

Homebuilding market study

Annexe K - The homebuying process

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K.1 THE HOMEBUYING PROCESS

- K.1.1 New homes can be found by word of mouth, using an estate agent or via advertisements in the national or local press or by searching internet property portals or by surfing the internet more generally.
- K.1.2 New home developments will often have display boards set up outside the site, advertising the availability of a show home for inspection or outlining any financial deals which are available with the property, to draw a potential homebuyer's attention to the site.
- K.1.3 Homebuyers have the option to purchase a new home which has already been built or 'off-plan'. Buying 'off plan' is where the home has not yet been built or is not yet complete. In such case, homebuyers are making their decision to purchase based on plans, drawings, architect's impressions and so forth in various media. Homebuyers may also have the opportunity to view a show home or other similar completed home on the same or a similar site before making their decision to purchase.
- K.1.4 Last year, a half (50 per cent)¹ of all residential homes built were bought 'off-plan'.

Potential negotiation

- K.1.5 Sometimes, homebuilders will use offers to attract homebuyers such as 'free white goods', 'free carpets' or 'payment of stamp duty'. Once the homebuyer has decided what they are willing to pay and the other terms on which they will transact, they will approach the homebuilder. This approach may be direct or via an estate agent (when the homebuilder has engaged one). Technically, such an approach takes the form of a 'subject to contract' offer by the homebuyer to the homebuilder. This offer is not legally binding. The homebuilder will then decide whether or not to accept. Again, this acceptance is not legally binding. If the homebuilder accepts the subject to contract offer, then it is often the

¹ OFT New home build consumer survey.

case that to the homebuilder will require some financial commitment from the prospective homebuyer to show that they are serious about wanting to purchase the particular home.

Reservation agreements and fees

K.1.6 Once there is agreement in principle over the pricing and terms of the purchase (whether or not there has been any negotiation between the parties and even though it is unlikely that the homebuyer will have seen a full contract at this stage) the homebuilder will often ask the homebuyer to sign a reservation agreement and pay a fee. The reservation agreement is usually the first formal document received by homebuyers. It is often presented by homebuilders as a necessary step towards the purchase of a new home.

K.1.7 In our consumer survey just over half (54 per cent)² of homebuyers were required to pay a reservation fee, and for most who did (94 per cent)³, the amount was less than 1 per cent of the purchase price. From our research, it appears that many small homebuilders do not charge reservations fees at all (only 35 per cent said they did).⁴ The reservation fee may not be refundable.

Legal arrangements

K.1.8 After arranging a mortgage, if required, most homebuyers and homebuilders instruct a solicitor or a licensed conveyancer to oversee the conveyancing process.

² OFT New home build consumer survey. Excluding those who refused to give a purchase price (10 per cent) or could not remember it (less than one per cent).

³ OT New home build consumer survey.

⁴ OFT Survey of homebuilders.

K.2 THE CONVEYANCING PROCESS

K.2.1 The conveyancing process transfers the ownership of the home from the homebuilder to the homebuyer. This process can be broken down into sections. These cover what happens after an offer on the home has been accepted but before the parties are legally bound to proceed, what happens between exchange of contracts and the completion date and what happens after completion.

Pre-completion

K.2.2 Most homebuilders will have a standard form of contract. As well as the standard legal provisions for any sale of land, this will include a description of the home, the price, the names of the homebuilder and homebuyer, the tenure of the property (ie whether the property is freehold or leasehold) and whether there are any restrictions on its use.

K.2.3 The homebuilder's legal advisers will send the contract to the homebuyer's legal advisers, together with various other documentation. This documentation will include evidence of legal title to the home (essentially whether the homebuilder is entitled to sell the home). This evidence will be based on the deeds to the home or from documents obtained from the Land Registry. This documentation may also include a document known as a 'deed of transfer' which will be used to transfer the legal title of the home from the homebuilder to the homebuyer. This is usually in a standard form to ensure consistency across the development.

K.2.4 With new homes, the homebuilder's legal advisers may also provide copies of a number of the searches and supplemental papers such as copy planning consents as part of the Home Information Pack (HIP). For more on the relevance of HIPs see Annexe G.

K.2.5 Once the homebuyer's legal advisers have received the draft contract and documentation, they will review them.

- K.2.6 The homebuyer's legal advisers may also conduct various searches to garner further information concerning the home which cannot be ascertained by a mere inspection of the home. As stated above such searches may have been included in the HIP. Even where searches have not been included in the HIP, the homebuilder's legal advisers may make searches available for the whole development site.
- K.2.7 It is even more important for the homebuyer's legal advisers to have up to date searches where there is ongoing development on a site to check that the homebuilder has discharged any relevant planning obligations relevant to the home to be purchased.
- K.2.8 Where the homebuilder's legal advisers have to make a search of the Local Authority there is often a delay of a few weeks while the Local Authority deals with these questions. In addition, sometimes, it may still be important for the homebuyer's solicitors to conduct other searches including searches to discover whether the home could be affected adversely by coal mines, pollutants, flooding and is connected to the mains water supply, sewerage and drainage. The searches carried out will depend on the area in which the home is located.
- K.2.9 The homebuyer's legal advisers may also make further enquiries of the homebuilder's legal advisers. Once the homebuyer's legal advisers have all the available information to hand they will report to the homebuyer on the legal status of the home. This will include details of the rights and responsibilities attached to the home.
- K.2.10 Where the homebuyer is using a mortgage to finance or partly finance the purchase of the home the homebuyer's legal advisers will revert to the homebuilder's legal advisers on the details of the mortgage offer once received from the mortgage company. The homebuyer's legal advisers may have to make some further enquiries to ensure that the information provided to the mortgage company is satisfactory. However, the homebuilder's legal advisers must provide the mortgage company with all relevant information concerning the value of the home including any incentives promised by their clients to the homebuyers, for example, cash back schemes, free holidays or discounts. It should be noted that

the mortgage company has the right to refuse, vary or withdraw a mortgage offer if this information is not provided. Further, mortgages are often not granted without the provision of a warranty on the new home (which states that the home meets certain standards) although smaller developments may have the benefit of an architect's certificate instead.

Exchange of contracts

- K.2.11 Once all the pre-contract enquiries have been answered, the mortgage offer received and the homebuilder and homebuyer have both signed their own identical copy of the contract (sometimes their respective legal advisers will do this on their behalf) their legal advisers will 'exchange contracts'. It is at this point that both the homebuyer and homebuilder become legally bound to proceed with the transaction. It is at the 'exchange of contracts' when a seller of a pre-existing home would usually provide a homebuyer with a moving in date. However with a new home, unless the property is structurally complete, it is unusual for a fixed completion date to be used. Instead completion will normally be agreed to take place say 14 days after the home is finished. This is dealt with in the contract document.
- K.2.12 In addition, it is at this stage that a non-refundable deposit is paid to the homebuilder's legal advisers as security in case the homebuyer fails to complete the transaction.
- K.2.13 The amount of deposit payable varies and is sometimes subject to agreement or negotiation between homebuyer and homebuilder. The amount of the deposit may well depend on whether there is a chain and if that money is passed up the chain. A homebuyer (not involved in a chain) purchasing an empty house would usually have to pay a 10 per cent deposit. However, the deposit may be lower. For example in the case of a first time homebuyer, purchasing a starter home who, historically, may have funded the purchase with a higher percentage of

mortgage. In addition, we have noted that some homebuilders do not require a deposit at all.⁵

K.2.14 Our consumer survey found that most homebuyers⁶ paid a deposit (84 per cent), although the payments of deposits were less common in England and Wales compared to Scotland (83 per cent versus 93 per cent respectively).

K.2.15 Deposits paid ranged from £50 to £200,000. As a proportion of the purchase price, four in 10 paid less than one per cent of the cost of the property (38 per cent), whilst at the other end of the scale, seven per cent paid a deposit of over 20 per cent.

K.2.16 The average deposit paid worked out at seven per cent of the cost of the home.

Between exchange of contracts and completion

K.2.17 The homebuyer's legal advisers will finalise the deed of transfer. The documents will normally be in duplicate, top copy and counterpart. The homebuilder normally requires the homebuyer to sign both and then return them in good time for completion.

K.2.18 Where a mortgage is involved the homebuyer's legal advisers will also complete the mortgage deed for the homebuyer to sign.

K.2.19 The homebuyer's solicitor will also carry out any final searches which may be required to check that nothing (eg undisclosed mortgages or disputes) has since been registered against the home together with searches required by the mortgage company against the names of the homebuyer.

K.2.20 The homebuyer's legal advisers will ask the mortgage company to arrange for a final inspection and ask for the mortgage funds. Also the

⁵ See Table 2.10 OFT survey of homebuilders.

⁶ Excluding those who refused to give a purchase price (10 per cent) or could not remember it (less than one per cent).

homebuyer will be asked for the balance of the purchase monies together with sufficient funds to pay stamp duty land tax, Land Registry fees and the legal fees and disbursements.

Legal completion

K.2.21 Completion is the legal transfer of the title in the home to the homebuyer. The final balance for the purchase monies is also paid to the homebuilder, usually via the homebuyer's legal advisers. The transfer and any title documents are sent to the homebuyer's legal advisers and the keys released to the homebuyer. Legal completion may be some time after exchange of contracts if the home is still being built when contracts are exchanged.

After completion

K.2.22 The homebuyer's legal advisers will arrange to pay any stamp duty land tax owing, and apply to the Land Registry to register the home in the name of the homebuyer and details of any mortgage to be secured against the home.

K.2.23 Subsequent to the application for registration, the homebuyer's legal adviser will send the title deeds and documents to the homebuyer's mortgage company or, if there is no mortgage or the mortgage company does not require the documents, they will be sent to the homebuyer. As the Land Registry no longer issues a Land Certificate, the homebuyer's legal advisers usually receive on behalf of the homebuyer just a copy of the Land Registry register for the home called the Title Information Document.

Northern Ireland

K.2.24 On the whole, the standard conveyancing procedure for new homes in Northern Ireland is similar to that in England and Wales, although there are some differences. For example, the onus is on the homebuilder rather than on the homebuyer to make the necessary searches on title, quality and fitness. There is no exchange of two identical contracts. Instead the

parties agree one contract of sale, which when signed by both parties is exchanged. Further, although a deposit is payable it does not have to be paid on the same day as exchange. Payment of the deposit can be made soon after, for example within five days of the contract being agreed.

K.2.25 As in England and Wales on completion of the sale a homebuyer in Northern Ireland will receive the benefit of a builders guarantee, building insurance or an architect's or surveyor's certificate on a new home that confirms that the new home has been built in accordance with recognised building standards.⁷

Scotland

K.2.26 In Scotland, the conveyancing process for new homes is similar to that of England, Wales and Northern Ireland. As a result, it differs from the traditional Scottish conveyancing process which applies to the purchase of existing homes in Scotland. With the sale of new homes in Scotland, there is an offer to sell by the homebuilder, as opposed to an offer to buy from the homebuyer, as is the case with existing homes.

K.2.27 For the sale of an existing home a Scottish seller usually markets the property with the aim of inviting offers to buy via a bidding procedure. Although in a slow market homes may be advertised at a fixed price, for existing homes, potential homebuyers are generally invited to submit bids in sealed envelopes by a set date. On that date the envelopes are opened and the highest bid accepted. Soon after, at a much earlier stage than in the traditional conveyancing process for the rest of the UK the homebuyer and seller agree via missives⁸ the terms of purchase. This includes a set date on which the sale must be completed and on which

⁷ Recognised building standards in Scotland are set out in the Building (Scotland) Act 2003, the Building Standard (Scotland) Regulations 2004 .S.S.1 2004/406. and the Building Regulations (Northern Ireland) Order 1979/1709 and the Building Regulations (Northern Ireland) Regulations 2000/389.

⁸ Missives are letters exchanged between the parties' legal advisers which eventually result in a formal agreement legally binding on both parties.

the homebuyer can move in. New homes in Scotland are more likely to be sold at a fixed price which is not subject to bidding or negotiation.

K.2.28 In addition, Scots law does not recognise a right to receive pre-contractual deposits. This is confirmed by section 20 of the Estate Agents Act 1979 which prohibits Scottish estate agents from seeking or receiving pre-contract deposits. However, homebuyers in Scotland are often asked to sign 'reservation agreements' and pay reservation fees. Subsequently the terms of the sale are agreed by way of missives. These may in addition (and especially in a buoyant market) require the payment of a deposit to be paid to the homebuilder on conclusion of missives or by a set date thereafter.

K.2.29 Unlike the sale of existing homes, for new homes in Scotland a homebuilder and a homebuyer will not agree a specific date for completion at an early stage. Instead, the homebuilder will generally require that once the new home is constructed the homebuyer will move in as soon as is reasonable thereafter. If the new home has not yet been built, this usually means a short period after the construction works are completed and the home has been 'passed' by the Council and warranty provider.

K.2.30 As in the rest of the UK, on completion of the sale, a Scottish homebuyer will receive the benefit of warranty insurance, building insurance or an architect's or surveyor's certificate on a new home that confirms that the new home has been built in accordance with recognised building standards.⁹

⁹ Recognised building standards in Scotland are set out in the Building (Scotland) Act 2003, the Building Standard (Scotland) Regulations 2004 .S.S.1 2004/406. and the Building Regulations (Northern Ireland) Order 1979/1709 and the Building Regulations (Northern Ireland) Regulations 2000/389.