Barratt Developments Plc
Response to CMA Housebuilding Market Study Working Paper on
Private management of public amenities on housing estates
24 November 2023

1. Introduction

1.1 Barratt welcomes the CMA's working paper on private management of public amenities on housing estates published on 3 November 2023 ("the **Paper**") and appreciates the opportunity to comment on the various measures proposed by the CMA to address the issues identified in the Paper.

1.2 Barratt's response to the Paper is structured as follows:

(A) **Section 2** sets out Barratt's support for the CMA's provisional finding that a market investigation reference ("**MIR**") is not the most effective way to address the concerns identified by the CMA in respect of estate management arrangements, charges, and outcomes for consumers. Further, Barratt agrees with the CMA that government action is a more appropriate and comprehensive response to the detriment identified in the Paper.

(B) **Section 3 and Section 4** contain Barratt's comments on the likely effectiveness, potential costs and unintended consequences in relation to the CMA's proposed measures on (i) additional protection for households living under current private management arrangements (section 3) and (ii) reducing the prevalence of private estate management arrangements (section 4).

(C) **Section 5** provides Barratt's response to the consultation questions posed by the CMA in the Paper.

1.3 At the outset, Barratt agrees with the overall direction the CMA is heading in respect of private estate management which is bound to lead to positive outcomes for Barratt's customers. Barratt further welcomes the finding that the issues identified are better dealt with by government action as opposed to a MIR. This response is focused on addressing the likely effectiveness and any potential unintended consequences of the measures proposed by the CMA to address the issues identified.

1.4 In summary, Barratt proposes the following measures which largely align with the CMA's preliminary conclusions:

(A) **The New Homes Quality Code ("NHQC") should be extended to cater for the measures proposed by the CMA**. Barratt agrees with the measures proposed by the CMA on additional protection for households living under current private management arrangements. In particular, Barratt recognises that across the industry a lack of transparency has been an issue for some homebuyers. In this regard, Barratt notes that the NHQC has specific provisions requiring transparency as regards the involvement of management companies, and projected costs relating to estate management, including an indicative costs schedule. The NHQC has also implemented

several mechanisms for ensuring compliance. Most significantly, an independent certified ombudsman ensures a route to redress for breaches of the NHQC.[1]These measures are currently adhered to by most housebuilders. The majority of housebuilders already participate in the NHQC. The CMA should therefore explore proposing changes to the existing NHQC to cater for the additional protections it has proposed for homeowners already subject to estate management arrangements and further encourage all stakeholders to participate in the NHQC. Where possible, the CMA should use its consumer protection powers to investigate those stakeholders who do not sign up to the NHQC or repeatedly fail to adhere to the protective measures outlined in the Code.

(B) **The development of common adoptable standards for housebuilders agreed at a national level**. Barratt agrees with the CMA that reducing the prevalence of private estate management models could address the root cause of the concerns in respect of future housing estates by ensuring that local authorities become responsible for adopting and funding the ongoing maintenance of public amenities as long as those amenities are built to common adoptable standards. Barratt agrees with the CMA that these standards should be agreed at a national level by each government in the UK, and housebuilders should be required to build public amenities on housing estates to those standards. Where public amenities on new housing estates are not built to the determined adoptable standard, Barratt agrees that they will need to be brought up to that standard and the costs of doing so should be borne by the housebuilder. Should housebuilders be required to build public amenities to an agreed adoptable standard, this is likely to support local authorities to adopt those amenities and will likely reduce further maintenance costs and ultimately lead to reduced estate management charges. However, the determination of a national set of common adoptable standards is in itself insufficient to fully address the CMA's concerns and will only be effective if local authorities are mandated to adopt the public amenities (at a nationally standardised commuted sum – see below) if built to the requisite standard. The implementation of any national common adoptable standards should apply only to future housing estates and should not apply retrospectively.

(C) **A standardised commuted sum schedule based on elements of maintenance should be agreed at a national level to fund the ongoing maintenance of amenities adopted by local authorities**. Barratt agrees with the CMA's finding that mandatory adoption of public amenities by local authorities would halt the trend of falling adoption levels and prevent households from having to pay privately for public amenities. Barratt also agrees with the CMA that commuted sum payments by housebuilders would fund the cost of mandatory adoption. However, as with the determination of common adoptable standards, a standardised commuted sum schedule should be agreed at a national level to ensure certainty for housebuilders and avoid the risk that local authorities charge exorbitant, disproportionate, and inconsistent commuted sums. Safeguards should be built into the national framework to ensure that commuted sum payments are ring-fenced from the wider Local Authority purse to

[1] The Ombudsman is certified to Stage 1 in the Chartered Trading Standards Institute's Consumer Approval Scheme (CCAS). Barratt understands the NHQB is now working hard to achieve Stage 2 approval and become a fully accredited Code of Practice.

ensure that the sums are entirely allocated to fund ongoing maintenance of the amenities on site. Furthermore, this national framework should also clearly outline the determination of inspection fees to be charged by the local authorities, to ensure certainty and avoid the risk of local authorities charging exorbitant, disproportionate and inconsistent inspection fees. Housebuilders need to be able to predict accurately the cost of building public amenities and the related inspection fees and commuted sums in advance so that these can be taken into account when valuing the land they buy. It may also be appropriate for the national framework to include a rapid appeal mechanism for housebuilders to challenge the commuted sum in the event that a dispute arises between the LPA and the housebuilder as to the sum to be paid. Such a national framework will avoid long drawn-out negotiations between housebuilders and local authorities on these issues.

2. A MIR is not the most effective way to address the concerns identified by the CMA

2.1 Barratt welcomes the CMA's provisional finding that a MIR is not the most effective way to address the concerns identified in the Paper, as they are not related to competition issues and there are other more proportionate remedies available which will address the issues identified and do so in a shorter timeframe. Indeed, the CMA is not best placed to enforce and monitor a discrete solution as the measures outlined would be most effective if underpinned by a broader regulatory framework, including appropriate tools for other bodies to monitor and enforce against breaches of those measures.

2.2 Barratt agrees with the CMA that the root cause of the concerns identified relate to the falling levels of adoption of amenities by local authorities. This is an issue that can only be effectively dealt with through legislative reform and accordingly it would not be proportionate to initiate a MIR, potentially leading to the application of the CMA's order-making powers when government action is needed to address the increasing prevalence of private management, and any underlying market power of estate management companies.

2.3 Furthermore, a MIR will only result in prolonging the CMA's investigation which would exacerbate the negative effects of the concerns identified and delay the adoption of the relevant measures, potentially leading to greater harm to consumers, when government action and the measures identified by the CMA would serve to provide both interim and long-term solutions to the concerns raised.

3. Measures on additional protection for households living under current private management arrangements.

3.1 The CMA's emerging view is that households living under private estate management arrangements can face poor outcomes, and in some cases potentially serious detriment, and can be powerless to address this. The CMA suggests several overarching principles that measures regarding the current estate management system should align with. These are: (i) transparency, (ii) cost-reflectiveness and accountability, (iii) proportionality, (iv) switching, (v) redress and liability; and (vi) onward sale.

3.2 At the outset, Barratt maintains that its customers are provided full transparency over any private estate management arrangements prior to the purchase of a new home. However,

Barratt agrees with the CMA that implementing protective measures for the wider industry is likely to have a positive outcome for homeowners that may be subject to undesirable estate management arrangements. Barratt provides its view on the effectiveness of each of these measures below.

Transparency

3.3 The CMA has proposed that all housebuilders could be required to provide information in relation to the management of the new housing estate to customers prior to the purchase of a new home, including:

(A) a full description of the estate management arrangements in place, including the nature of any contract the homeowner will enter into with the relevant party and details of any covenants relating to estate management charges that the homeowner will be required to enter;

(B) the charges payable in the first year of ownership and a statement that charges can increase annually and may not be subject to any cap;

(C) how the estate management process operates in practice (i.e., who owns the public amenities and who maintains them);

(D) whether, and if so, how the estate management company can be changed; and

(E) households' rights to redress.

3.4 Further, the CMA has proposed that following the purchase of a new home, households could also be entitled to receive clear and transparent invoicing, including a full breakdown of costs on an annual basis.

3.5 As above, Barratt's customers are provided full transparency over any private estate management arrangements prior to the purchase of a new home. Indeed, all customers are provided with a new homes information pack which contains information on any management company commitments and associated fees. In Scotland, the development factor information and fees are always declared at the point of sale. Deeds of conditions plans identify the public amenities, such as public open spaces.

3.6 [REDACTED]:

(A) [REDACTED];

(B) [REDACTED];

(C) [REDACTED];

(D) [REDACTED].

3.7 [REDACTED].

3.8 Notwithstanding the above, Barratt agrees with the CMA that greater transparency in this area would benefit consumers, help them make informed choices and would not be difficult to implement. Accordingly, Barratt agrees with the CMA that the measures proposed in respect of transparency would be effective to address the concerns identified. Barratt considers that in addition to the protection already provided under the existing NHQC, the Code can be extended to cater for the measures identified by the CMA. For example, the NHQC could provide for information on the estate management arrangements and associated charges to be provided to customers at the beginning of the sale process, rather than after the reservation stage. Further, the NHQC could be amended to provide clarity on the customers rights to switch estate management companies or seek redress. Barratt therefore believes that the NHQC provides a platform to improve the current measures and promote effectively their implementation and enforcement with the current ombudsman system.

3.9 The NHQC has specific provisions requiring transparency as regards the involvement of management companies, and projected costs relating to estate management, including an indicative costs schedule, which must reasonably identify likely costs associated with the tenure and management of the new homes for the next 10 years. The costs schedules must also clearly identify any financial obligations in respect of public amenities (such as street lighting, parks and landscaping).

3.10 The NHQC also requires that:

(A) the content of any sales and marketing material relating to the new home is clear, fair and not misleading, legally compliant, and uses plain language;

(B) in describing the new home, the developer must inform and not mislead customers, including as to management services, service charges and any resale restrictions/covenants;

(C) employees do not make assumptions about the degree of knowledge that a customer has;

(D) the developer has systems and procedures in place to enable them to accurately and reliably meet NHQC requirements. This includes providing training on the NHQC to all employees who deal with customers; and

(E) any agents used by the developer must ensure that they are familiar with and meet NHQC requirements.

3.11 The NHQC has implemented several mechanisms for ensuring compliance. Most significantly, an independent certified ombudsman ensures a route to redress for breaches of the NHQC.[2] Residents have two years to apply to the ombudsman for resolution of a dispute, which is

[2] The Ombudsman is certified to Stage 1 in the Chartered Trading Standards Institute's Consumer Approval Scheme (CCAS). Barratt understands the NHQB is now working hard to achieve Stage 2 approval and become a fully accredited Code of Practice.

sufficient time for disputes relating to transparency to have been resolved. The NHQC also has in-built mechanisms to test the success of its provisions:

(A) the NHQB has implemented a developer audit process that will measure compliance with the NHQC, including but not limited to, ombudsman outcomes, complaint trends, and customer satisfaction levels; and

(B) the ombudsman will publish anonymised case studies to provide developers with lessons learned on issues raised and resolutions.

3.12 Barratt agrees with the comments from other respondents to the CMA's Statement of Scope that further time is needed to assess the success of these aspects of the NHQC, as it was only launched in 2022, and it is desirable that unnecessary duplication of voluntary standards is to be avoided.

3.13 Accordingly, Barratt would be supportive of an extension to the NHQC and the remit of the ombudsman to include the transparency measures identified by the CMA above.

Cost-reflectiveness and accountability

3.14 To address the concerns around non-cost reflective annual increases by management companies, the CMA has proposed that any increase in the level of the charge beyond the first year must be reasonable with reference to the invoiced costs of providing the service, communicated openly, and be easily challengeable by households. In order to achieve this, the implementation of these principles would need to set out a clear framework to guide management companies in how they should tender for work, monitor the quality of that work and set the level of management charge they are allowed to include.

3.15 While it may be more appropriate for management companies to comment on this particular measure and any unintended consequences that may arise from it, Barratt agrees any increase in the level of the estate management charge beyond the first year must be reasonable with reference to the costs of providing the service, communicated openly, and be challengeable by households. This would help ensure that households are paying reasonable charges for the services that they receive not just in the first year, but in future years. Barratt further agrees that the implementation of these principles would need to set out in a clear framework to guide management companies on how to achieve this.

Proportionality

3.16 Barratt agrees that households should not be subject to potentially significant financial detriment through the threat of, or imposition of, disproportionate sanctions for non-payment of charges. Accordingly, Barratt agrees with the CMA's proposal that the remedies available under Section 121 of the Law of Property Act 1925 should be abolished through legislation where these relate to the non-payment of estate management charges. In the meantime, the CMA could in its final report indicate that the use of Section 121 in these circumstances is likely to be challenged by the CMA as a breach of consumer law.

Switching

3.17 Barratt agrees with the CMA that it may be difficult in certain circumstances for homeowners to switch from an embedded management company. Should homeowners face unreasonable charges or levels of service from their existing management company, households should be more readily able to switch their estate management company which may result in securing higher standards of service and driving competition between estate management companies. Therefore, Barratt supports the measure proposed by the CMA that would result in empowering households to review and change estate management companies through a routine process of annual renewal or tender. Barratt suggests that this issue could be addressed by extending the NHQC and/or HBF Code and complaints process to cater for the appointment, switching and audit of management companies.

Redress and Liability

3.18 Barratt agrees with the CMA that households should be entitled to contest charges and to obtain redress by access to an appropriate ombudsman with the necessary powers of investigation. As the CMA points out, the ombudsman's remit should include confirming that management companies do not place disproportionate legal obligations or liabilities on households. As suggested above, the remit of the ombudsman under the NHQC could be extended to cater for this remedy.

Onward sale

3.19 Barratt notes the CMA's suggestion that estate management companies could be required to provide, without charge, any information about the arrangement that a household reasonably requires to progress the sale of their home. Barratt agrees that this information should be provided to households free of charge. However, recommending that households should be provided with the right to progress sales without the approval of the management company will likely lead to an undesirable outcome for all parties involved in the sale process and would almost certainly result in significant uncertainty as to the management of amenities on the site. There needs to a contractual relationship between the new owner and the management company. This can be achieved by signing a standard form contract whereby the new owner accepts the obligations accepted by the previous owner. This simple mechanism, if completed, should result in approval of the sale by the management contract without the need for any further negotiations.

Conclusion: measures on additional protection for households living under current private management arrangements.

3.20 Barratt agrees with the CMA that a package of measures in alignment with the principles set out above would result in increased protection for households living under private estate management arrangements and could be implemented to make a material contribution towards addressing the concerns raised on estate management. Further, the NHQC and the remit of its ombudsman could be extended to cater for and enforce these measures.

4. Measures on reducing the prevalence of private estate management arrangements

4.1 The CMA has concluded that reducing the prevalence of private estate management models by ensuring that local authorities become responsible for funding the ongoing maintenance of

public amenities could address the root cause of the concerns in respect of future housing estates. The CMA has proposed that this can be done via a combination of:

(A) the development of common standards for housebuilders to adhere to; and

(B) mandatory adoption by local authorities of amenities built to those standards.

4.2 Barratt addresses both proposed measures below.

Determination of common adoptable standards

4.3 The CMA has suggested that determining and enforcing common adoptable standards for the construction of public amenities could address the barriers to the adoption of public amenities.

4.4 Barratt agrees with the CMA that the appropriate measure to address this issue is for common adoptable standards to be agreed at a national level by each appropriate authority in the UK, and housebuilders should be required to build public amenities on housing estates to those standards. While Barratt maintains that it (and most other housebuilders) already builds amenities to an adoptable standard, implementing a national framework that outlines the agreed adoptable standard is likely to promote the adoption by local authorities of public amenities. Further, common standards will likely reduce further maintenance costs and ultimately lead to reduced estate management charges. However, funding the adoption of public amenities by local authorities remains an issue – we discuss this below.

4.5 Barratt notes that in Britain, various codes already exist to provide guidance on common standards. These are:

(A) BS4428 1989 – Code of Practice for General Landscape Operations;[3]

(B) BS7370 1993 – Grounds Maintenance. Recommendations for Maintenance of Soft Landscape; [4]

(C) BS 3969:199 - Recommendations for Turf for general purposes;[5] and

(D) Guidance for outdoor sport and play.[6]

4.6 These standards could be used as a guide to build national standards throughout the UK.

[3] https://knowledge.bsigroup.com/products/code-of-practice-for-general-landscape-operations-excluding-hard-surfaces?version=standard

[4] https://knowledge.bsigroup.com/products/grounds-maintenance-recommendations-for-maintenance-of-soft-landscape-other-than-amenity-turf?version=standard.

[5] https://knowledge.bsigroup.com/products/recommendations-for-turf-for-general-purposes?version=standard

[6] https://www.fieldsintrust.org/Upload/file/guidance/Guidance-for-Outdoor-Sport-and-Play-England.pdf

4.7 Where public amenities on new (future) housing estates are not built to the determined adoptable standard, Barratt agrees that they will need to be brought up to that standard. In this instance, Barratt believes that the most appropriate solution is for the housebuilder to be responsible for completing the work necessary to meet the determined adoptable standard and should bear the cost of this remedial work.

4.8 A solution requiring the local authority to be responsible for completing the work to meet the determined adoptable standard by drawing upon bonds put up by the housebuilder would result in undesirable outcomes for all stakeholders. As the CMA points out, this system would necessitate the mandatory use of bonds by housebuilders which are likely to require complex and significant consultation before implementation and be the subject of further friction between local authorities and builders. The use of bonds is likely to also impose significant costs on the housebuilder which are best avoided since alternative and preferable solutions are available. Further, as pointed out by the HBF, SME housebuilders are most likely to be affected by requiring a bond which can be prohibitively expensive. In addition, various housebuilders have already raised concerns in respect of delays and inconsistencies relating to bonds, which are becoming increasingly difficult to agree and enforce. Lastly, Local Authorities will likely incur greater cost in conducting the works themselves.

Barratt agrees that the local authority should be provided with a range of sanctions to employ in the event that housebuilder fails to build a public amenity to the required adoptable standard and subsequently fails to carry out the remedial work required to bring the public amenity up to the adoptable standard.

Mandatory adoption

4.9 Barratt agrees with the CMA's finding that mandatory adoption of public amenities by local authorities would halt the trend of falling adoption levels and prevent households from paying privately for public amenities. Indeed, it is Barratt's policy to always seek adoption of public amenities by the local authority in the first instance, as opposed to establishing a management company.

4.10 Barratt further agrees with the CMA that to be implemented effectively:

(A) housebuilders would need to build all public amenities to an adoptable standard;

(B) housebuilders would be required to offer all public amenities for adoption by the local authority;

(C) local authorities would be required to adopt all public amenities that are built to the requisite standard;

(D) adoption by the local authority would have to take place upon completion of construction of the public amenity; and

(E) There would need to be a clear route outlined in national legislation for householders to enforce the above duties, in addition to an inspection regime to enforce those duties.

4.11 As discussed in more detail below, Barratt submits that a standardised commuted sum schedule should be agreed at a national level (as opposed to being set by the local authority) based on the objective and verifiable costs of the ongoing maintenance of amenities adopted by local authorities. Further, any inspection regime that flows from mandatory adoption should be clearly outlined in a national framework to ensure that such fees are reasonable, proportionate and predictable.

4.12 Barratt now address the areas for further consideration by government for the mandatory adoption of public amenities on new housing estates to be implemented effectively, namely:

(A) Specification of the public amenities to be adopted by the local authority;

(B) Funding of the maintenance of adopted public amenities;

(C) Inspection; and

(D) The steps that will need to be taken during the interim period from when mandatory adoption is accepted by UK, Scottish and Welsh governments as a viable solution to when it is brought into effect.

Specification of public amenities that must be adopted

4.13 Barratt agrees with the CMA that the following amenities should be required to be adopted by the relevant local authority.

(A) Roads that meet the eligibility criteria for public roads

(B) The connection to the sewer and drain network for homes that are built in appropriate proximity to those networks; [7]and

(C) Public open spaces on housing estates that are accessible to the general public.

4.14 In addition, Barratt submits that Sustainable Urban Drainage Systems ("**SuDS**") should also be added to the list of public amenities that should be adopted by local authorities. Barratt faces the same difficulties in seeking adoption by the local authority for SuDS as it does for other amenities therefore necessitating private estate management.

Funding of maintenance of adopted public amenities

4.15 The CMA have correctly acknowledged that mandatory adoption will have financial and resourcing implications for local authorities, which are currently already under resourced. Barratt therefore agrees that if adoption by local authorities is made mandatory, further consideration needs to be given to the funding of the long-term maintenance of public amenities, which is traditionally funded through council tax.

[7] Only those homes that are built in appropriate proximity to the network would have to be connected to it.

4.16 Barratt agrees with the CMA that commuted sums from housebuilders can fund the cost of the initial period of adoption. As the CMA recognises, this also allows local authorities to plan for the expense in advance of funding it themselves, for example, by investing the commuted sum to generate income, which was historically general practice before the financial downturn. To mitigate this financial impact, the CMA has suggested that commuted sums could be:

(A) hypothecated for maintenance expenditure and reflective of the typical cost of the ongoing maintenance of adopted public amenities. To ensure consistency in the calculation of commuted sums, local authorities could be provided with guidance on how to calculate the sums;

(B) set by the local authority and agreed with the housebuilder as part of the planning process; and

(C) published alongside each local plan so that all key stakeholders are aware of the methodology and housebuilders are able to take this into account for further developments.

4.17 Barratt does not agree that the payment of such a hypothecated commuted sum should be determined at the local authority level. This is likely to result in delays and lengthy negotiations. Local authorities may be reluctant to adopt public spaces and therefore have an incentive to delay adoption or inflate costs to disproportionate levels, which will undoubtedly create further barriers for SMEs. As the CMA is aware, the commuted sums required by local authorities often lack robust evidence as to how they have been calculated and any challenge to commuted sum payments invites considerable delays. The result of this is that local authorities often make adoption unviable as an option for the housebuilder by setting the commuted sum at a high and disproportionate level, without providing a sufficient breakdown or justification of the costs of maintenance when determining the size of commuted sums. As the CMA is aware, this results in the developer having no option but to seek private adoption in the absence of any legislation or regulation requiring the local authority to act reasonably and transparently when setting commuted sums.

4.18 Furthermore, there is a risk, absent a national framework for the calculation of commuted sums, of an inconsistent approach to commuted sums which differ by local authority which creates uncertainty as to the costs involved.

4.19 Therefore, Barratt proposes that a standardised commuted sum schedule should be agreed at a national level (as opposed to being set by the local authority) based on the objective and verifiable costs of the ongoing maintenance of amenities adopted by local authorities. Such a schedule could require the advance payment of the ongoing maintenance of adopted public amenities for a defined period (for example, 10 years). Any ongoing maintenance costs after this period could be funded by the local authority through the council tax in that specific area. Safeguards should be built into the national framework to ensure that commuted sum payments are ring-fenced from the wider Local Authority purse to ensure that the sums are entirely allocated to fund ongoing maintenance of the amenities on site.

4.20 This would give housebuilders cost certainty and enable them to factor in the commuted sum when negotiating prices with the landowner at the outset. In this regard, Barratt strongly agrees

with the CMA's finding that the prices of existing housing stock places a significant constraint on new housing prices, which would limit pass-through to consumers. [8]

Inspection

4.21 Barratt agrees that an inspection regime would be necessary to ensure that public amenities are built to the required adoptable standard and adopted by the local authority in a timely manner. Barratt further agrees that such inspections should be carried out by the relevant public authority.

4.22 However, as the CMA is aware, the inspection fee is often calculated as a proportion of the commuted sum. Therefore, if the commuted sum were to increase, so too would the inspection fees. In addition, local authorities tend to significantly overestimate the cost of road works, which are the basis for calculating the inspection fee, resulting in these fees being exceptionally high.

4.23 Therefore, similar to the standardised commuted sum schedule proposed above, it will be important to ensure that any inspection regime is clearly outlined in a national framework to ensure that such fees are reasonable, proportionate and predictable.

Interim preparation

4.24 Barratt agrees that it would take several years to implement the policy, legislative and practical changes required to effect mandatory adoption including embedding the new arrangements in each local authority's standard practice. For this reason, any such legislative reforms should be fast tracked by government.

4.25 Barratt agrees with the CMA that there are several measures to be taken during this interim period such as updating the Consumer Code for Home Builders and the NHQC to include requirements regarding the construction and handover of public amenities for adoption by local authorities, including setting out the common adoptable standards and the process for adoption.

4.26 Barratt also agrees that guidance could be provided to local authorities to set out their responsibilities in respect of the adoption of public amenities and thereby support effective implementation.

5. Responses to the CMA's consultation questions

5.1 Below, Barratt sets out its responses to the consultation questions posed by the CMA in the Paper.

Question 1

a) How effective is the process for the adoption of roads on new housing estates in England?

[8] As noted by Barratt in its deep dive presentation to the CMA on competition in the downstream market.

When applied as it should, from design inception to formal adoption, the process for adoption of roads can be effective. However, achieving formal adoption has been compromised by several factors:

- Excessive and varying commuted sum demands for future asset maintenance that are not supported by robust qualitative and qualitative evidence.
- Legal challenges over the interpretation of specific parts of the Highways Act.[9].
- Varying and inconsistent technical requirements applied by most of the Highway Authorities ("**HA**s") within England.
- HAs not following established/legislative procedure(s).[10]
- A lack of HA resources to process s.38 technical submissions, and considerable delays in issuing draft s.38 agreements.
- There have been instances when despite paying inspection fees some HAs have not always responded to requests for inspection at key/defined construction stages.
- Changes to previously agreed/consented highway construction specification(s) contained within signed s.38 agreements and which certain HAs insist must be implemented if highways are to be considered for adoption. Street Lighting specifications are particularly susceptible in this regard.
- There is an identifiable reluctance on the part of numerous HAs to proceed to formal adoption by whatever means. [11]

Notwithstanding the above, in Barratt's experience, roads are in the vast majority of cases adopted by local authorities after a number of years.

Housebuilders have a strong incentive to avoid the ongoing obligations involved in maintaining roads and the reputational risks of doing so given the need to get private roads funded by local residents. Highway authorities have the obligation to adopt roads that are built to the relevant standards, which facilitates the process of adoption. However, the process of adoption is time consuming, in particular because of the need to agree the level of contribution the housebuilder has to pay for ongoing maintenance in the form of commuted sums (see response to (b) below).

Barratt notes the CMA's comment that it has received mixed feedback as to whether local authorities are required to adopt roads on new housing estates. However, the legislation is clear. The HA is required to adopt, provided that the road is built to the appropriate standard[12] (albeit that in practice, adoption is often achieved through voluntary s.38 agreements with the local authority). [13] However, for the reasons explained in Barratt's RFI response dated 24 April 2023, it is generally more practicable to achieve adoption through a s.38 agreement with the local authority. S.38 of the Highways Act 1980 provides local authorities with the powers to enter into an agreement to adopt a newly constructed road.

b) What are the barriers to the adoption of roads on new housing estates in England?

[9] For instance, the case of Redrow and Knowsley Borough Council regarding the validity of imposing commuted sum payments. Case summary available here: https://www.bailii.org/ew/cases/EWCA/Civ/2014/1433.html

[10] For example, the serving of section 220 Notices (in this regard, see response below explaining the s220/s219 HA 1980 process).

[11] See the results of the HBF's freedom of information requests.

[12] Section 37 of Highways Act 1980.

[13] Ibid.

The principal obstacle is the need to agree an appropriate commuted sum. The commuted sums required by local authorities often lack robust evidence as to how they have been calculated and any challenge to commuted sum payments invites considerable delays. There is tendency for the HAs to significantly over-estimate the cost of highway works (sometimes by more than 50%) and these estimated costs are the basis for HA inspection fees which are often excessive. Plainly this complicates and extends the process for agreeing commuted sums, although Barratt notes that this does not disadvantage its customers, as Barratt will typically fund the maintenance costs of roads during this period.

By way of example, a number of HAs refuse to accept Barratt's retained, competent contractor competitive tender submission for the highway works to be adopted. These tender returns are frequently much lower than disclosed HA costs and are usually determined from the HA's existing Framework Contractor costs.

HAs are also known to impose disproportionate and at times excessive commuted sum payments for the maintenance of highway construction and street furniture they deem to be outside of the authority's standard specification for adoptable highways – street lighting, road name plates, traffic calming measures, Sustainable Urban Drainage Systems("**SuDS**") components, and on-street landscaping are often defined as out of specification works. The excessive nature of these commuted sums, often unsupported by robust qualitative and quantitative evidence has been a contributory factor in estate roads/verges regrettably remaining private.

This issue is not however a competition concern – Barratt considers that these concerns are likely to be materially reduced if a standardised commuted payment schedule is set for local authorities at a national level.

Barratt notes in this regard that calculation criteria for commuted sums already exist in some areas – for example in England:

- s.106 and/or local Supplementary Planning Documents stipulate the calculation criteria for certain elements, for example Local Equipment Area for Play, and Multi Use Game Areas; and

- some Highway Authorities have adopted the (discretionary) principles contained within the ADEPT (Association of Directors of Environment, Economy, Planning & Transport, formerly CCS, County Surveyors Society) Commuted Sums for Maintaining Infrastructure Assets Guide 2009.

Further barriers include:

- Resource limitations within HAs is a growing constraint leading to a lack of constructive interaction in the planning process. Whilst HAs are a recognised statutory planning consultee, it is common for HAs to seek significant changes to highway geometry post-planning consent and at the onset of the s.38 technical approval process. The extent of these changes can carry the risk of having to return to the planning process. Procedural delays are common with few highway authorities committed to engaging in pre-planning application discussions – a crucial event at a stage when the framework and requirements for highway adoption can be agreed.
- Access to bonding facilities can be an issue, especially for SMEs. Linked to this and to maximise inspection fees, it is common for HAs to grossly inflate their estimated cost of the

highway construction. This in turn has an impact on bond availability and the cost of securing such. Bonds are often considered front-line debt by financial institutions and therefore reduce a company's borrowing capability when seeking to invest in new land and development. Repeated and challenging pre-adoption inspections, coupled with requests for additional remedial works following completion of previously identified works is a frequent tactic used by HAs to delay formal adoption.

- The timely reduction/release of any bond or surety is a reasonable expectation but there are many instances when legitimate reductions and/or release(s) are delayed for indeterminate periods and for no specific reason other than the HAs reluctance to take on maintenance responsibility. Reducing and/or releasing bonds at the appropriate time makes the securing of future bonding provision much easier, whilst it reduces housebuilder financial responsibilities of having to maintain bonding provision for longer than necessary.
- The requirement for off-site highway improvement works (s.278) and for these to be agreed/implemented before the HA is prepared to enter into a s.38 adoption agreement, can introduce significant delays. Some HAs can insist that s.278 works must also have their own dedicated/separate planning approval despite being capable of being incorporated as part of the principal development planning application.
- Despite the existence of HA design guides, a growing number of HAs are insisting on pre-adoption safety audits. In some instances, these have been required up to 3 years after completion of the works. Consequently, adoption is delayed with bonds and/or cash surety provisions remaining in place for longer periods than necessary. In the circumstances, safety audits can be an unnecessary requirement and a can be a deterrent to formal adoption.
- Issues surrounding highway drainage can be problematic, i.e., HAs refusing to adopt roads when SuDS infiltration drainage/permeable paving is proposed and/or required as part of the LPA/LLFA approved surface water drainage strategy.
- Several HAs insist that on-site sewerage infrastructure, especially surface water assets must be formally adopted by the Sewerage Authority before formal adoption of any estate roads can be considered. This is despite the existence of a s.104 Water Industry Act adoption agreement for sewerage infrastructure being in place and supported with bonding provision (albeit not to the full value of the works, i.e., limited to 10% of the estimated cost of the works and based on industry accepted reasons).
- HAs are not agreeing to accept SuDS cellular drainage infrastructure as part of the adoptable highway construction is becoming increasingly common, citing a perceived increase in highway maintenance cost post-adoption as the reason.
- Although relatively rare and usually limited to historic and/or long-established 'feudal' family land holding interests, land acquisitions involving solely leasehold arrangements can be problematic. The Highways Act 1980 implies only freehold landowners can enter into a s.38 highway adoption agreement. If the epitome of title means the leaseholder or an appropriate representative/agent cannot be readily identified, it becomes difficult to conclude the s.38 process. Likewise, if a bona fide leaseholder is reluctant to be a co-signatory to the s.38 agreement. In the circumstances, recourse to the adoption of estate roads relying on s.37 may be possible, providing the HA is amenable, but s.37 offers no guarantees. Regrettably, private highways, maintained by a management company could end up being the likely outcome.

Question 2

a) How effective is the process for the adoption of roads on new housing estates in Wales?

b) What are the key barriers to adoption of roads on new housing estates in Wales?

Barratt considers that the effectiveness of the process for the adoption of roads and the key barriers to adoption in Wales is identical to the process in England as described in detail above.

Further, Welsh government enforced legislation to provide sprinklers on all new housing estates. This requires the installation of a private sprinkler main in the footway. A significant number of local authorities (including Cardiff CC, Newport CC and Bridgend C.B.C.) will not adopt roads with a private main in the adoptable road. This then precludes adoption. In addition, a few authorities address this matter through clauses in the s.38 agreement. Some HAs are becoming concerned about SuDS features, such as bio-retention verges being located next to the adoptable highway, despite the SuDS being subject to the SuDS Approval Body (SABs) detailed approval process**.**

c) What impact has the Good Practice Guide and Common Standards on highway design had on roads adoption on housing estates in Wales?

Highway authorities do not follow the Good Practice Guide and Common Standards in Wales. Each Local Authority has their own preferences. Some have their own guides from which they will not deviate.

Therefore, this appears to have been an aspirational means to facilitate adoption, but barriers still prevail, especially when it comes to sustainable drainage proposals as part of the highway construction. In Wales, the provision of sprinklers is mandatory, but the associated infrastructure is deemed private as noted above. Sensible construction practice would often see infrastructure laid in the road/footpath as part of the general water distribution system. However, HAs in Wales have been known to refuse adoption should this practice be followed.

d) In particular, have they reduced any barriers to adoption and achieved greater consistency in approach across local authorities?

This has not happened in practice. Moreover, barriers to progress have become more prominent in the case of Schedule 3 the Flood and Water Management Act 2010 ("**Schedule 3**") and the provision of SuDS. [14]

Question 3

a) How effective is the process for the adoption of roads on new housing estates in in Scotland?

Scotland local authority road departments all have published standard forms that are to be used for maintenance and adoption requests for roads, therefore a more standardised approach is taken. Accordingly, Barratt relies on local authority road departments 'standardised forms' to manage the process. Standards are set by a roads construction consent or section 56 agreement which is specifically approved by the Roads Authority and relates to alterations to existing highways.

[14] In this regard, see Arup review of the post-implementation of Schedule 3 in Wales (July 2023), available here: https://www.gov.wales/sites/default/files/publications/2023-07/sustainable-drainage-systems-suds-schedule-3-post-implementation-review.pdf

Barratt always seeks the adoption of public roads via the local authority route. In East Scotland, the highway inspection fees are typically calculated on a time basis, but in North and West Scotland, the fees are calculated using a combination of time and a percentage of the cost of the works. Adoptions are secured by road construction consents following a successful planning approval. The Highway Authority's standards must be followed, and inspections must be scheduled during the construction of the road infrastructure. Once completed, the roads are put on to a maintenance period, with any pertinent issues addressed to allow for formal adoption.

Despite the presence of supporting legislation, the issues encountered in England and Wales described above also arise in Scotland, with the exception of commuted sums.

b) What are the key barriers to adoption of roads on new housing estates in Scotland?

In Scotland, Barratt experiences the same challenges as in England and Wales, with the exception of commuted sums.

c) How does the process for adoption of roads in Scotland compare to the process for adoption in England and/or Wales?

See response to (a) above. In Scotland, the standard forms that are to be used for maintenance and adoption requests for roads typically ensures that commuted sums are not a requirement. Otherwise, the process for adoption is Scotland is similar as in England and Wales.

Question 4

a) Please provide views on how effective the adoption process works in practice for:

(i) sewers and drains and

Generally, the process is effective, but since Water UK/Ofwat introduced the Design and Construction Guidance ("**DCG**") for the adoption of sewerage infrastructure in April 2020 difficulties have been experienced, largely as a result of sewerage companies deciding what which amenities they will be prepared to adopt under s.104 of the WIA. That said, these standards are accompanied by Ofwat Codes for the Adoption of Sewerage Assets. Importantly, Water UK and Ofwat engaged with housebuilders to arrive at jointly agreed standards and protocols.

(ii) SuDS.

In responding, please state whether your response relates to England, Scotland or Wales, or a combination of nations.

SuDS (Wales)

The introduction of Schedule 3 has not resolved many of the longstanding issues which continue to have a direct impact on the approval and adoption of SuDS infrastructure. Delays in being able to commence on site are frequently caused by the long delays which invariably

occur because of the excessive time taken by the SuDS approval Body (the SAB) to approve SuDS applications.

Approval in place before Dŵr Cymru (Welsh Water) will enter into the s.104 adoption process. In addition, prior to adoption it is common to find post-construction performance monitoring of SuDS infrastructure has to be provided before adoption progresses.

Maintenance period of 2 years and the current agreements do not allow for partial reduction in bonds. This is unbalanced because the work is in place. There should at least be a partial completion reduction as there is with highway (s.38) agreements. SuDS Approval bodies repeatedly respond that they are under resourced. One authority is presently stating that the recent on-going rainfall (storm) events are diverting resources thus delaying technical approval.

Commuted sums vary across each SAB but are often very considerable. Also, the SABs are reluctant to give any figure or even indication until the SuDS technical approval is completed. This presents a risk to the developers' business which is not appreciated by the SAB.

SuDS (England)

Little progress has been made since the floods of 2007 despite the recommendations contained within the subsequent Pitt Report. [15]

Unfortunately, the process remains fragmented, underscored by the application of subjective design criteria (despite the existence of the CIRIA SuDS Manual), together with a litany of differing adoption requirements/criteria. Furthermore, adoption and/or the future maintenance of certain types of SuDS infrastructure is having to be considered/undertaken by various bodies/organisations. Whilst foul sewerage infrastructure is less of an issue, surface water infrastructure has become far more problematic with conflict between the requirements of LLFAs and Sewerage Companies becoming more commonplace. E.g., outfall locations, hydraulic design standards.

When confronted with intervening third-party land between a site and the outfall location, as preferred/demanded by respective bodies, i.e., an existing watercourse, it is not possible to rely on the s.98 WIA requisition process to provide the intervening infrastructure between the site and the outfall location – the statutory provisions do not allow for such. Third-party ransom payments (Stokes/Cambridge) [16] can be project threatening and this remains one of the fundamental flaws associated with Schedule 3. In addition, following the Supreme Court decision in United Utilities and Manchester Ship Canal Company, consent must be obtained from riparian watercourse owners to allow the actual discharge of surface water into the watercourse in perpetuity. [17]

SuDS Scotland

[15] See Government's Response to the Review (Final Progress Report 27th Jan 2012) here: https://assets.publishing.service.gov.uk/media/5a798dd9ed915d042206956e/2012-01-31-pb13705-pitt-review-progress.pdf

[16] Stokes v. Cambridge Corporation (1961) 13 P & CR 77.

[17] See https://www.bailii.org/ew/cases/EWCA/2022/852.html"

The issues experienced in Scotland are similar to those in England with a perceptible reluctance on the part of Scottish Water to adopt SuDS infrastructure.[18] Scottish Water have put in place a Vesting Team to encourage developers to come forward with SuDS adoption on legacy and new sites.

b) Will forthcoming changes in England remove any barriers to adoption?

The onset of Schedule 3 will help to a limited degree, but it will introduce a further tier of regulatory approval and control once the SAB is established. This in turn has the propensity to increase conflict in the demands/requirements imposed by the local planning authority, the SAB/LLFA, Internal Drainage Board, Environment Agency (if a main river is involved) sewerage company, highway authority, and Natural England.

In addition, concerns remain regarding the knowledge and experience of a newly constituted SuDS Approval Body. The critical question is whether this body has sufficient knowledge and experience of geology, hydrology, hydrogeology, soil/rock geochemistry, hydraulics and land law required to perform its function. This lack of expertise was revealed in the ARUP review of the post-implementation of Schedule 3 in Wales (see response above).

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?

The review undertaken by ARUP on behalf of the Welsh government has exposed many of the issues first identified when Schedule 3 was first mooted. Some of the recommendations suggested by ARUP, if implemented will be positive, but the outcome still leaves housebuilders with the prospect of a disjointed and fragmented process. Even if the recommendations contained in the ARUP Review are implemented, the following outcomes are still likely:

- SuDS adoption: SAB responsibility, but the sustainable highway drainage solution(s) will be excluded. Commuted sum payments for future maintenance of adoptable SuDS infrastructure by the SAB highly likely to be demanded from the housebuilder.
- Foul sewerage infrastructure: adoption will remain with the sewerage company.
- Sustainable on-site highway drainage infrastructure: approval/maintenance will likely be the responsibility of the HA, if they are prepared to adopt. Commuted sums for the maintenance of out of specification highway construction will continue to be demanded and will likely continue to lack adequate supporting robust evidence when it comes to how commuted sums have been determined.
- Attenuation ponds within public open space areas: a possible mixed adoption involving the SAB, Local Authority, Groundworks Trust, and/or management company: commuted sum payment for public open space maintenance is highly likely.
- How above ground SuDS infrastructure is expected to link/contribute to developments that have to achieve 10% Biodiversity Net Gain ("**BNG**") is still to be resolved, i.e., a key question is whether green surface water drainage infrastructure, namely, ponds/swales/rain

[18] See https://www.water.org.uk/wp-content/uploads/2019/02/SuDS-asset-register-and-mapping.pdf

gardens etc be allowed to contribute/offset the BNG requirement. BNG and SuDS will therefore become a further material consideration.

Question 5

a) What measure, or combination of measures would provide the best solution to our emerging concerns? Please give reasons for your views

Please see section 3 and section 4 above for the combination of measures proposed by Barratt to address the CMA's emerging concerns. These largely align with the measures proposed by the CMA.

b) Does the best approach to tackling our emerging concerns differ according to the amenity (eg roads versus public spaces) or by nation?

No, the combination of measures described in (a) above does not differ according to amenity or by nation.

c) Are there any options that may be more effective in addressing our emerging concerns than those that we have proposed?

See response to (a) above.

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?

Enhanced consumer protection in isolation is insufficient to provide protection for households. Mandatory adoption would be the most effective and responsive way forward. At present, the approval and adoption of public-use infrastructure is fragmented both in terms of the bodies involved and the significant variability in the standards being applied. For example, there are c.152 highway authorities in England with almost all applying differing design and construction standards for adoptable estate roads. The onset of Schedule 3 in England and the creation of a respective number of separate SABs will see the level of fragmentation and potential inter-body conflict increase. The preference would always be for public-use amenities, together with road and sewerage/drainage infrastructure on a new residential development to be adopted by respective competent bodies who have clearly defined responsibilities, accompanied by key stage obligations/timings.

Notably, the creation of new housing provides income generating assets for several bodies, typically water and sewerage companies and who benefit from assets that are income generating in perpetuity. These assets are transferred to water and sewerage companies for zero consideration. Such material factors need to be taken into consideration when setting down terms and conditions for asset adoption and which must be sensible, fair, proportionate, and equitable. Whilst Scottish and Welsh governments are likely to go their own legislative way, if there is a process that can be underpinned by appropriate national standards, defined procedural methodology and responsibilities, together with proportionate and accurate reflective costings, then we would see a more reliable outcome offering greater confidence

for new homeowners and house builders. Such a concept has been suggested many times over by the UK house building industry but largely ignored.

Management companies may still continue to have a role, but local authority adoption is always preferable. However, as the CMA has identified, mandatory adoption should not be retrospective and should apply only to future housing estates.

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

See response to 5(a).

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.

No. For example, issues regarding adoption of SuDS infrastructure by Scottish Water persist. All Road Construction Consents are aproned under the Road Scotland Act in theory if built in accordance with the approval then ensures that the Local Authority adopt if and when put forward. The difficulty currently is that the Local Authorities, due to budget constraints, are reluctant to adopt and are using the system to continual delay. Likewise with Sewers and SuDS when designed in accordance with Sewers for Scotland and built in accordance with the approval will ensure adoption if and when put forward. Scottish Water have put in place a Vesting Team to encourage Developers to come forward with adoption on legacy and new sites.

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.

As explained above, the measures identified by the CMA should be implemented by the appropriate government and a market investigation is not required or advisable.

Question 7

a) Would the determination of common, adoptable standards support an increase in the adoption of amenities by local authorities?

No. The determination of common adoptable standards at a national level will result in a uniform framework for construction and infrastructure development. This is a necessary component of a mandatory adoption system but not sufficient to ensure universal adoption. While a uniform standard may not directly result in an increase in the adoption of amenities by local authorities, it will certainly simplify and streamline the approval process for local authorities, reducing uncertainty and making it easier for LPAs to assess and adopt public amenities.

Common adoptable standards may also promote efficiency and potentially lower costs, which may result in LPAs being more accepting of adoption. However, it is still imperative for LPA adoption to be mandatory to ensure that the issues recognised by the CMA are fully addressed.

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

Despite the existence of recognised standards for open space, currently defined by Fields in Trust, a charity incorporated by Royal Charter, this is largely the remit of the local authority and driven by existing planning policy. Historically, there was the Six Acre Standard for public open space and applied on a varying basis by planning authorities. However, this too became part of local plan planning policy.

Barratt notes that in Britain, various codes already exist to provide guidance on common standards. These are:

(A) BS4428 1989 – Code of Practice for General Landscape Operations;[19]

(B) BS7370 1993 – Grounds Maintenance. Recommendations for Maintenance of Soft Landscape; [20]

(C) BS 3969:199 - Recommendations for Turf for general purposes;[21] and

(D) Guidance for outdoor sport and play.[22]

These standards could be used as a guide to build national standards throughout the UK.

In terms of SuDS, the CIRIA SuDS Manual constitutes a good example of a national, accepted standard for surface water drainage that can apply across the UK, including devolved administrations. In Barratt's view, the 'manual' (currently under review as part of the intended Schedule 3 introduction for England in 2024) should be the defined national standard.

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

The common adoptable standards should be agreed at a national level by each government in the UK, Scotland and Wales. Enforcement of the standard should then fall to the relevant LPA by ensuring that LPAs have the necessary enforcement mechanisms i.e., sanctions where a housebuilder fails to build to the adopted standards or fails to carry out the remedial work.

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

[19] https://knowledge.bsigroup.com/products/code-of-practice-for-general-landscape-operations-excluding-hard-surfaces?version=standard

[20] https://knowledge.bsigroup.com/products/grounds-maintenance-recommendations-for-maintenance-of-soft-landscape-other-than-amenity-turf?version=standard.

[21] https://knowledge.bsigroup.com/products/recommendations-for-turf-for-general-purposes?version=standard

[22] https://www.fieldsintrust.org/Upload/file/guidance/Guidance-for-Outdoor-Sport-and-Play-England.pdf

As the CMA has recognised, this should only apply to future housing estates, given the likely significant additional challenges and costs associated with implementing the retrospective common standards on existing housing estates. In any event, Barratt submits that the vast majority of amenities and infrastructure are already constructed to an adoptable standard.

Question 8

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

As above, LPAs should not fund the cost of remedial work required to bring a public amenity up to an adoptable standard. The housebuilder should be responsible for completing the work to meet the adoptable standard and should bear the cost of this remedial work provided that this cost is predictable and proportionate. However, Barratt recognises that there will be cost implications for local authorities who monitor/enforce against the adoptable standards. Such costs should be factored into the standardised commuted sum and/or inspection regime and should be agreed at a national level.

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?

The relevant sanction should be a legal requirement for the housebuilder to remedy the works, and absorb the costs of doing so, in order to bring the amenity in line with the requisite standard. Ultimately, planning enforcement is already available and denial of formal adoption can be a particularly effective deterrent.

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?

See response to 7(b).

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.

Yes, mandatory adoption will likely be an effective and feasible option to address the CMA's concerns in relation to new housing estates. As previously submitted to the CMA, non-adoption of public amenities by local authorities is the root cause of the estate management concerns that customers face. For all new housing estates, mandatory adoption is necessary to achieve a comprehensive solution as this provides certainty and reassurance for customers.

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.

Yes. See response to 7(d) and 6(a) above.

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 is considered already to be best practice and is commonly followed by public authorities in the UK. There are highly unlikely to be any unintended consequences from mandatory adoption.

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

Barratt is not aware of any circumstances where amenities are of a genuinely public nature and are not suitable for adoption.

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?

Barratt agrees with criteria for determining which public amenities should be adopted outlined by the CMA. However, the CMA should include SuDS to the list of amenities that should be adopted.

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).

As above, Barratt considers that a national, standardised commuted sum schedule which reflects the ongoing cost of maintenance for amenities adopted by the local authority will enable the LPA to fund the maintenance of these amenities for a defined period, for example, up to 10 years. Following this period, the LPA should seek to fund the ongoing maintenance costs of the amenities through council tax payable by the relevant residents.

One of the issues Barratt frequently experience post-completion of a new development is the progressive decline in the maintenance of adopted public open space. This is an issue that needs to be addressed more effectively and there are a number of useful publicly accessible reference documents to guide local authorities in this regard. See response to question 7(b) above.