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**Ms Kate Barker,
Barker Review of Housing Supply,
1 Horseguards Road,
London,
SW1A 2HQ.**

Our Ref: DB/ Housing/ Barker Review

Your Ref:

14th August 2003

Dear Ms Barker,

RE: Review of Issues Underlying Housing Supply

I am aware that you and your team have been instructed by HM Treasury to conduct a review of issues underlying the lack of and responsiveness of housing in the United Kingdom and, in particular, focusing on the role of competition, capacity, technology and finance of the housebuilding industry; and the interaction of these factors with the planning system and sustainable objectives.

Centex Group would like to contribute to this debate. We are aware that the House Builders Federation has already made representations to you on behalf of its membership and we have been actively involved in those submissions. Consequently, we have confined our comments to issues about which we feel most strongly and rely upon the comments of the HBF in respect of other issues. We would like to contribute to this debate by commenting on the key weaknesses of the planning system and its interaction with housebuilders. In particular, we would wish to point out where those weaknesses remain unaddressed by the recent proposals of the Planning and Compulsory Purchase Bill. We also wish to comment on the suggested influence of landbanking on the supply of housing.

We believe strongly that many of the problems of housing supply have been caused by the current planning system. In particular, its failings after the introduction of a plan led system by virtue of the 1990 Planning Act. The introduction of the plan led system occurred at the same time that many of the 'checks and balances' were removed from the planning system. We acknowledge that changes have been proposed by the Planning and Compulsory Purchase Bill, currently being progressed through Parliament. However, in our opinion, the Bill does not address all of the weaknesses of the system. It would be a mistake to rely alone on those proposed changes working through the system. In our

submission, delaying specific action now will result in the same magnitude of supply problems in 5 years from now.

Before setting out our concerns in detail, I would like to introduce the Centex Group to you. Centex Group is part of the Centex Corporation, one of the largest and most respected housebuilders in the USA. In the UK, Centex owns Fairclough Homes which operates through England and has more recently set up a new house building company, CDC 2020 which operates principally south of the Thames. The current management team has many years experience of UK House building and has been actively working in and with the planning system since the early 1980's. It has been involved with a wide range of housing and mixed use schemes from single large dwellings to major urban extensions. It feels well qualified to comment upon housebuilders interaction with the planning system.

We intend to concentrate on two key topics: the Development Plan system and Development Control. We consider these topics are key to your review and that there are three questions to be answered to ensuring an adequate supply of housing land being delivered in a timely and efficient manner. Under each issue we will seek to identify what we believe are the key areas of uncertainty or failings of both the existing system and the proposed new system under the Planning Bill which need to be addressed if we are to make a real impact upon the responsiveness of the planning system to housing needs and demand. The questions are:

- Assuming the continuation of a plan led system, which we support to balance competing pressures for development against environmental protection in a sustainable manner, how can development plans be produced that are relevant, flexible and timely?
- Can or should the development control system be amended to ensure better, more timely and more efficient delivery of housing targets once set in the Development Plan?
- How can a positive attitude to development be fostered such that those responsible for delivering Development Plans and the Development Control system actively work towards delivery instead of examining means to frustrate?

Question One

If the Development Plan system is to deliver appropriate housing targets, it is imperative that the targets are up to date and reviewed regularly. We welcome proposals to streamline the system by the removal of the Structure Plan tier, leaving just Regional Spatial Strategies (RSS's) and Local Development Frameworks (LDF's). This should speed up plan production. However, we are concerned that the benefits of a more rapid delivery of targets to a District level may be lost through an extended period to complete sub regional strategies (given the RSS's will cover several counties). In order to avoid this, we believe there is a need for future guidance to stipulate a timetable for the production of RSS's..

We consider it is essential to hold one inquiry into the RSS which can examine the proposed housing distribution will test the robustness and logical consistency of the RSS and its sub regional strategies in terms of their broad environmental implications at a District level as well as in their aggregate, measured against forecasts of housing requirements at the regional level. Whilst this may be a significant undertaking we believe it will ultimately help to speed up the system.

We assume the inquiry process will be similar to the Examination in Public for County Structure Plans. Such a process will allow debate at both County and District level which can inform decision making on future distribution.

Emerging policy in respect of LDF's is currently unclear as to the precise content of such documents. Currently, local plans are, in our opinion far too long and cumbersome documents that often run to 200 pages of text with 100-150 policies. We believe such detail is unnecessary and much could be dealt with by means of Supplementary Planning Guidance (SPG). We recommend that a LDF contains only core policies on topics such as housing, employment and Green Belt (where appropriate) for the whole district and the document should include a housing strategy to demonstrate how the housing targets of the RSS are to be met at the District level and that this is site specific. Whilst we see merit in flexibility in the proposed LDF system, we consider it important that this core strategy enables examination of alternative distribution strategies such that an Inspector may be properly informed as to the most sustainable option for meeting current development plan and inquiry system. What must be avoided, though, is the reopening of debates on housing capacity at each plan level. We reiterate that this issue must be properly addressed at the time distribution is determined in order to avoid undermining confidence in the plan process from users.

Current guidance suggests that LDF's/ Local Plans shall identify at least 5 years worth of housing land supply on the proposals map in order to guard against undue reliance upon windfall sites, that is sites unidentified in the local plan that gain planning permission for housing development. However, in our experience, many local plans are currently produced which rely wholly or almost so upon the results of urban capacity studies (UCS). There is nothing intrinsically wrong with this approach provided that there is a reasonable certainty that a substantial element of the land will come forward for development.

However, there are two significant flaws with this approach. First, the 5 year requirement in many instances is met by identifying sites from the UCS on the proposals map without further investigation or confirmation that those sites are free or readily freed from constraints including the willingness of the landowner to sell, viability of the project and constraining infrastructure beyond the capabilities of the developer or committed public expenditure to resolve. Without such verification, these sites have little more reliable status than windfall sites – which come forward arbitrarily – and do little to ensure that the plan's housing requirements can be met, particularly if the UCS assumptions are too optimistic.

Secondly, a combination of uncertainty over how long to wait until monitoring shows sufficient under/ over performance to require intervention coupled with a lengthy period for production of a local plan review means that the 5 year periods for sites to be genuinely available will often be too short a period to cover delays arising from a need to recognise a shortfall in completions and to take corrective action via a plan review. We discuss under Question Two below, the importance of acting upon monitoring information in a timely manner. However, we would also suggest the need for greater flexibility in LDF's/ Local Plans than exist at present. We see no danger in advocating a system whereby the totality of the plan's housing requirement on specific sites which are or can be readily freed from constraint. We believe this will add a degree of certainty to the system. If land comes forward for development higher up the sequential approach, for example a brownfield site rather than a Greenfield urban extension, then the latter site would not be released for development under the Plan Monitor and Manage approach. The great benefit with this system is that because sites are identified to cover the whole of the plan's housing requirement, if monitoring reveals under performance/ shortfalls, then sites can be released in a timely fashion, rather than merely initiating a review of the plan which may well take some 3-5 years to complete.

However, we perceive a reluctance on the part of local authorities and local plan Inspectors to adopt such a flexible approach despite its attractions in dealing with the inherent uncertainty surrounding UCS issues. In our opinion, this stems from a historical reluctance to identify reserve sites. All sites not currently within the urban area are now effectively reserve sites until plan monitor and manage shows their release to be necessary. PPG3 at paragraph 30 suggests not extending the search for sites further down the sequence than is necessary to meet housing requirements. This presupposes the assumptions about urban capacity are correct, there being no requirement to assess genuine availability of sites in a UCS, but it also removes flexibility to react instantly to under provision, ie the 'manage' element of Plan Monitor and Manage. We recommend that it is deleted.

Plan monitor and manage should prevent under provision and over provision and the release of sites lower in the sequential approach unless their release is necessary to meet housing requirements. Identifying all sites which could contribute to supply over the whole plan period will also bring an added advantage of enabling a much more rapid response to decisions to increase the rate of housing provision in certain areas if it was felt appropriate. For example, we refer to the decision to accelerate housing completions on growth areas identified in the Sustainable Communities Plan. However, reference in sub regional reports associated with the Plan refer to inertia in the plan system to precluding significant change in advance of 2011.

It may be politically expedient for a local authority to delay production or adoption of a plan where significant or controversial growth is proposed. A plan led system is doomed to failure if there is no plan. The failure to achieve plan coverage under the 1990 Act is well documented and it is unclear why the new Bill will succeed where the old did not. There are currently no sanctions against Councils who fail to perform in this regard and only a limited sanction regime is proposed through best value ratings and grant levels. However, these sanctions will not deliver a plan necessarily. We consider that where Councils fail to adhere to the timetable set out in the Local Development Scheme proposed, either the Regional Planning Body or ODPM should appoint consultants to prepare the Core Policies in draft assuming investigations reveal that such is not prevented by constraints external to the relevant local authority, for presentation to an inquiry at which the local authority might wish to be an objector. This would be undertaken at the local authorities expense. We accept that this should be used as a last resort as with other similar intervention in other areas of public service delivery. However, its presence as an ultimate sanction should ensure the need for its use would be limited.

Question Two

We accept the principle that the development of brownfield sites should be given priority, which is likely to mean proposed phasing of development lower down the sequential approach at least in some areas. However, much brownfield capacity claimed by local authorities is a theoretical assessment of 'constrained urban capacity'. We accept that local authorities should attempt to assess this important source of housing supply though this is not always done in a realistic manner, there being an obvious temptation to overestimate and thus avoid controversial decisions on specific site identification. But if completions fail to meet predictions, monitoring should reveal this and corrective action should be taken. Present guidance gives no indication of how long a local authority should wait or how bad the undersupply of housing should become in relation to annualised completion rates before they should trigger the release of sites further down the sequential approach. This difficulty is exacerbated where the only sites available to release are effectively windfalls as little investigation has been undertaken to assess their genuine availability (See Question One). There are examples of local authorities with only a few years to run of their local plan where completion rates are way behind requirements but the

council still anticipate production from theoretical urban capacity sites several times the level actually achieved in recent years. The result of this approach is uncertainty on the part of developers and local authorities as to when it might be appropriate to submit or approve applications relating to those later phased sites, resultant inefficiencies in the development control and appeal system and ultimately, failure to achieve the required level of completions within the plan period. We consider that if completion rates are 20-25% below required annualised rates, aggregated to the base date of the monitoring information, and once the second phase of a plan period is reached, that should be the trigger for corrective action. Any threshold is to some degree arbitrary but this is the level at which many local authorities have policies to start restricting the release of identified housing sites when supply exceeds the required completion rates.

We consider the present planning appeal process inefficient in that the decision of an Inspector is all or nothing. In other words, if a proposal is in most respects sound but falls down on a technical deficiency, the appeal is dismissed and a further process of resubmission, negotiation and sometimes further appeal is necessary, particularly where the local authority remains resistant to the scheme (even after an Inspector has clearly accepted the principle of development). Such delays may often result in abandonment of the scheme in favour of alternative uses or lower densities often found more palatable locally. We consider there to be scope for improving the system by introducing a system of deferred decisions whereby an initial 'minded to' notice might be issued by the Inspector indicating he/ she is minded to dismiss the application in its current form but amendments specified and to be discussed with the local authority would result in the scheme becoming acceptable. Such a process would require time for necessary consultation and interested party comment. As a result it might stretch the decision timetable of the Inspectorate but would nevertheless represent a considerable efficiency and should reduce the number of appeals submitted.

While the above seeks to introduce greater flexibility in the planning system, we would strongly urge that existing flexibility is not removed as initially proposed by the Planning Bill. In this regard, we refer to proposals to remove outline planning permissions, remove twin tracking of planning applications and shortening the lifetime of planning permissions. We see few if any benefits to these proposals. Their removal will not, in our opinion speed up the process as that is caused by other factors. Their removal will, however, cause considerable increased costs, delays and scheme failures to the development industry which will result in lower completion rates. Outline planning permission is an important stage in establishing the principle and form of development without having to produce a complete design solution. More importantly, it is a legally binding document unlike its proposed replacement. Twin tracking is the only means by which an applicant can put pressure on a local authority to determine a planning application as it allows the applicant to pursue a planning appeal which generally requires a local authority to inform the Inspectorate of its decision had it had the opportunity to determine the application. At this stage the applicant can either negotiate on the second application or pursue the appeal if the reasons for refusal are matters of principle.

We are constantly frustrated by Government Office failure to intervene where it is clear a local authority is not producing a plan to time, or a plan that is in conformity with a structure plan (or RSS in the future), or by intervention at the last moment in the preparation of a development plan or call in of a planning application when the issue must have been clear to that office from a much earlier date. We note also that failure to comment by the office on a controversial issue is often taken as consent whereas reality may be inadequate resources to respond, again creating the scope for conflict and delay. We are aware of the concern regarding intervention in what could culminate in a quasi judicial hearing and the possible role of the office in that process. We note that the relevant office is often prepared to comment prior to submission of an application but not after and this distinction seems to

us entirely artificial. It cannot be appropriate for the instigator of the highest level of policy not to advise on its implementation in the formal process of plan making/ development control other than to throw a spanner in the process just before plan adoption or scheme approval and we would urge a rethink of the role and adequacy of funding of Government Office in this regard.

Question Three

Whatever procedural improvements are introduced, they will be less effective in raising completion rates where appropriate if the operators of the plan and development control systems are negative in their approach towards accommodating development. We consider that there needs to be a series on incentives and disbenefits to accommodating/ failure to accommodate development in accordance with the RSS. Those benefits are already considerable in terms of the provision of affordable housing and other related benefits but are clearly insufficient to change a mind set in some areas or to overcome local resistance. The development industry has its own role to play in terms of community engagement and quality of development but these are more often mitigation issues rather than leading to the acceptance of the principle of development. On the incentive side, we see the possibility of re-examination of the degree to which the local authority retain the enhanced income through its tax base and other means of grant related reward for performance in delivery. On the 'stick' side we consider investigations leading to an ultimate sanction of surcharging councillors if they have been responsible for failure to perform (in areas where the Councils have failed to meet their targets) would act as a counterbalance to local anti development pressures. This might entail a new statutory duty on local authorities to facilitate the achievement of RSS housing targets.

There are clearly many and possibly complex issues surrounding the above suggestions which we would be happy to take further in discussion if this were to be felt appropriate and helpful to the review.

We are aware that other commentators have suggested, through response to the first issue, that reasons for failure of housing supply to respond to demand relate more to the land banking activities of housebuilders than to issues of supply of housing land. We would do no more here than strongly refute the suggestion. The profit margin on any site where land is paid for before development can start (the majority of all sites) is strongly influenced by the speed with which sales can begin and be completed. In today's climate of high land prices it would be commercial suicide to delay deliberately production in an attempt to sustain artificially high sales prices. The impact of such an approach would fall upon the bottom line of specific sites while the benefit, assuming there were any given the relative volatility of the housing market, would be spread across the industry and the price of second hand homes comprising in excess of 80% of all housing transactions. The source of such suggestions may well lie in reports of housebuilders to their shareholders indicating several years worth of plot production held in land banks. The global figures disguise the complexity of those land banks in including land with no planning permission or indeed planning status, land allocated in a local plan, land with outline planning permission where there may be a delay of 18-24 months in securing detailed approval and land with detailed planning permission where development of later phases is constrained by requirements to complete infrastructure or to complete earlier phases pending commencement of development upon that land. Thus such land bank reports can disguise the actual situation.

We thank you for giving us the opportunity to participate in your review of housing supply. We have focussed our concerns on only a few of the many issues that we consider are responsible for constraining housing supply and rely upon the submission of other, namely the HBF, in those issues. We look forward to reading your report and conclusions in due course. If we can be of further assistance or if you require further clarification of any of the points we have raised, please do not hesitate to contact the writer.

Yours sincerely,

David Birchall
Managing Director

CC: Andy Evans - CSL

