

Response to Questions – Private Management of public amenities on housing estates working paper – Competition and Markets Authority.

████████████████████ has not responded to questions 1, 2 and 3 of the working paper. ██████████ has provided answers to the following questions –

Question 4

- a) Please provide views on how effective the adoption process works in practice for (i) sewers and drains and (ii) SuDS. In responding, please state whether your response relates to England, Scotland or Wales, or a combination of nations. **As ██████ do not currently adopt any SuDS or sewers and drains in open space I am not sure that we are best placed to provide a view on how effective the adoption process is.**

- b) Will forthcoming changes in England remove any barriers to adoption? **Short answer is yes. Currently we ██████ do not adopt SuDS constructed as part of development in Open Space land. With the implementation of Schedule 3 of the Flood & Water Management Act we would become the SuDS Approval Body (SAB) and will be expected to adopt SuDS and associated drainage infrastructure serving more than one property and thus removing any self-imposed barriers that ██████████ has had in place.**

- c) In relation to Wales, if implemented, would the recommendations from the review of the implementation of Schedule 3 of the Flood and Water Management Act 2010 remove any barriers to adoption? **From speaking with colleagues in Wales it does sound that ensuring funds are in place for the long-term maintenance of SuDS assets adopted by local authorities is a key matter that has lacked any set guidance from the Welsh Government and has caused issues. If a national set of guidelines were to be produced for Wales, then I could only see that having a positive impact in removing barriers to adoption of SuDS features. I just hope that the government in England follows the advice of the Welsh Government review and puts in place a national set of guidance on commuted sums / future adoption costs.**

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Question 6

a) Would enhanced consumer protection measures by themselves provide sufficient protection for households, or would mandatory adoption also be necessary to achieve a comprehensive solution to the detriment experienced by households living under private estate management arrangements?

If the private management of public open space is to remain then the homeowners must have enhanced consumer protection measures. Whilst mandatory adoption would go some way to overcoming the consumer protection measures, homeowners would still need to have some consumer protection measures.

b) Are there any other measures that are required to provide adequate protection to households living under private estate management arrangements?

The documentation used for selling new homes with private estate management arrangements needs to be unequivocal in the requirements for the estate management charge and how this impacts the buyer and future owners.

c) Do the protections afforded to households in Scotland by virtue of the Property Factors (Scotland) Act 2011 provide adequate protection, in accordance with the principles outlined above.

This proposal has merit and homeowners would find it easier to take action against the estate management company.

d) Should such measures be implemented by the UK, Scottish and Welsh governments, as appropriate, or by the CMA following the conclusion of a market investigation? Please explain why, and whether this differs by nation

For the consumer measures to be effective they should be implemented by Government as appropriate. This will enable there to be consistency across the issue.

Question 7

a) Would the determination of common adoptable standard support and increase in the adoption of amenities by local authorities?

A common adoptable standard would bring uniformity to the delivery of amenities by local authorities and would allow the community to know what to expect. The increase in the adoption of amenities by local authorities will only happen if there are sufficient resources to support this.

b) Are there existing standards that could be used to support the determination of common adoptable standards

Every Council has different standards for public open space and would need to be subject to consultation to establish a national standard.

c) Who should be responsible for determining and enforcing adoptable standards

The determination of adoptable standards would need to be by the Government using the Building Regulations Model and enforced by Local Authorities.

d) Should this option only apply to future housing estates or include existing estates? If the latter how and over what timescale could existing infrastructure be brought up to the agreed common standard.

Depending on the approach it could lead to two tier approach to the provision of public open space with new estates having infrastructure to a national standard and older estates have different standards for existing infrastructure. It would take years for existing infrastructure to be brought up to a national standard and would be financially hard for local authorities without appropriate resourcing.

Question 8

a) How should local authorities fund the cost of remedial work required to bring a public amenity up to adoptable standard?

This should be funded by either utilising a bond paid by the house builder to the local authority or through a central fund which all house builders must pay into run by Government. The local authority can then claim from this fund.

b) Which sanctions, if any, should be available to public authorities in case a housebuilder fails to build a public amenity to the adoptable standard?

One sanction would be to increase the size of bond for any future developments that the housebuilder constructs. A notice should be issued by the Land Registry to go on the sale documents to explain what has happened where the housebuilder has not met the adoptable standard.

The bond is not returned to the house builder where the standards have not been met and where necessary additional bonds should be sought

c) Are there particular examples of standard setting arrangements in Britain that should inform our approach? For example, are there lessons from the requirements of the Roads (Scotland) Act 1984 and the Security for Private Road Works (Scotland) Regulations 1985, SI 1985/2080 (as amended) that should be considered across England and Wales?

No Comment

Question 9

a) Is mandatory adoption likely to be an effective and feasible option to address our emerging concerns in relation to new housing estates? Please state whether this applies in general terms, or to specific amenities, and/or in specific nations.

It will only be effective if driven by the Government and that sufficient resources are made available to local authorities in both the short and long term to deal with new housing estates. This is in general terms for the adoption of all public amenities.

b) Do you agree with our preliminary view that mandatory adoption is likely only to be practicable for new housing estates, given the significant additional challenges and costs of retrospective adoption? Please explain your views.

The preliminary view is that mandatory adoption would only be suitable for new housing estates, though this will create a two tier approach to housing estates and the provision of public amenities, particularly with public open space.

The management companies for estates would need to be subject to more rigour in how they operate on a day to day basis.

c) Do you consider there to be any unintended consequences from mandatory adoption? If so, please describe the consequences and state whether this applies in general terms, or to specific amenities, and/or in specific nations.

Mandatory adoption of public amenities would lead to the reduction of the private management companies and would potentially result in the loss of jobs

d) Are there circumstances where it may not be appropriate for a local authority to adopt a public amenity? Please provide an explanation.

There are no obvious circumstances for a local authority not to adopt a public amenity, provided the financial resources are available in full. Unless it was for a development of less than five properties. Open spaces should always be publicly accessible when constructed on a housing estate unless there is a specific reason such as a garden area for block of flats which has restricted access to the occupiers of the flats.

Question 10

a) Are our proposed criteria for determining which public amenities should be adopted the right ones? Are there amenities that we have not mentioned but should be included?

The proposed criteria would be suitable. The working paper has covered the major amenities that are constructed by the housebuilders.

Question 11

a) How should local authorities fund the long-term ongoing maintenance of adopted public amenities? Please provide examples of existing or considered funding mechanisms where relevant (for example we noted in paragraph 3.58 the national commuted sums approach considered in the review in Wales of the implementation of Schedule 3 of the Flood and Water Management Act 2010).

The issue of long term maintenance of adopted public amenities is critical for a local authority due to issues of financial and staff resources. The key is to provide sufficient finance to enable the maintenance to cover between 10 and 20 years particularly for public open space. This commuted sum would need to be paid up front to avoid a situation where a house builder no longer exists and is unable to make any staged payments.

There would need to be an agreed schedule of maintenance between the housebuilder and the Council so all parties are aware of the responsibilities of the Council and the housebuilder. This would then be made public so the householders are on the state are aware of the schedule and the process is made transparent.