

# The Role of Land Promoters in Housing Delivery

May 2017

LICHFIELDS

 Richborough  
Estates

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# Executive Summary

This research paper seeks to explore the role that land promoters play in delivering homes. Within the context of the Government's Housing White Paper: Fixing our Broken Housing Market, this paper examines how Richborough promotes land and the role they play in boosting land supply. It focuses on Richborough Estates' past experience and through a series of case studies demonstrates that they are important suppliers of housing land and do not inhibit the release of land for housing. Developing land for housing is a time-consuming, complex and risky business. The land market is strong and there is often fierce competition for sites. This report debunks some of the myths surrounding the issue of land banking as holding onto land simply does not fit into the Richborough business model.

Richborough Estates is not a land speculator, the sites it promotes actively deliver new development and create communities. It is clear from the case studies within this Report that Richborough Estates has a strong track record for delivery with the majority of sites transferred to a housebuilder once outline planning permission has been secured. As soon as other approvals such as reserved matters approval and discharge of conditions have been secured their sites start delivering homes.

Richborough Estates' provides a symbiotic role with housebuilders with many of the major housebuilders relying on Richborough Estates to take the risk and obtain the initial planning permission on the land for them to implement. The Housing White Paper acknowledges that around 60% of new homes are built by just 10 companies. Richborough Estates considers that the majority of these companies are large and can be constrained by their scale. Richborough Estates is a small owner managed organisation where they have the ability to take risks and it considers it can be more assertive in its approach to secure planning permission.

Richborough Estates response to the White Paper is wide-ranging and whilst the document proposes a host of reforms to fix the 'broken housing market', a comprehensive approach is required and that no one 'silver bullet' exists. Whilst the White Paper proposes many initiatives, it is light on detail; and clarification is necessary to understand how some of the 'carrots' and sticks' can be delivered in reality. In the right circumstances the release of Green Belt land is imperative to meet acute housing needs. The proposed reduction in the default length of planning permissions and the requirement to provide the track record of delivery of similar schemes (timing, pace of delivery and aggregate information on build out rates) do provide an incentive to implement developments in a timely manner.

Richborough Estates is a strong advocate of a plan led system and the Housing White Paper is clear in its focus on speeding up the plan-led system for housing development. Among its many recommendations is overcoming the often disputed issue of agreeing housing requirements in Local Plans. The housing crisis will not be solved just by agreeing how many homes are needed; it's about how to encourage housing delivery too. Less than a third of Local Planning Authorities [LPAs] have a Framework-compliant up-to-date plan and a significant amount of housing supply is a consequence of speculative applications and Section 78 appeals. In these circumstances, the application of the Framework's presumption in favour of sustainable development and lack of 5 year housing land supply are pivotal.

# Richborough Estates in Figures

Specialists in strategic land promotion with

over 12 year's experience

Land promoter of a diverse range of sites from

50 -1000 dwellings

Provide a substantial contribution

Team of 14

personnel with specialist skills

to delivering affordable homes and meeting the diverse housing needs of the population

Richborough have a diverse range of sites within current portfolio with varying status in the planning process including:

770 dwellings (8 sites)

Sites pending determination

160 dwellings (2 sites)

Sites at appeal pending determination

276 dwellings (3 sites)

Sites with resolution to grant planning permission

813 dwellings (5 sites)

Sites with planning permission secured and on market / or subject to house builder securing reserved matters approval

527 dwellings (6 sites)

Sites with planning permission refused and pending further strategy (e.g. appeal / resubmit etc.)

20,000 dwellings (76 sites)

Sites under control and active promotion through the development plan process

02

## Richborough Estates

Richborough Estates is one of the UK's most successful strategic land promotion companies.

They work on behalf of a wide range of landowners including private individuals, charities, trusts and Local Council / Government estate departments - promoting land through the planning system to secure housing allocations and planning permissions for residential development. They then manage the sale of the site from the landowner to the housebuilder who then build out the site and deliver homes.

Richborough was founded in 2003 and the team works in partnership with landowners, LPAs and stakeholders to bring land forward for housing. The team is made-up of a wide range of development experts who deal with land acquisition and planning issues. Richborough's objective is to deliver 'oven-ready' sites to house builders ensuring that planning permissions are quickly turned into homes for local people. Its approach is closely aligned with the Government's key aim of boosting significantly the supply of new homes.

Richborough is currently promoting over 20,000 dwellings through various stages of the planning process across the United Kingdom, and on average can be promoting up to 100 sites at any one time. Their aim is to leave a lasting legacy for the communities within which they work.





## Introduction

Lichfields has been appointed by Richborough Estates Limited [Richborough] to explore the role that land promoters play, and specifically Richborough, in delivering homes.

Within the context of the Government's Housing White Paper: Fixing our Broken Housing Market, this paper examines how Richborough promotes land, and the role it plays in boosting land supply.

A recently<sup>1</sup> published Lichfields research paper, 'Stock and Flow: Planning Permissions and Housing Output' sought to unpack the relationship between planning permissions and the output of new housing. The report explored the business models of housebuilders and land promoters and the risks inherent in bringing new homes forward through the planning system. The report demonstrated that – given the significant costs and risks involved in land promotion, construction and sales (particularly over an economic cycle) – there is no business case for active land banking.

This further report builds on Lichfields' earlier research and seeks to understand how Richborough Estates, landowners and housebuilders work collaboratively to bring forward homes. It focuses on Richborough's past experience; and, through a series of case studies, demonstrates that it is an important supplier of housing land and does not inhibit the release of land for housing. Richborough is making a positive contribution to solving the housing crisis.

Developing homes is a time-consuming, complex and often risky business. The land market is buoyant and there is often fierce competition for sites in strong market locations. This report debunks some of the myths surrounding the issue of land banking as holding onto land simply does not fit into the Richborough business model. There are a range of factors that Richborough, like any landowner, developer or land promoter experiences that cause delay. Some of these are intrinsic in the system, and include the wider delays and issues with LPAs, such as skills shortages, delays to secure planning permission, political issues, and the appeals system which perpetuate the delays in implementing housing schemes led by Richborough.

<sup>1</sup> January 2017

# Land Banking

It is important to understand what land banking is, and what it is not, and why it may occur. The following diagram summarises the situation:



<sup>2</sup> §173 of the Framework



# The Housing White Paper

The Housing White Paper: Fixing our Broken Housing Market” and the key announcements in the run up to its publication included accusations of land banking within the development industry. Prior to the publication of the White Paper, the Communities Secretary Sajid Javid said:

“I cannot look the other way when I see land-banking holding up development. Some of you have conceded to me, in private that it happens. Some of you still deny it’s an issue. But there’s clearly something going on”.

Prior to the publication of the White Paper, the property industry was gearing up for radical proposals that would facilitate the rapid delivery of homes. However the Government’s proposals were not as far-reaching or as detailed as anticipated, with some issues to be the subject of further consultation. This is likely to reflect some acceptance from the Government that developers need a land bank and the delays

in housing delivery are not because the industry holds onto undeveloped land and waits for the values to rise before starting on site. Indeed, in response to a question in the Commons Debate (7-02-2017), the Secretary of State acknowledged the complexity in delivering new homes stating that:

“We need to respect the fact that there are legitimate reasons why the supply of any product would need to have a pipeline of inputs, including land, in the case of a house builder, but there is evidence of some firms taking advantage of that, as my hon. friend mentions.”

The Housing White Paper defines its proposals as four steps to achieving the objective of boosting new housing supply to deliver ‘between 225,000 and 275,000 homes every year’. The four steps can be summarised as:

“I cannot look the other way when I see land-banking holding up development. Some of you have conceded to me, in private, that it happens. Some of you still deny it’s an issue. But there’s clearly something going on”

**Communities Secretary Sajid Javid**

The objective of boosting new housing supply to deliver **between 225,000 and 275,000 homes every year**

### Step 1 - Planning for the right homes in the right places

This step seeks to ensure that LPAs have up-to-date plans and simplify plan-making. The Paper is seeking to provide greater transparency on what land is available for new housing and make more land available for homes in the right places. It is proposed that there may be changes to Green Belt policy which articulate the “exceptional circumstances” test so that it covers a need to include examining “fully” all other reasonable options. It goes on to explain that LPAs should make better use of land for housing by encouraging higher densities where appropriate.

### Step 2 - Building homes faster

This step seeks to provide greater certainty for authorities that have planned for new homes and reducing the scope for local and neighbourhood plans to be undermined by changing the way that land supply for housing is assessed. The Paper is seeking to boost local authority capacity and capability to deliver and ensure that infrastructure is provided in the right place at the time. The Government is seeking to support developers to build homes faster by tackling delays caused by planning conditions, planning obligations and ecological conservation constraints such as Great Crested Newts. It also wants to hold developers to account for the delivery of new homes. To address under delivery LPAs will be held to account by the presumption in favour of sustainable development through a new housing delivery test. This raises the bar to address situations of delivery and tackle ‘worst offenders’.

### Step 3 - Diversifying the housing market

This step seeks to encourage small and medium-sized builders, supports custom build homes, encourages more institutional investors into housing, and seeks to boost productivity and innovation by encouraging more modern methods of construction.

### Step 4 - Helping people now

This step pledges to continue to support people to buy their own homes, help households who are priced out of the market to afford a decent home, making renting fairer for tenants and encourage the development of housing that meets the needs of our future population.

Within these steps, the Housing White Paper includes a number of mechanisms to facilitate home building:

1. Diversifying the Market: Encouraging more small and medium sized builders.
2. Site Ownership: Clarification of what land is available for new housing, through greater transparency over who owns land and the options held on it.
3. Site Deliverability: To provide greater clarity and emphasis on the importance of building out housing, there are proposals to amend the national planning application form to include a section asking the applicant to provide information about their estimated ‘start date’ (month/year when a substantive start would take place) and ‘build out rate’ (the number of homes built per financial year) for all proposals for or including housing development.
4. Developer’s Track Record: Whether an applicant’s track record of delivering previous, similar housing schemes should be a material consideration.
5. Compulsory Purchase Powers: New guidance to be prepared to encourage LPAs to use their compulsory purchase powers to support the build out of stalled sites.
6. Completion Notices: Simplification and speeding up of the completion notice process, whereby if development on a site has stopped and there is no prospect of completion, the LPA can withdraw planning permission for the remainder of the site.

7. Timescales of Permissions: Encouraging local authorities to shorten timescales for developers to implement permissions for housing development to two years, except where a shorter timescale could hinder the viability of deliverability of a scheme. The Government is also seeking views on what this would mean for SME developers.
8. Local Authority Capacity: Proposed increase to nationally set planning fees by 20% if Local Authorities commit to investing the additional fee income in their planning department. The Government is also minded to allow an increase of a further 20% for those authorities who are delivering the homes.
9. Housing Delivery Test: In parallel with other measures to address under-delivery, the housing delivery test will effectively create two triggers for the presumption in favour of sustainable development, firstly where future supply falls below five years, and secondly where past delivery since April 2014 does not meet a series of thresholds.

Richborough plays an important role within the wide Government objective of boosting the annual supply of new homes across the UK. Richborough positively contribute to land supply through the delivery and promotion of small, medium and large sized sites.

Richborough's response to the Housing White Paper is that, although it proposes a host of reforms to fix the 'broken housing market', a more integrated approach is required and that no one 'silver bullet' exists. Whilst the Housing White Paper proposes many initiatives, it is light on detail; and clarification is necessary to understand how some of the 'carrots' and sticks' can be delivered in reality. In the right circumstances the release of Green Belt land is imperative to meet acute housing needs. It is anticipated that the proposed

reduction in the default length of planning permissions and the requirement to provide the track record of delivering, previous similar schemes (timing, pace of delivery and aggregate information on build out rates) will offer a stick to encourage implementation.

Richborough is a strong advocate of a plan led system and the Housing White Paper is clear in its focus on speeding up the plan-led system for housing development. Among its many recommendations is overcoming the often disputed issue of agreeing housing requirements in local plans. The Government will publish its proposals for a new methodology on objectively assessed housing need in due course. This is welcomed, although the omission of the proposals from the Housing White Paper is a missed opportunity. However, the housing crisis will not be solved just by agreeing how many homes are needed; it's about how to encourage housing delivery too. Less than a third of LPAs have a Framework-compliant up-to-date plan<sup>3</sup> and a significant amount of housing supply is consequently a result of speculative applications and Section 78 appeals. In these circumstances, the application of the Framework's presumption in favour of sustainable development and lack of 5 year housing land supply are pivotal.

<sup>3</sup> Lichfields Intelligence 'Early Adopters and the Late Majority: A Review of Local Plan Progress and Housing Requirements April 2016'

# How does Richborough Estates take land forward for residential development?

To understand the complex relationship between land and housing development and to test the concept of land banking, we need to understand the land promoter model. There are three distinct elements as to how promoters bring land forward for development. Each of these elements needs to be understood in order to discern the role that land promoters play in housing delivery. These stages are:

1. Planning (promoting the site through the Local Plan process and/or securing outline planning permission [OPP]);

2. Land Disposal (transferring the control of the site from the landowner to the builder); and,
3. Construction & Sales (building and selling houses on the site).

The Richborough model is illustrated in Figure 1. Their approach is closely aligned with the core planning principles set out within the Framework that underpin both plan-making and decision-taking. Richborough support the plan-led system that normally provides a practical framework within which decisions on planning applications can be made.

Figure 1: Richborough Estate Land Promotion Model

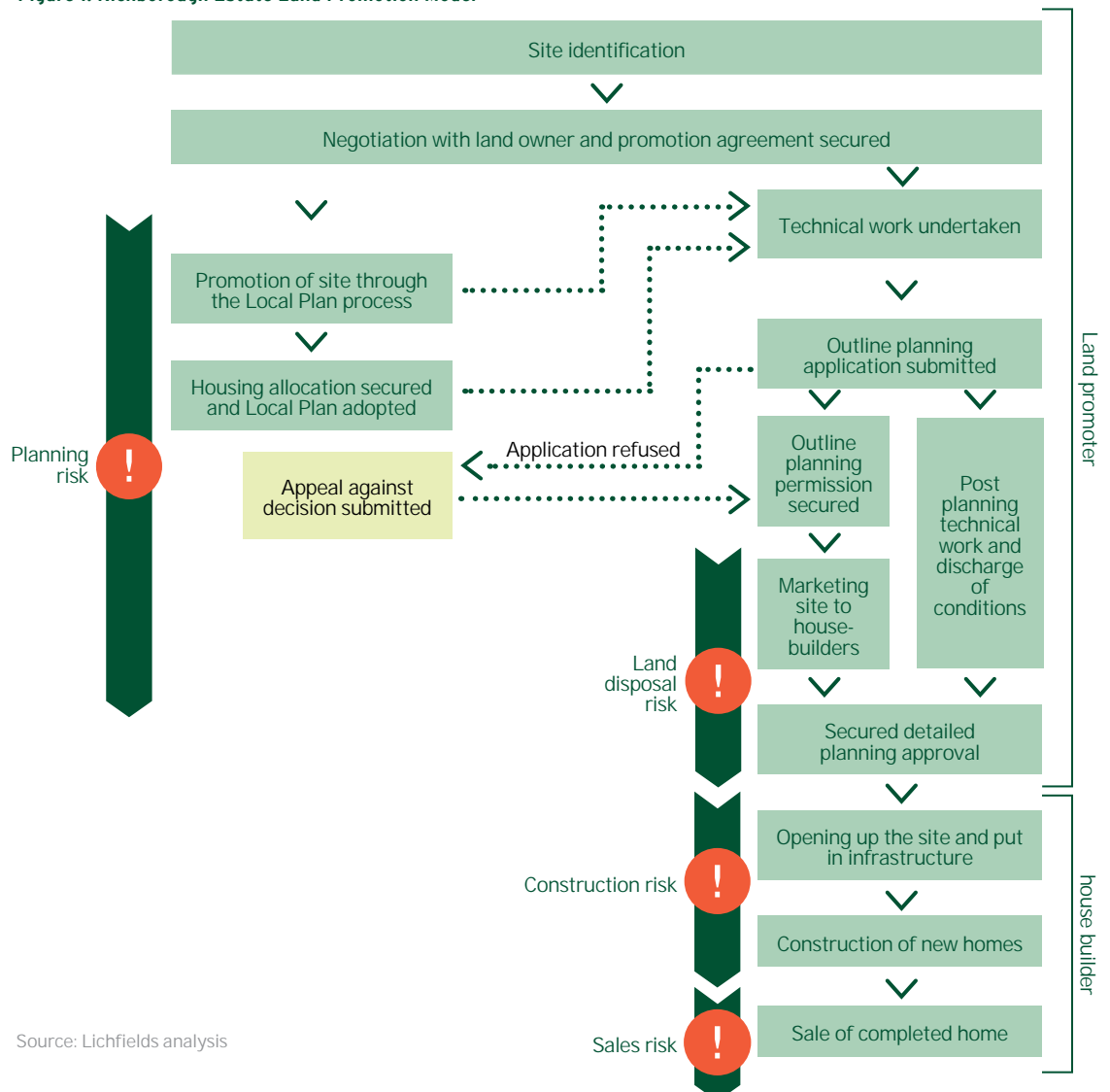


Figure 1 shows that the land promoter is responsible for taking land through the planning system and the associated elements of risk (i.e. the planning and land disposal risk). Both parties (i.e. the land owner and land promoter) are involved in the disposal element of the process and are exposed to some commercial risk. The housebuilder or developer is then responsible for third stage – building and selling homes on the site. Housebuilders rely, to some extent on land promoters like Richborough that specialise in managing the planning and land risks inherent in establishing the principle of development on a site. They promote land that is sold to a builder once an OPP has been secured. For example, the UK's largest housebuilder, Barratt Group, bring approximately 10% of their land through the planning system and therefore rely on the likes of Richborough to provide them with sites that are ready to be developed. Richborough have sold approximately 1,500 plots to housebuilders in the last 12 months (April 2016 – April 2017), which equates to approximately 1% of the total new build completion in the same period<sup>4</sup>.

### Planning

Once a site is identified, the Richborough internal team carry out an initial appraisal to understand the planning issues. If the landowner is willing and Richborough consider the site to be sustainable in the context of the Framework with good planning prospects, a promotional contract between the two parties will be drawn up. Richborough will then begin promoting the site.

The strategy and how vigorously to promote the site will be based on a realistic view of its planning risks and prospects. The strategy could comprise the promotion of the site through the Local Plan process, or the submission of an immediate planning application (where for example the policies of the Framework apply with regards to paragraph 14 - presumption in favour of sustainable development & paragraphs 47 & 49 – 5 year housing land

supply). If the site has any key technical issues (e.g. access), initial technical work will be undertaken.

If Local Plan consultations occur during the time in which a site is being promoted, Richborough will submit representations to the LPA at various junctures (Regulation 18 and 19 consultation stages etc.). These representations may include supporting technical information to demonstrate that the site is deliverable and set out the benefits of allocating the site for housing. It is widely recognised<sup>5</sup> that the Local Plan process takes far too long, and even now – over five years on from the Framework – just one third of local authorities outside London have an up-to-date Local Plan<sup>6</sup>. The cost of engaging with a long drawn out plan process can be a significant one, and with no certainty that they will be successful in securing an allocation.

Once an allocation is secured, (either in an adopted or emerging plan) an application for OPP will normally be progressed quickly. This allows the Richborough Team to secure the principle of residential development, the parameters of any scheme (and any obligations and infrastructure requirements), before the housebuilder agrees the detail of the scheme through a reserved matters submission. To further de-risk the site and speed up delivery of housing, Richborough may undertake some of the post planning technical work at this stage (e.g. Phase 2 Site Investigation, S.104 Agreements, and S.278 Agreements).

If the planning application is pursued, Richborough will carefully set out the benefits and balance of considerations within the submission (in the light of the Local Plan and Framework). If that application is refused or LPAs do not determine the application within the prescribed timescales, an appeal might be submitted. This carries further cost and risk compounded by further delay.

<sup>4</sup> Richborough Estates commentary

<sup>5</sup> S1.2 of the White Paper

<sup>6</sup> Source – Stock and Flow: Planning Permissions and Housing Output (Lichfields, 2017)



Wheatfield Manor

It is noted that the White Paper is proposing to introduce enhanced application fees and potentially an appeal fee which will further increase the cost of submitting an appeal against the decision of the LPA. This may deter landowners and developers in engaging with the process and encourage local authorities to shy away from making difficult decisions with positive outcomes. If, for example, elevated application fees are paid then consideration should be given to LPAs paying the appeal fees from the application fee pot in circumstances where decisions are not made, local plans are not in place, or decisions cannot be substantiated.

#### Land Disposal

To ensure that there is a minimal lag time between the granting of OPP and submission of a Reserved Matters application, the promoter will often market the site to housebuilders through agents before OPP is granted. Housebuilders will normally make an offer for the land subject to the grant of the outline and occasionally subject to a reserved matters approval. The majority of Richborough's sites are sold on the grant of outline planning permission.

Due to the fact that the housebuilder will be paying for a site with planning permission, it attracts only those parties with an interest in taking the site forward immediately. The market and technical knowledge of land promoters ensures that it is promoting deliverable sites that are attractive to the market.

#### Construction & Sales

The site is now the responsibility of the housebuilder and the construction and sales risk is theirs. Before development can commence, pre-commencement conditions need to be discharged. These can be problematic and unnecessarily imposed, however, Richborough seek to ensure consents are as clean and implementable as possible. Richborough often commence the discharge of pre-commencement conditions at the marketing stage in order to facilitate

the implementation of schemes and enable the housebuilder to get on site quickly.

The majority of Richborough sites are under 200 units. Lichfields research<sup>2</sup> (on housing delivery) has found that sites under 100 units deliver an average of 27 units per year, whilst sites of between 100-499 units deliver 60 units per years. These small and medium sized sites appear to be the optimum for delivery. Those with capacity for 2,000 units on average, deliver proportionately less dwellings per annum. This is likely to reflect the significant infrastructure requirements on larger sites and indicates that for delivery the small-medium sized sites (i.e. typical Richborough sites) are ideal for resolving short term 5 year housing land supply issues.

#### Relationship between Richborough & Housebuilders

The differences between the business models of a land promoter and a housebuilder facilitates the existence of a much greater choice of land for the delivery of homes. The relationship between the two businesses is mutually beneficial and facilitates the necessary capacity in the industry whilst balancing the risks for the various parties. Land promoters and housebuilders generally approach risk differently and take on risk at different stages of the development cycle. This symbiotic relationship throughout the development process increases the level of output (i.e. the supply of land and the number of homes that are delivered).

#### Company Ownership & Red Tape

The majority of homes in the UK are delivered by a handful of housebuilders. Some of these are public limited companies and are expected to deliver a return to their shareholders. Like any FTSE business, uncertain or negative trading results have a detrimental impact to the share price of housebuilding companies. The planning system, by nature is unpredictable. Housebuilders cannot always be certain of the time or expense that is required to bring a site through the planning system.

This can bring uncertainty to the housebuilder's delivery programme and their shareholders.

Housebuilders need continuity and predictability to ensure good results and a strong share price. They do this by having a trajectory of consented land in the pipeline. This is achieved from a variety of sources, depending upon a range of factors. However land promoters form a critical part of this process, providing capacity in a critical component of housing supply. Much of a housebuilders supply of land is purchased from land promoters (Barratt Homes purchase approximately 90% of their sites with OPP) who have taken the risks to get the land consented. It is understood that Taylor Wimpey is one of the few housebuilders to have a reasonably large strategic land function.

Conversely, the majority of strategic land promoters are smaller and privately owned companies. This means that they can take bigger risks on sites because they have no shareholders to satisfy. Richborough considers it is more entrepreneurial, and less risk averse than the bigger corporate organisations. The housebuilder business model generally spreads their risk by purchasing 'oven ready' planning permissions and promoting some land through the development plan process or via the submission of planning applications at the appropriate time.

### Reputation

Whilst Richborough is an advocate of the plan led system, there are many LPAs with out of date Plans where much of their housing land supply has been provided through speculative applications or S.78 appeals. Without this supply the housing shortage would be more acute. Richborough considers that it can take the optimal strategy to secure planning permission at appeal, and can be bolder than some housebuilders who may be restricted by the issues that are set out above.

### Geography

Richborough is not confined by regional boundaries and operate at a national scale. Some national housebuilders have regional divisions whose boundaries reflect a geographical area. This allows housebuilders to manage sites in an effective manner. However, in some circumstances there are limited resources to promote numerous strategic sites within an area and in some cases conflicts may start to arise. Richborough considers that they can promote multiple interests in one particular area and are more adept at delivering multiple sites in a certain area as their model opens land up to competition.

Moreover, option agreements often include no-compete clauses that relate to the planning phase of the process and a particular geographic or LPA area. This can prevent some promoters or housebuilders promoting more than one site in a prescribed area. However housebuilder divisions have completion targets and will often want to deliver on more than one site within any given LPA / geographical area simultaneously. If this is the case, the housebuilder has to purchase land with planning permission. It is impossible for the majority of housebuilders to promote all of their sites through the planning system and the role of the land promoter becomes fundamental to the delivery of housing.



### **Promotional & Option Agreements**

Richborough consider that the transfer of land from a landowner to a developer through a promotional agreement can be more efficient than a housebuilder entering into an option. Housebuilding is a competitive business and builders want to minimise the amount they pay for the land. This will in turn increase the return from the sale of the houses and increase profit margins. On the flip side, landowners want to ensure that they receive a fair price for the land. Richborough consider that these conflicting positions can sometimes lead to protracted negotiations and a delay in drafting and exercising an option agreement.

A land promoter on the other hand will normally sell a site through a competitive tender where there is no dispute over the market value. This speeds up the process and enables development to start on site as quickly as possible.

### **Supply**

In general, housebuilders do not promote land to trade with others (their competitors). They promote land to build houses. Housebuilders only sell land when they have promoted more strategic land than they can consume within one geographical region. To do otherwise would not fit within their model as they are normally obligated to purchase the land when permission is secured. Buying more land than they need would tie up too much capital and inhibit the amount of development that they could undertake. Richborough on the other hand are not limited in this way and can promote and supply land to the wider market, increasing the supply of consented land.

### **SME Housebuilders**

The government is seeking to widen participation in the housebuilding industry and is encouraging SME housebuilders to enter the market. To facilitate this, it is essential that there is a reservoir of consented land. Richborough consider that some of these SMEs will not have the skills or resource to promote sites through the planning system. Richborough can play an important role in this regard by providing SME with this resource and has experience of selling sites to SMEs including Lioncourt and Mulberry.



# Delivery Case Studies: Unpicking Land Banking Myths

## Case Study 1: Delivery Case Studies: Unpicking Land Banking Myths

**Richborough Estates Hind Heath Road, Site (Phases 1 and 2) have an exceptionally complicated planning history being the subject of a number of applications, appeals and legal challenges dating back to 2010. Despite the sites being caught within a challenging political and planning backdrop the sites are delivering homes and some are now occupied.**

The Hind Heath site has progressed with applications over a number of years and phases. It exemplifies the changes that have occurred through the planning system over the time of its consideration and the significant risks faced by applicants. It also was impacted by the after effects of LGR<sup>7</sup> in Cheshire and the resulting political disparities across the enlarged Borough.

Phase 1 outline applications<sup>8</sup> for 269 dwellings were submitted in July 2010, and validated in August of that year. They were refused permission on the 28th October 2010. Appeals<sup>9</sup> were submitted on the 8th November 2010, and were subsequently recovered by the Secretary of State for determination. The appeals were allowed in July 2011, but were then the subject of a high court challenge, with the decisions quashed in October 2011, being remitted back to the Secretary of State, before finally being allowed in December 2012. Cheshire East then legally challenged the permission which was unsuccessful.

The applications were submitted against a Local Plan requirement<sup>10</sup> of 253 dwellings per annum (with the Inspector acknowledging a need for early review). This was superseded by the then Regional Spatial Strategy<sup>11</sup> which required 300 dwellings per annum. The RSS was revoked and PPS3<sup>12</sup> was superseded by the Framework<sup>13</sup> during the course of the consideration of the appeal.

Consequently, the Phase 1 application was considered within the context of a policy vacuum with no up-to-date development plan, disagreement regarding the housing requirement, uncertainty and dispute regarding a claimed 5 year housing land supply position, and members seeking to block new development. This latter issue stemmed from the forced end of the moratoria that had been in existence precluding the grant of permission for much housing. This moratoria (which were endemic across the North West of England) resulted in a failure to plan for future housing needs.

As a consequence of the volume of applications and appeals, there was a backlog of inquires within the Borough. The Planning Inspectorate struggled to process and facilitate inquiry dates and the timely determination of appeals. The Council also struggled to secure an officer to represent the Council at the inquiry due to internal workloads.

Through this process the Council sought to introduce various interim measures to allow it to resist development, ranging from Town Strategies, Interim Guidance Notes, and ultimately Neighbourhood Planning. These documents sought to preclude development or limit the quantum thereof. There was strong Local Authority resistance to any development (ostrich style) beyond settlement boundaries despite:



**Hind Heath Road Phase 1  
Indicative Masterplan**

<sup>7</sup> Local Government Reorganisation [LGR] that combined Macclesfield Borough Council; Crewe and Nantwich Borough Councils, and Congleton borough Councils came into effect in April 2009.

<sup>8</sup> 10/2608C and 10/2609C

<sup>9</sup> APP/R0660/A/10/2141255 & APP/R0660/A/10/2143265

<sup>10</sup> Congleton Borough Local Plan First Review - 1995-2011 (adopted January 2005)

<sup>11</sup> North West of England Plan - Regional Spatial Strategy to 2021

<sup>12</sup> Planning Policy Statement 3 [PPS3] - Housing - June 2011

<sup>13</sup> National Planning Policy Framework - March 2012

1. The absence of a local plan;
2. Demonstrable absence of available and deliverable sites;
3. No established OAN;
4. No 5 year supply;
5. A significantly higher likely housing requirement (the requirement had been reduced by 40% compared to previous plan requirements)

Following the positive determination of the appeal Richborough commenced marketing of the site in July 2011. This marketing was delayed by the high court challenge but the site was eventually conveyed to Bovis Homes where they exchanged on the 24th January 2012 and sold the site to them on the 28th May 2013. They submitted their first reserved matters application on the 1st March 2013 only 4 months after the final determination of the appeal. This was approved on the 17th May 2013. Development commenced in June 2013 which was only one month after the planning permission was judicial review period free.

Since this time the vast majority of the approved 269 dwellings have been built with only a small phase that remains under construction.

The Phase 2 application<sup>14</sup>, for an additional 100 dwellings was submitted in September 2013 and was subsequently allowed at appeal<sup>15</sup> in August 2014 with full award of costs against the Council for unreasonable behaviour following the failure of the Council to determine the application. A further application<sup>16</sup> was submitted alongside the appeal for 120 dwellings in February 2014. This was granted permission in September 2015.

The site was sold to Miller Homes Ltd in July 2015 A reserved matters application was submitted in September 2015 and approved on 31st May 2016. Development commenced shortly after.

## Conclusions

The Hind Heath developments proposed a locally significant quantum of development (130% of the annual requirement as well as it making a notable affordable housing contribution) in a settlement that was acknowledged as a principal town and focus for growth (expected to accommodate 25% of development in the plan period).

However the approach of the Council meant the applications were high risk, with appeal inevitable, and the site would not have been progressed by traditional housebuilders. This is especially the case bearing in mind the significant changes that occurred and the financial uncertainty in the wake of the last recession. This was despite the subsequently recognised suitability of the site for housing and its overarching sustainability. The replacement Local Plan still has not been adopted by the Council some 7 years after the submission of the original application. The Council still accept it is unable to demonstrate a 5 year supply, even on the basis of the emerging Local Plan requirement.

This site has made a significant contribution to housing land supply (1.3 years based on RSS) and the permissions have been implemented with minimal delay between the various

<sup>14</sup> 13/3887C

<sup>15</sup> APP/R0660/A/14/2212992

<sup>16</sup> 14/0977C

## Case Study 2: West Oxfordshire Council

**Richborough Estates promoted the site at New Road, Bampton securing outline planning permission for 160 dwellings in August 2014. Although the site was delayed due to the nature of conditions imposed upon the permission, construction commenced almost immediately following receipt of the reserved matters permission. The site is delivering homes and some are now occupied.**

This site is an example where Members determining applications can cause significant delay in the commencement of development on site if they choose to impose poorly considered planning conditions. It demonstrates how conditions imposed on decisions by local authorities, over which applicants have little control, can hamper the prompt delivery of sites.

The outline application for 160 dwellings at New Road was submitted on 12th October 2013 and validated on 14th October 2013 (Ref: 13/1465/P/OP). The Council did not have an adequate 5-year housing land supply and as such, the housing policies of the Local Plan were out of date and paragraphs 14 and 49 of the Framework should be applied. This was a fact accepted by officers and members when the application was considered at the Area Planning Sub Committee on 17th March 2014. The application was determined against a housing requirement of 541 dwellings per annum (based on CLG 2011 interim household projections as adjusted through the Oxfordshire SHMA 2014). The 160 dwellings proposed equated to almost 30% of the annual dwelling requirement identified.

It was resolved by members that the application be approved subject to the applicants entering into a legal agreement and to an additional condition requiring 60 units being built by 2017, 50 further units in 2019 and the final 50 in 2023 thereby artificially limiting development delivery, the opposite of what the Framework advocates. Richborough did not have the opportunity to contest this condition at the planning Committee.

Notwithstanding their dissatisfaction with this, Richborough signed the S106 on 26 August 2014 and planning permission was

granted on 29th August 2014.

Richborough commenced marketing of the site following the resolution to grant outline permission. However, the additional planning condition imposed by Members which rendered the planning permission almost impossible to implement.

On 17th September 2014, almost immediately following the completion of the s106 agreement and in parallel to the marketing of the site, Richborough made a Section 73 application to the Council to remove Condition 3, by (Ref: 14/1338/P/S73). However, the application was refused on 4th December 2014, against Officer recommendation, for the following reason:

“By reason of the pace and scale of development, the lifting of the restriction would give rise to a significant adverse impact upon the social and economic facilities of the settlement and fail to assimilate with the host community. It is therefore contrary to paragraphs 7, 14, and 15 of the NPPF”.

An appeal against the refusal of the application was immediately submitted by Richborough on the same date as the refusal (4th December 2014). The appeal process took approximately 7½ months and was allowed by the Inspector with the full award off costs due to unreasonable behaviour of the LPA and permission was granted (without condition 3) on 13th July 2015.

In parallel with this process a housebuilder was identified in December 2014 and the site was contracted with the housebuilder (CALA Homes) in May 2015. This parallel marketing and sale process helped to ensure that the housebuilder could commence preparation of the reserved matters submission in advance of the appeal decision being issued.



**New Road, Bampton  
Proposed Masterplan**

The application for the approval of reserved matters was submitted by CALA Homes on 25th September 2015 and validated on 20th October 2015. After a period of almost 6 months, the reserved matters application was granted on 9th March 2016. Development commenced almost immediately following the grant of reserved matters permission (3 weeks) and first dwelling completions were achieved in August 2016.

The scheme is achieving an annual average build rate of 40 dwellings per annum and contributing towards the 5-year housing land supply. The Council's 5-Year housing land supply data<sup>17</sup> notes that construction is well underway with all 160 homes anticipated for completion in the 5-year period 2016-2021.

### Conclusions

The New Road development proposed a locally significant quantum of development (30% of the annual requirement), as well as contributing to the supply of affordable homes, and was one of the 5 largest developments granted planning permission in the monitoring period 2014-15.

The above case study demonstrates how Richborough streamline the delivery trajectory by undertaking marketing in parallel to the planning process (where delays which were beyond the control of Richborough were incurred). Development commenced almost immediately once reserved matters permission had been secured. This site is making a significant contribution to the 5-year housing land supply with the completion of all 160 homes anticipated in the period 2016-2021. In the background, Richborough undertook a significant amount of public consultation and thorough negotiation with stakeholders meant that a Committee approval was secured even when the Council claimed to have a 5 year housing land supply and the application was contrary to policy. Richborough's commitment and success in negotiating consents means that supply and completed homes can be delivered.

<sup>17</sup> West Oxfordshire District Council Housing Supply Position Statement (October 2016), page 9

### Case Study 3: North West Leicestershire Council

**The Site on land at Burton Road and Moira Road at Ashby-de-la-Zouch represents a situation where negotiations with the LPA were protracted during both the determination of the outline and reserved matters applications. Whilst there were delays within the planning process (issues with highways and resolution of a legal agreement), a housebuilder was secured in advance of the issue of outline planning permission in order to ensure the early delivery of this important site.**

An outline application for 275 dwellings was submitted and validated in June 2014. At the time of the submission, the proposals were a departure from the Adopted North West Leicestershire Local Plan (August 2002) but the Council was unable to demonstrate a five year housing land supply. During the determination of the application, the Council accepted that it did not have a 5 year housing land supply.

The statutory determination period expired on the 19th September 2014. However the application was the subject of a protracted process as a result of additional highways modelling being required; complex negotiations on the contents of the legal agreement, including issues with the affordable housing package and the ability to secure registered provider commitment to delivery. Richborough Estates agreed to an extension of time with Officers to resolve the detail of the legal agreement. The application was taken to Planning Committee on the 2nd December 2014 where officers granted outline planning permission for the development subject to the completion of a legal agreement. The legal agreement was signed on the 4th August 2015 and the planning permission was also issued on that day.

In the background, Richborough commenced the process of marketing the site in March 2015, identifying the preferred housebuilder in June 2015. The site legally exchanged with Bellway in September 2015 - a month after the issue of the outline planning permission.

Bellway submitted an application for reserved matters approval in December 2015. The determination of the application was stalled while the housebuilder sought to vary the S106 Agreement with regards to the affordable housing details due to the Registered Social Landlords declining to bid for the Section 106 units following Government announcements on rental caps having commenced and being

well underway. The application was also the subject of rigorous design policing by the Council's Urban Design Officer. Reserved matters approval was issued in August 2016, over twelve months after the application was submitted. Bellway Homes is now on site with the show-home open and the first homes are available for occupation in the coming months.

#### Conclusions

Ashby-de-la-Zouch represents a site where negotiations with the LPA at all stages of the development process were protracted. Firstly there were the delays with the determination of the outline application as result of the legal agreement, negotiation of affordable housing and the County Council requiring additional highways modelling. The detailed design of the scheme was marred with subjective design opinions from the urban design officer which resulted in a nine month determination delay. It is clear from this case study that Richborough Estates sought to drive forward delivery in a collaborative manner with the Council but were the subject of delays within the planning system. Early marketing of the site and securing informal agreement with Bellway Homes is a demonstration that Richborough are keen to quickly deliver on their planning permissions and contribute to the delivery of homes.

Furthermore, the Government policy on rental caps in the Budget was not consulted on and had a negative effect on the Registered Social Landlord market and hindered delivery of both market and affordable housing. Close working with Bellway Homes and the Council solved the problem by reducing affordable percentage and transferring affordable dwelling to the Council for £10.00 so that they could rent the properties out. This demonstrates collaborative and innovative working to overcome obstacles put in place by the Government to hamper delivery.



**Land off Burton Road  
Indicative Masterplan**





**Beehive Lane 3D model, aerial view from west**

## Case Study 4: Cheshire West and Chester Council

**The Richborough Estates Fountain Lane, Davenham site is an example of a scheme that had Officer level support, but was refused following political pressure from the local community and elected members. The decision to refuse permission was appealed and Richborough secured outline planning permission 16 months later. A housebuilder has now been secured and Reserved Matters approved. The site is expected to start delivering homes in summer 2017 with occupations from January 2018.**

An outline application for 70 dwellings at Fountain Lane, Davenham was submitted and validated in May 2014. At the time of submission, the proposals were considered a departure from the adopted Vale Royal Borough Local Plan [VRBLP], but an appeal decision had recently<sup>18</sup> been issued on a different site where the Inspector concluded that the Local Authority had only a housing supply of 3.26 years<sup>19</sup>.

Council Officers were initially supportive of the proposals and no objections had been received from statutory consultees. The application was scheduled to be considered at the Strategic Planning Committee on 14th August 2014 with a recommendation for approval subject to a S.106 Agreement. Within the Committee Report, the Council considered that as the emerging Cheshire West and Chester Local Plan (Part One) [CWaCLP] was at an advanced stage, the five year supply should be assessed against the housing requirement contained within the emerging plan resulting in a 5.5-year supply of deliverable housing sites. However, on balance the Officer concluded that the proposals did represent sustainable development and should be approved.

The LPA then published a late Report to Members updating the housing land supply position from 5.5 year to 5.64 and consequently withdrew the Fountain Lane application (along with several others) from the agenda of the Committee meeting. It was understood that Officers had been put under pressure from elected members to remove several applications from the agenda and refuse the proposals under delegated powers.

Following the withdrawal, the agent entered into protracted negotiations with the LPA over the principle of development. Despite this, the application was refused on the 2nd October 2014 under delegated powers. There was a seven week delay between the original Committee date and the issue of

the decision notice.

The appeal was lodged on 8th October 2014 and a Public Inquiry was held between the 28th April and the 1st May 2015. The appeal was allowed and the decision was issued on 3rd September 2015. The Inspector concluded that the significant social and economic benefits, along with the potential environmental benefits were of sufficient weight to clearly outweigh the moderate harm that would be caused, meaning that the proposal would represent sustainable development.

The site was advertised within the Estates Gazette and a preferred housebuilder was identified on 19th May 2016. The Reserved Matters were submitted in December 2016. The delay in submission related to uncertainty in the market following the UK's vote to withdraw from the EU. The Reserved Matters were approved on 8th March 2017 and the pre-commencement conditions are currently being discharged. Subject to the discharge of the conditions, the development should commence in summer 2017 and the site is expected to start delivering homes in early 2018.

### Conclusions

Fountain Lane represents a site where political agendas that sought to restrict development and protect the open countryside resulted in the delay of the grant of planning permission by 16 months. This delay caused Richborough, the landowner and the LPA a significant amount of time and money. Richborough's commitment to boosting the supply of housing within Davenham was clear through the expedient advertisement of the site following the grant of planning permission and the commitment to the land deal when there was some uncertainty in the marketplace. It is clear that Brexit shows that political and economic certainty understandably affects delivery. It is anticipated that all 70 homes will be delivered before the end of 2019.

<sup>18</sup> December 2013

<sup>19</sup> Appeal Decision – Land off Barnside Way, Moulton, Cheshire reference APP/A0665/A/13/2198931

## Case Study 5: Warwick District Council

**The Golf Lane Site is a case study which demonstrates that where an authority has an acute housing land shortage, the need to deliver homes becomes more pressing and applications can be determined on time to facilitate implementation.**

An outline application for 94 homes was submitted to Warwick District Council and validated on 25th June 2013. The application was submitted in the context of the Adopted Warwick Local Plan (2007) where the site was not allocated for any particular use in the Local Plan but was outwith the settlement boundary for Whitnash. At the time, the Council had an acute shortage of housing land with a supply of only 2.6 years. As a consequence, the policies of the Framework (para 14 - presumption in favour of sustainable development & para 49 - 5 year housing land supply) applied. The application was recommended for approval at Planning Committee in September 2013. The resolution noted that the application should be refused if the legal agreement is not signed by the 24th September 2013. Planning Permission was subsequently granted on the 24th September 2013 (within 13 weeks of submission).

The length of Richborough's marketing period was 11 weeks (the shortest of any site they have promoted to date). Richborough commenced the process of marketing the site on the 30th September 2013, identifying the preferred housebuilder in November 2013. The contract to sell the site to Bovis Homes was concluded on the 19th December 2013. Bovis Homes subsequently submitted an application (within six months) for 111 dwellings for reserved matters approval. The delay to the submission of the reserved matters was a result of issues in relation to pre-application engagement on housing mix and the layout. These issues were resolved during the pre-application discussion in May 2014 following advice from Counsel. The reserved matters application was validated on the 15th May 2014. The application was approved on

the 14th August 2014 (within 13 weeks). Bovis Homes commenced the development in October 2014 following the discharge of pre-commencement conditions. The development is substantially complete with 96 homes completed to date.

### Conclusion

The Golf Lane Site is located in one of the largest and accessible settlements in the district. The Site therefore made an important contribution to the draft housing requirement at the time (2012 Preferred Options, which set out a housing requirement for Warwick District of 10,800 dwellings for the period 2011-2029). The proposals also make an important contribution to the supply of affordable homes in the District. The permissions have been implemented and the development is substantially complete. It is clear from the timeline on the site, that the officers sought to determine the application within the statutory time periods and the inclusion of a provision at committee threatening the refusal of planning permission without the timely signing of the legal agreement reduced any potential delays. It is also important to note that Richborough were the first to submit an application to develop housing on greenfield land because the 5 year housing land supply triggered the presumption in favour of sustainable development. Going first is a risky business and is a demonstration of the risk appetite Richborough has in contrast to housebuilders. Numerous applications in the District followed and this has led to significant increases in supply and actual completions.



**Land off Fieldgate Lane,  
Whitnash Indicative  
Masterplan**



**Land off Ashlawn Road, Rugby  
Indicative Masterplan**

### Case Study 5: Ashlawn Road, Hillmorton, Rugby Council

**The Ashlawn Road Site demonstrates that where a pro-active authority seeking to facilitate housing development to meet its acute housing needs in the context of the Framework's presumption in favour of sustainable development, can result in a positive outcome. The delays to the receipt of planning permission were as a consequence of reaching agreement on the planning obligations - a barrier to speeding up house building which the Government is looking to address. Richborough marketed the site after receiving a resolution to grant planning permission in order to quickly progress delivery of the site.**

An outline application for up to 100 dwellings on land at Ashlawn Road, Hillmorton, Rugby was submitted to Rugby Borough Council and validated in September 2014. The application was submitted in the context of the Adopted Rugby Core Strategy (June 2011) where the scheme was contrary to the provisions of the development plan relating to open countryside but that the Council were unable to demonstrate a five year housing land supply. As a consequence the policies of the Framework applied.

The application was deferred from the Planning Committee on 22nd March 2015 in order to seek additional information in relation to highways (following a specific request on the matter from a Planning Committee Member). This caused a minor delay to the progress of the application as Officers had to re-consult on the revised information and wait for the next Committee cycle. The application was subsequently recommended for approval at Planning Committee on the 22nd April 2015. Richborough demonstrated that the site was sustainable, with the provision of affordable housing being a significant material consideration and the site making a 16% contribution to the Core Strategy net requirement of 540 dwellings per annum. Members resolved to grant outline planning permission on the 22nd April 2015 subject to conditions and the completion of a legal agreement. Outline planning permission was granted on the 2nd December 2015 (with the delay between resolution and grant of permission down to protracted S106 negotiations).

Richborough commenced the process of marketing the site in June 2015, identifying the preferred housebuilder in September 2015. The site legally exchanged with Bovis Homes on the 23rd December 2015 - three weeks after the receipt of the outline planning permission.

Once the site was transferred to Bovis Homes an application for 96 dwellings for reserved matters approval was submitted and validated on the 9th February 2016. The determination of the reserved matters was delegated to Officers and consent was issued on the 27th May 2016 (within 15 weeks). Bovis Homes commenced the development in June 2016 following a quick turn around on discharging pre-commencement conditions. The first dwelling was completed in December 2016.

#### **Conclusion**

The Ashlawn Road site is another example where Richborough has worked collaboratively with Council Officers and Members in order to ensure the timely approval of permissions enabling the housebuilder to get on site and deliver much needed homes (including a policy-compliant level of affordable homes). Delays were incurred as a result of agreements being reached on the planning obligations.



# What are the key factors which affect the delivery of housing?

The previous section of the Report demonstrated through a number of Case Studies that the reality of land banking for land promoters such as Richborough is unjustified. There are various factors which affect the delivery of housing:

## 1. Delays to securing a planning permission

It is clear from our analysis that Richborough Estates immediately seeks to turn their planning permissions into homes as soon as the market and planning system allows. Delays to securing outline and detailed planning permission and delivery can be a consequence of:

1. LPA capacity to handle applications and undertake meaningful pre-application discussions.
2. Appeals particularly where an Authority has acted unreasonably and Members go against Officer recommendations.
3. NIMBY and the political response to development where, despite applications meeting the Framework's presumption in favour of sustainable development, planning permission is refused.
4. Statutory consultee delays e.g. a highways authority seeking additional technical work at a late stage in the process or making unreasonable requests for information.
5. Local Plan delays where Local Plan adoption is necessary before the grant of planning permission for political or legal reasons.
6. The capacity of legal teams within Local Authorities and protracted negotiations with LPA legal Officers with regards to the S.106 Agreement.

The White Paper proposes that LPAs will receive an increased planning application fee (20% from July 2017) if they commit to ring-fencing the additional income in planning department resourcing. If LPAs can properly resource themselves to meet the needs of

the development industry and hit their statutory determination targets then this proposal is a positive one. However, it is often the pre- and post-application stages that delay the determination of an application. The Case Studies demonstrate that level of service clearly creates uncertainty. The timescales for negotiating Section 106 Agreements can often be protracted having direct and significant implications for the time period before a housebuilder can build houses.

## 2. Addressing the issues with landowners and transferring sites to house builders

The Government consider that one of the causes of the housing crisis is developer land banking. It is clear that Richborough Estates transfers a site to a house builder as soon as planning permission is granted. In the majority of cases, Richborough markets the site well in advance of securing planning permission, a preferred house builder is secured at the resolution stage and the legal exchange of a site usually happens almost immediately upon the grant of planning permission. Any sites where there have been delays are a result of market forces where the viability of a site is questionable, or there are significant infrastructure, or technical constraints, which require additional due diligence work. Once the house builder has purchased a site from Richborough, they also have no incentive to land bank as they have paid full market value to deliver homes within the planning consent's prescribed timescales (e.g. the securing of Reserved Matters consent within 2 years).

The Government's view of land banking is overly simplistic and the Housing White Paper's proposed reduction in the default length of planning permissions aims to address this issue. Richborough is supportive of this mechanism. Richborough would not pursue a site that could not be implemented and through careful due diligence work it is their intention that all their permissions are implementable, viable and have no unexpected site abnormalities (infrastructure or contamination or other physical constraints that may fetter or delay the delivery of a development) which introduce physical or viability constraints.

### 3. Delays to building out a planning permission

The speed to which a planning application can be implemented is constrained by the following issues:

1. Discharge of planning conditions (and the number of conditions).
2. Addressing planning obligations.
3. Lack of infrastructure.
4. Problems securing the necessary utility connections.
5. Site constraints.
6. Scale of site and infrastructure constraints.
7. Availability of construction workers.
8. Timely approval of reserved matters.
9. Litigation from LPA and third party.
10. Timely decision from the Courts.
11. Seasonal constraints of ecology surveys and licence applications being available to be undertaken until reserved matters is approved.
12. Legal complications such as the requirement to negotiate drainage easements.
13. Valuation disputes under option agreements.
14. Market conditions e.g. recession.

Through mechanisms in the Housing White Paper, the Government is keen to encourage faster delivery of housebuilding in order to provide a million new homes within the current Parliament. It is clear that given the complex nature of land and building houses; delays are inevitable and should be acknowledged.

# Key Conclusions

Part of the debate within this report has focused on perceptions of 'land banking' – the concept that developers are hoarding land or slowing down development. Through detailed analysis of a number of Richborough's sites it is clear that they have a proven track-record of delivery by agreeing the sale of land to the preferred housebuilder once planning permission is granted. The housebuilder then submits their detailed applications, discharges conditions and any Section 106 obligations before building homes promptly. They will have paid an open market price and need to demonstrate a timely return on capital employed (ROCE) to the City.

Richborough Estates provide a symbiotic role with housebuilders with many of the major housebuilders relying on Richborough to take the risk and obtain the initial consent on the land for them to implement. Together they are able to deliver more of the homes the country needs than would be the case without the input of land promoters.

Richborough Estates concentrates its efforts on promoting small and medium sites and therefore facilitates the entry of SMEs, a key Government aspiration to ensuring that the market is more diverse.

Through mechanisms in the Housing White paper, the Government is keen to encourage faster delivery of housebuilding in order to provide a million new homes within the current Parliament. It is clear that the delivery of homes is complex. We are being told that planning delays are the greatest barrier to the delivery of new homes. Whether it is a consequence of under staffed LPAs, political issues, the lack of an adopted up-to-date Plan or constraints with sites (e.g. nature conservation constraints), ultimately developing homes is a time-consuming, complex and risky business. Despite these challenges, Richborough endeavours to play a key role in significantly boosting the supply of homes (market and affordable) and facilitating the actual building of homes.

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