A. Adoption of infrastructure / facilities, and the Adoptions Process (England only)

Highways

Our opinion is that the process for obtaining the required technical approval of new roads is relatively straightforward. However, once new roads have been constructed, the process for ensuring the local authority adopt the roads can be both problematic and complex. There are two primary reasons for this:

1. Where adoptable foul and surface water drainage are in or underneath the roads, local authorities will not adopt those roads until the drainage has been adopted by the relevant Water Authority, who themselves are often insistent on minimum build-out quota across housing schemes before they are willing to do so. Consequently, roads serving large-scale housing developments are often not eligible for adoption until several years post-construction. This prevents housebuilders from finalising their adoptions within their own parcels until our spine infrastructure is adopted and can generate significant costs to maintain and remediate infrastructure for an undefined period. Ultimately, these bottlenecks challenge the economic viability of large schemes that are already only marginal in profitability at best. With reference to schemes being delivered within our pipeline, if several housebuilders were made responsible to deliver spine infrastructure themselves this would be unsustainable.

2. The judgement as to whether the constructed roads are in a suitable condition for adoption is entirely at the discretion of the relevant local authority who are, in many cases, inconsistent in their approach and level of skilled resource. In our experience, the judgment of local authorities is subjective, with some engineers being 'reasonable' with requirements and others being, in our opinion, 'unreasonable'. An example of this is on one of our developments [redacted], where we have incurred additional costs of [redacted] exclusively for highway repairs to meet the requirements of the local authority highways engineer. Though some remedial works were justifiably required, we believe that the local authority requirements were far in excess of both the quality benchmarks typically required in our experience, and those previously discussed / agreed. These spine highways are still not adopted despite construction commencing in 2015.

In addition, contradictory requirements between the planning and highways departments in the same local authority area makes both the design and adoption process more difficult. An example of this being in [redacted] where the planning department stipulate traffic calming measures as essential, but the local authority highways team will not adopt such measures. This level of departmental inconsistency drives inefficiency and causes delays in bringing sites forward.

Drainage

Our opinion is that the adoption process for foul sewers is moderately effective. The adopting water authorities are relatively clear about their requirements. However, as a developer, we often construct sections of 'spine' or 'enabling' drainage to service housebuilder plots of between 10 - 500 houses and typically this will not be adopted until the upstream housebuilder has a 51% occupation rate. As a result, we have no control over the timescales for adoption of our drainage, resulting in the 'validity period' of a Section 104 agreement expiring before the upstream developments are sufficiently constructed. In cases such as this, the adopting water authority can request that We submit a new application for Section 102 drainage with more onerous requirements, prior to adoption, adding further delays and costs to the process.

However, specifically relating to sustainable drainage systems ("SuDS") on residential developments, this adoption process is not effective and is very difficult to achieve. Our experience is that local authorities and water authorities do not want to adopt SuDS. Anecdotally, we believe this is due to a lack of skills and resource within the local authorities, and the ongoing maintenance liabilities that accompany the proper management of

SuDS. In one development of over 300 homes, we have, to date, been unable to achieve adoption of any highways or surface water drainage (which is also impacting upstream housebuilder drainage) due to the water authority and local authority requirements being directly contradictory. The SuDS in question has demonstrably been constructed in accordance with all relevant Ciria Guidance and has performed without issue since construction for over three years, however neither the local authority nor water authority are prepared to adopt the SuDS as constructed.

The impending – and currently unclear – legislation on biodiversity net gain ("BNG") also creates a complication relating to the adoption of SuDS, with SuDS basins, ponds and channels a good opportunity to create areas that contribute to the required BNG at a development. Making SuDS adoption mandatory could impact on a developer's ability to take advantage of this and may therefore make site viability challenging, potentially impeding development.

We welcome the proposed forthcoming changes, particularly relating to SuDS, though we do retain reservations about whether local authorities will be given the necessary funding to recruit and meet the needs of the proposed changes required to ensure the system operates more effectively.

B. <u>Estate Management Charges</u>

Whilst we appreciate that there are several concerns regarding private management companies, charges levied against residents and the limited protections for those obliged to pay such a charge, it should also be noted that they play an important role in placemaking and the development and integration of communities at new housing developments. With RMCs, ultimately ownership and control of unadopted amenity land and facilities at developments will pass to those people that live there and pay the annual charge. Whilst reliant on individual residents being willing to become directors, this gives them control (both operationally and financially), a sense of ownership and the ability, subject to planning, of managing those areas with a level of autonomy - something which would be taken away with mandatory adoption.

Roads, pavements and foul drainage on our own developments that have been built by us are not included within the estate management charges levied by our management companies and we would ensure these facilities are subject to adoption by the relevant body. We would however be very concerned about the increase in the adoption, or mandatory adoption, of other amenity areas such as open spaces and play areas accessible by the public for several reasons including:

1. Lack of local authority budget and resource to manage to the standard required, particularly whilst development is still ongoing. In addition, any future cuts to local authority budgets may mean reduced services in the future, having a detrimental effect on public open spaces (which may be 'easy targets' for cuts) and the communities that use them. This is of particular concern given that, in recent years, several local authorities, such as [redacted], have declared significant financial issues.

2. Lack of clarity of responsibility, particularly where there are developments that have a mixture of adopted and unadopted facilities. Residents may also have difficulty understanding such arrangements and may create issues by withholding their estate management charge for reasons that are not even within the scope of the charge.

3. Lower standard, and reduced frequency, of maintenance by the local authority. In our experience amenity land is better maintained when managed privately, and residents may have less confidence in the maintenance or management of assets managed by the local authorities.

4. Developers and housebuilders may, for viability reasons, be less willing to produce good quality, inclusive open spaces should they be expected to fund them in perpetuity via a commuted sum, rather than the costs being covered by residents.

5. Difficulty for developers and housebuilders in achieving the required level of biodiversity net gain at developments.

We do believe that some form of common standards, or legislation, for developers and housebuilders to adhere to would likely be beneficial and may address some of the current areas of concern, and we would be happy to engage with the CMA to assist with shaping any such standards. Some comments on the issues examined within the working paper are as follows:

1. ***Transparency***: due to the nature of our developer role, it is the housebuilders at our developments that explain to their potential purchasers the role of the management company and the associated estate management charge, how much it is and the scope of it. In our experience, the extent to which these communications are successful, regardless of literature provided, is dependent on the quality of the housebuilder sales team (and their knowledge of such charges) that interacts with prospective purchasers. Upon reviewing some resident feedback, some sales teams incorrectly state the amount, start date and scope of the estate management charge. Staff turnover can, in our opinion, also be an issue within sales offices, with some site-specific knowledge not being handed over. We are also frequently informed by residents on our developments that they are often not adequately informed by their own solicitor around the detail of the estate management charge, and clearly conveyancing solicitors have a key role to play in this process. In forming any recommendations for improvements to transparency, the level of detailed granularity required needs to be balanced to ensure extended time spent dealing with onerous requirements does not translate to higher management fees.

2. ***Quality of service****:* in our experience, property owners are satisfied to pay their estate management charge when they feel they are receiving an appropriate level of service. However, where there is uncertainty around the scope of responsibility of the management company, or where areas yet to be developed are not maintained because they yet to be included within the scope, this creates misaligned expectations with assumptions that a service is being paid for but not received. This also causes ripple effects to other unrelated areas of general services provided by housebuilders: for example, we have had residents refuse to pay their estate charge because their housebuilder had not adequately dealt with snagging issues on their new home.

3. ***Impact on re-sale of home***: whilst we have not been impacted by any lender issues, given our service charges are all under £300 per annum, and the majority are capped, we are aware that lender requirements are becoming more stringent. Management packs are also provided by our appointed managing agent at £90, which is very reasonable, and our experience is that the majority of issues on re-sale occur when a vendor's appointed solicitor does not request a management pack until much later in the conveyancing process. As an example, we have been contacted by residents wanting to complete on their sale within a week of contacting us, but we / our agents had yet to receive a request for the required information despite the sale being agreed months previously.

4. ***Sanctions for non-payment***: Our view is that the ability to impose sanctions on those that choose to withhold payment of their service charge is important and is supported by the vast majority of property owners that pay their service charge in full and on time. Clearly, not having the ability to recover sums owed can create difficulties with cash flow, impact on services and is inequitable to those residents that do pay. Theoretically, paying an estate management charge should be no different to paying a council tax or utility bill where it is widely recognised that non–payment leads to more severe debt recovery

measures. However, we appreciate that any sanctions should be proportionate, with re-possession of a property, where an option for a management company, not necessarily something that should be considered.

5. ***Barriers to switching***: We feel it is beneficial from a community, stakeholder engagement and placemaking perspective, that we retain control of our management companies until a development is completed. However, beyond this, it is important in our view that there is the ability for residents to switch provider where the majority of residents are in agreement and/or if contractual key performance indicators or service-level agreements are not being met. In recent years we have appointed managing agents to oversee the relevant management company at most of our developments and retained the ability to switch provider (both during the ongoing development process to mitigate the risk of any severe issues of non-performance and following handover of the resident management company to residents). The CMA should also recognise whether there are any geographic "blackspots" in the UK where the ability to access choice from several providers is restricted because of market dynamics.

6. ***Ability to challenge / seek redress***: whilst we agree that residents have the right to a fair and equitable level of estate management charge, any ability for homeowners to challenge should also be fair and reasonable for the management company. Whilst redress legislation for leaseholders is often used as a comparator when discussing the rights (or lack thereof) for those on freehold developments, residents should have the right to reasonably challenge those providers that are taking advantage of the current system with clear supportive evidence. Nonetheless, any mechanism for remedial action should be highly efficient to avoid onerous and lengthy requirements, given these could detrimentally result in increased charges to residents as compliance related costs.