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CMA Housebuilding Market Study

Response to CMA's Working Paper on Private Management of Public Amenities on Housing Estates

1. INTRODUCTION

- 1.1 Bellway welcomes the opportunity to comment on the CMA's Working Paper on Private Management of Public Amenities on Housing Estates (the "**Working Paper**").
- 1.2 Bellway agrees that the matters set out in the Working Paper raise important issues relating to consumer interests, and that it is right that the CMA considers closely and carefully how these interests can best be promoted and protected.
- 1.3 Bellway agrees wholeheartedly with the proposal that all future public amenities on new build housing estates are adopted and are made mandatory via a legislative framework, which would provide certainty of outcomes for both developers and customers. Bellway also agrees that pending a statutory regime, the most appropriate structure for the management of public amenities is the resident management company (**RMC**) approach.
- 1.4 In order to assist the CMA in its assessment for the next phase of its Market Study, Bellway has provided some general commentary below and remains available to discuss any aspect should this assist the CMA with its assessment.¹

2. A MARKET INVESTIGATION WOULD NOT BE PROPORTIONATE

- 2.1 In line with the CMA's provisional thinking set out in the Working Paper (and as Bellway set out in its response to the CMA's Update Report), Bellway agrees that recommendations to Government for legislative/policy changes would be the most effective, proportionate and timely way to comprehensively address the CMA's potential concerns in this area.
- 2.2 As the CMA suggests, Bellway considers that a market investigation (which would be both lengthy and onerous) would not be necessary or appropriate to deliver benefits for consumers quickly and comprehensively.

3. ADOPTION OF PUBLIC AMENITIES

Future developments

- 3.1 In order to provide much-needed and improved certainty of outcomes for both developers and customers, Bellway fully agrees in principle with the CMA's proposal to introduce mandatory adoption in respect of all future public amenities on new build housing estates in

¹ While Bellway has not provided responses in this submission to the specific questions set out in the Working Paper, it has provided detailed responses to a number of requests for information from the CMA relating to the subject matter of the Working Paper, and would refer the CMA to these as it progresses its assessment.

- Great Britain via a new national legislative framework implemented by the UK Government or, as appropriate, via devolved national assemblies.
- 3.2 Bellway is first and foremost a customer-focussed business, and its policies, procedures and Customer First initiative (which is designed to put the customer at the heart of everything that Bellway does) support this.
- 3.3 With this in mind, Bellway is of the view that the best outcomes for customers will be achieved through a strong, established statutory framework in respect of adoption of public amenities, which includes common standards and specifications together with clear procedural requirements in relation to inspection fees, commuted sums, adoption costs and timescales for adoption (both for the housebuilder and the adopting authority).² Indeed, Bellway's standard approach – to which it remains committed for future developments – is to seek adoption of all public amenities wherever possible, which it considers will deliver the right result for consumers.
- 3.4 As recognised by the CMA, local authorities' approaches to adoption today are not uniform, rates of adoption of public amenities are falling and, where these are adopted, the period taken to do so has increased over time. Bellway considers the main reasons for these trends are: (a) the discretionary nature of adoption; and (b) local authorities' capabilities and concerns around funding. It is Bellway's view that the approach of local authorities is the overriding constraint.
- 3.5 Bellway considers that issues around the discretionary nature of adoption could readily be addressed via the CMA's proposed recommendations to the Government.
- 3.6 Bellway acknowledges mandatory adoption will have financial and resourcing implications for local authorities. Bellway would however like to take this opportunity to make the point to the CMA that new build housing development already produces additional income for local authorities via several routes:
- 3.6.1 Firstly, Section 106 Agreements impose obligations on housebuilders to provide funding to local authorities (primarily via education and highways contributions) which mitigate pressure on existing local authority budgets.
- 3.6.2 Secondly, new developments create significant numbers of additional households with a commensurate increase in council tax receipts in perpetuity.
- 3.6.3 Thirdly, local authorities receive a new homes bonus from central government for every consented plot within their jurisdiction (to highlight the extent of this, the central government budget for new home bonuses in 2023/2024 amounts to £290 million).
- 3.6.4 Fourthly, under the current statutory framework, significant commuted sums can be paid in respect of amenities which are adopted by the relevant regulatory body.
- 3.7 Whilst new build housing creates these additional income streams for local authorities, the latter have discretion as to how their overall budgets are applied. There is therefore a question as to the manner in which resource allocation is determined by local authorities.
- Existing developments***
- 3.8 Bellway also agrees with the CMA's emerging view in the Working Paper that mandatory adoption is likely only to be practicable for new housing estates.
- 3.9 In particular, Bellway would urge the CMA to have regard to the following important points in relation to any suggestion that mandatory adoption should be extended retrospectively to existing developments:

² Bellway considers the Water Industry Act 1991 to be a good example of a clearly prescribed framework accompanied by a high rate of adoption of sewer and drainage apparatus.

- 3.9.1 It would not in Bellway's view be a necessary or a proportionate approach to the issues identified to require that all amenities on existing developments should be retro-fitted to an adoptable standard. Existing amenities will have been constructed in accordance with the terms of, and to the standard and specification required by, the relevant planning permission. In this regard, for the reasons outlined above, Bellway does not consider it appropriate for works to retro-fit amenities to an adoptable standard to be referred to as 'remedial' in nature (as in paragraph 4.39 of the Working Paper). The drawing of parallels with the Responsible Actors Scheme, which requires remedial works to be carried out to buildings which did not meet the requisite safety standards at the time of construction is also, in Bellway's view, inappropriate. Public amenities on existing development sites will have been constructed to the required standard under the relevant planning permission, and any works required to bring public amenities retrospectively to a different standard to that which applied at the time of construction are not analogous.
- 3.9.2 There may also be physical constraints on site which effectively prohibit public amenities being changed, as well as complications in relation to legal ownership, rights to enter to carry out works, and residents' views.
- 3.9.3 Instead, Bellway considers that good outcomes for customers can be achieved through ensuring that management arrangements for public amenities are appropriate, and by providing residents with a transparent and cost-effective maintenance regime.
- 3.9.4 Moreover, bringing existing unadopted public amenities to an adoptable standard could give rise to an issue of betterment and unfairness for developers, who will have appraised, acquired and developed a site based upon the planning permission for the consented scheme and will have then constructed all public amenities in accordance with that planning permission with the support of, and oversight by, the local planning authority.
- 4. TRANSPARENCY OF ESTATE MANAGEMENT ARRANGEMENTS AND CHARGES**
- 4.1 Bellway strives to ensure that its policies, procedures and training around the provision of information to customers are clear and transparent. Bellway would welcome measures to improve and standardise transparency across the sector.
- 4.2 In Bellway's view, the New Homes Quality Code (**NHQC**) has been a valuable innovation for the sector, providing a robust framework of requirements for ensuring transparency and quality issues.
- 4.3 Registration under the NHQC (which has been developed in conjunction with the UK Government) also binds housebuilders to the regulatory regime of the New Homes Ombudsman in relation to any subsequent complaints or non-compliance with NHQC, which is an important route for redress for consumers.
- 4.4 As the CMA notes in its Working Paper, the vast majority of larger housebuilders have now registered to operate under the NHQC, evidencing how seriously most companies in the sector are taking customer care and issues around transparency. Due to all of the benefits listed above, and to ensure consistency across the sector, Bellway would welcome a recommendation at the end of the CMA's Market Study to make registration to NHQC mandatory for **all** housebuilders, which would further improve transparency for customers.
- 4.5 In addition, Bellway agrees with the CMA's emerging position as to the benefits of introducing legislative changes to ensure that proprietors of freehold properties are able to enjoy the same protections as those enjoyed by the proprietors of leasehold properties, and would also welcome a specific statutory exclusion of the operation of Section 121 of the Law of Property Act 1925 in respect of rent charges.

5. CONCLUDING REMARKS

- 5.1 Bellway remains at the CMA's disposal to discuss any of the above points in more detail, should this be of assistance, and stands ready to engage with the CMA and/or any Government body or department in formulating detailed proposals going forward.
