rights over land that benefits from (or is soon likely to benefit from) some form of permission to build houses, the company which holds that land obtains a valuable ability to make profit by building on it at whatever time is thought likely to maximise the profitability of doing so. It would therefore be perfectly possible for financial investors of a certain kind to seek to make a business out of holding land as a purely speculative activity."

"But [he could not find] … any evidence that the major house builders are financial investors of this kind. Their business models depend on generating profits out of sales of housing, rather than out of the increasing value of land holdings; and it is the profitability of the sale of housing that they are trying to protect by building only at the 'market absorption rate' for their products" (*Draft Analysis* 5.40 & 5.41).