

Annex 1- Responses to Questions 1 – 11 contained in the Competition and Markets Authority ("CMA") Private management of public amenities on housing estates working paper issued on 3 November 2023 (the "Working Paper")

Roads adoption (Section 3)

Question 1 (a) - How effective is the process for the adoption of roads on new housing estates in England?

Crest Nicholson does not consider the process for the adoption of roads on new housing estates in England to be effective in any regard. The process is impaired by a number of factors:

- Conflicts between the adopting authority's requirements and the planning permission originally obtained by developers that cannot reasonably be overcome. This may include issues such as layout / dimensions, non-standard surface finishes and decorative lighting that is either not acceptable to the adopting authority or results in an unacceptably high commuted sum.
- Poor resourcing of the adopting authority leading to consistent poor performance, resulting in delays at all stages including design approval, legal agreement, final inspections and receipt of approval documents. This can result in a reluctance by developers to progress new road adoptions should a suitable alternative be available.
- Lack of confidence in an adopting authority's ability to maintain to an acceptable standard.
- High commuted sums that impact financial viability or are considered excessive.

Question 1 (b) - What are the barriers to the adoption of roads on new housing estates in England?

Crest Nicholson considers the key barriers to the adoption of roads on new housing estates in England, if sought, to be:

- Conflicts between the adopting authority's requirements and the planning permission, originally obtained by developers that cannot reasonably be overcome. This may include issues such as layout / dimensions, non-standard surface finishes and decorative lighting that is either not acceptable to adopting authority or results in an unacceptably high commuted sum. This can result in developers needing to consider trade offs between placemaking and delivering high quality developments, and the adoption of roads.
- Highway Authorities' design requirements, which can result in higher construction costs due to rigid design standards being applied that do not align with the low traffic, small vehicle use of some estate roads. The same design standards can also require unnecessarily wide estate roads, which has both cost and land take implications.
- Poor resourcing of the adopting authority leading to consistent poor performance, resulting in delays at all stages including design approval, legal agreement, final inspections and receipt of approval documents. The requirement to provide performance bonds increases costs to the developer. The above referenced poor performance due to insufficient resources within adopting authorities can result in performance bonds being in place for longer, increasing the charges paid.
- Permeable paving to roads can be a requirement of drainage strategies to provide surface water quality treatment and attenuation. Highway Authorities generally do not adopt permeable paving resulting in conflicting requirements causing barriers to adoption.

Question 2 (a) - How effective is the process for the adoption of roads on new housing estates in Wales?

Crest Nicholson is unable to comment as it does not operate in Wales.

Question 2 (b) - What are the key barriers to adoption of roads on new housing estates in Wales?

See response to question 2(a) above.

Question 2 (c) - What impact has the Good Practice Guide and Common Standards on highway design had on roads adoption on housing estates in Wales?

See response to question 2(a) above.

Question 2 (d) - In particular, have they reduced any barriers to adoption and achieved greater consistency in approach across local authorities?

See response to question 2(a) above.

Question 3 (a) - How effective is the process for the adoption of roads on new housing estates in Scotland?

Crest Nicholson is unable to comment as it does not operate in Scotland.

Question 3 (b) - What are the key barriers to adoption of roads on new housing estates in Scotland?

See response to question 3(a) above.

Question 3 (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 question 3(a) above.

Sewers, drainage and SuDS adoption (Section 3)

Question 4 (a) - Please provide views on how effective the adoption process works in practice for (i) sewers and drains and (ii) SuDS. In responding, please state whether your response relates to England, Scotland or Wales, or a combination of nations.

This response relates to Crest Nicholson's experiences in England.

Crest Nicholson will generally try to pursue the adoption of sewers and drains. However, the resourcing by different water authorities varies greatly and, consequently processing / response times for adoption are delayed. In Crest Nicholson's experience, even the best performing water authorities are poorly resourced and that impacts on the time it takes to work through the adoption process.

The common standards in place ('Design and Construction Guidance for foul and surface water sewers offered for adoption under the Code for adoption agreements for water and sewerage companies operating wholly or mainly in England') ("**the Code**") for the design and construction of sewers make the process easier because they increase certainty and provide more consistency when compared to the adoption of roads. This means Crest Nicholson is more confident proceeding with construction of sewers because the sewer adoption process is more likely to be successful. That said different Water Authorities do have addendums to the Code which result in regional variations to the

baseline common standards. Whilst the addendums are transparent, ideally all authorities would implement the Code unamended.

With regard to SuDS, the Code should make it easier, at least in theory, for SuDS to be adopted. Crest Nicholson has not yet widely pursued the adoption of SuDS following the introduction of the Code. However, this will be a consideration moving forwards on a site by site basis.

Crest Nicholson has had previous difficulties getting SuDS adopted, not necessarily due to the adoption process, but due to the increased requirements of the standards. For example, SuDS standards require a particular width of maintenance track around SuDS attenuation basins that a management company would not require. This increases the cost of adopting SuDS standards and has land take implications.

Question 4 (b) - Will forthcoming changes in England remove any barriers to adoption?

The proposal to implement Schedule 3 of the Flood and Water Management Act 2010 will provide a framework within which SUDS must be adopted. Implementation of Schedule 3 requires National Standards to be published. These changes will remove any ambiguity and differing requirements between adopting authorities. Crest Nicholson therefore anticipates the proposed changes would be helpful in removing barriers to adoption by effectively making adoption of SUDS mandatory.

However, Crest Nicholson is concerned that the changes will add further costs to developments, by way of approval fees, legal fees, commuted sums and performance bonds. The CMA comment elsewhere in the consultation paper that cost increases for other potential measures to tackle emerging concerns are likely to be offset by lower land payments rather than sales price increases. Whilst that may be the case in some instances, it is unrealistic in our view that in all cases the cost of building houses can continue to be increased (due to increasing levels of regulation and legislation) but that such cost increases will be offset by reductions in land values. In areas of low sales values, there will be a point at which it is not viable and / or there is not sufficient incentive for a landowner to sell their land for development. An unforeseen consequence may be that land values cannot continue to reduce and other variables such as affordable housing provision and Section 106 contributions must reduce.

Crest Nicholson is also concerned that implementation of Schedule 3 will restrict the commencement of construction until the necessary approvals are in place. Experience of adoption processes generally suggests that the approval process will be unpredictable, take longer than is reasonable, with significant under resourcing of the process and limited rights of recourse. This contributes to a significant risk of further delays to the commencement of developments. Crest Nicholson considers the approvals should be provided as part of or concurrent with the planning permission, to ensure the approval bodies are held to the same statutory timescales. There should also be an ability to appeal against non-determination.

Question 4 (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?

Crest is unable to comment as it does not operate in Wales.

Possible measures to address our emerging concerns (Section 4)

Question 5 (a) - What measure, or combination of measures would provide the best solution to our emerging concerns? Please give reasons for your views.

Mandatory adoption

Broadly, Crest Nicholson considers an adequately funded and well facilitated system of mandatory adoption may provide a comprehensive solution to the CMA's emerging concerns. Such a system would require clear, reasonable and accountable timescales for adoption as well as transparent fees and commuted sums. Developers would then be able to build costs into land valuations at an early stage.

However, we do not consider it realistic that the system would be adequately funded and well facilitated. As a result, we consider the implementation of mandatory adoption would be very challenging and unlikely to be feasible in practice.

Crest Nicholson has major reservations that mandatory adoption would be implemented without the necessary resources to manage such a system adequately. As a result this proposal would likely add significant delays and costs to bringing forward new developments for an unknown period of time, adding a further barrier to developers' ability to meet the housing supply needs of the country. We anticipate any transitional period would be particularly challenging as adopting authorities would need to have funding and resources in place prior to the implementation of such a system. We would also note that it would not be possible for authorities to adopt all amenities even under a mandatory adoption scheme and therefore management companies will still need to exist and have a role to play to some extent.

Crest Nicholson also has concerns about the ability and willingness of adopting authorities to fund long term maintenance of adopted amenities.

Enforcement of standards without adoption

It is unclear how beneficial it would be to enforce standards for private amenities that local authorities do not intend to adopt. Crest Nicholson considers this would be unnecessarily onerous as such a scheme would require the same technical design / approval processes as adoption. The process would therefore carry many of the same costs for developers and require the same amount of resourcing by local authorities. The justification for this proposed measure is questionable in our view as it is unclear to what extent poor construction standards are impacting the effectiveness of estate management companies and the consumers, as no data has been provided and this is not known to be a widespread issue in our experience. In any event, it is unclear how the enforcement of such standards would reduce the long term costs to residents for the maintenance of amenities.

We would also highlight, for completeness, the use of 'advance payment code notices' by some highways authorities, which effectively impose adoptable standards on private infrastructure, with performance bonds required and additional fees for legal agreements and qualified engineers to inspect and verify the construction works meet the required standards. This process is used infrequently by local highway authorities and can, in some cases, impose unnecessarily onerous standards and additional costs on developments.

Improvements to consumer protections

Rather than mandatory adoption, Crest Nicholson considers a reasonable way to make a realistic and impactful change would be to make changes to estate management by implementing additional consumer protections. We consider all of the principles outlined at 4.11 of the CMA Working Paper are broadly sensible as currently proposed, but we would add the following comments:

- We agree charges for estate management services should reflect the actual costs incurred by the estate management company. However, the CMA should take into account the need for estate management companies to set budgets and request charges in advance to ensure they

maintain viable cashflows and can instruct the necessary services in full knowledge of their ability to fund the commitments.

- We agree with the principle of redress and the ability of residents to dispute management charges. However, we would highlight the risk that suspending payments during disputes may impact the cash flow of the management company and its ability to undertake work.
- We agree with the principle of householders being able to switch management company should they be dissatisfied with services levels. However, constitutional processes should be in place to ensure changes are made with the agreement of a suitable majority of residents.
- We agree with the principle that the system must not cause households undue problems with the onwards sale of the property. We do not consider this to be inconsistent with management company's charging reasonable admin fees (e.g. for producing sales packs) for individual residents rather than a whole estate bearing the cost. Such costs should not be an issue if reasonable and transparent.

When more detailed proposals are made by the CMA in future, Crest Nicholson would welcome the opportunity to comment and contribute to those proposals.

Question 5 (b) - Does the best approach to tackling our emerging concerns differ according to the amenity (e.g. roads versus public spaces) or by nation?

This response relates to Crest Nicholson's experiences in England only. Crest Nicholson does not consider the effectiveness of the approaches discussed above would differ according to the type of amenity. It may be arguably slightly easier to make road / sewer adoption mandatory as most sites typically make some form of adoption application. However, all of the issues outlined in response to question 5(a) would still apply. We would note, however, that Crest Nicholson does not generally apply for, (and local authorities do not support), adoption of public open spaces and playgrounds so the viability of mandatory adoption for those amenities is less certain.

Question 5 (c) - Are there any options that may be more effective in addressing our emerging concerns than those that we have proposed?

In combination with the improvements to consumer protections, there are improvements to the adoption process that may increase the incentive to pursue adoption without making it mandatory. Options to consider include:

- Undertake a review of performance bond requirements – for onsite adoptable highway works such as S38 highways, Crest Nicholson considers it excessive to require a bond for 100% of the construction cost. The road is unable to be used until it is substantially constructed (typically complete except the final surface finish) and therefore it is highly unlikely that there would be a scenario where the local highway authority would need to step in to complete the works in place of the developer. Crest Nicholson considers a lower performance bond value, such as the 10% value in place for drainage adoption bonds, would be more appropriate, would reduce costs and the burden on bond facilities available to developers.
- Introduce statutory response timescales for adopting authorities, with a right of recourse for under performance. This would help increase programme certainty.
- Introduce standard commuted sum calculation methodologies that are transparent, to allow developers to accurately account for commuted sums in land valuations.
- Ensure inspection fees payable by developers are used to fund sufficient resources within adopting authorities. Typically, highway authorities charge fees of 10% of the construction cost for design approvals and inspections. Crest Nicholson believes this results in fees

significantly higher than the cost to the highway authority of providing those services. There is a lack of transparency about what the balance of the fees are used for. However, Crest Nicholson's experience indicates the fees paid are not being used to ensure adequate resourcing of the relevant departments.

- Standardise a reasonable payment profile for fees and commuted sums. Some authorities require a low value application fee to start the design review process, whilst other authorities require the full c.10% of construction cost payment made upfront to start the design approval process. Commuted sum payment dates vary from completion of legal agreement to adoption. Some payment profiles enforced by some of the adopting authorities unnecessarily create a poor cashflow profile for developers and can disincentivise developers to pursue adoption.
- Allow for earlier engagement between developers and adopting authorities ahead of planning permission, to avoid conflicting requirements between the planning permission and adoption standards. Crest Nicholson's experience is that adopting authorities are often reluctant to engage in detailed discussions until planning permission is granted, at which stage the conflict has already been crystallised.
- Implement common design standards to create greater design and cost certainty for developers at an early stage. The use of common standards could ensure the road hierarchy is accounted for and low use light vehicle estate roads are not over-engineered.

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?

Crest considers a package of appropriate enhanced consumer protection measures could provide a suitable and sufficient level of protection for consumers. However, Crest would wish to review and comment further on any specific proposals made by the CMA in the future. Whilst mandatory adoption would be a more comprehensive solution we would repeat our concerns with regard the viability of such a solution in our response to question 5(a) above.

Question 6 (b) - Are there any other measures that are required to provide adequate protection to households living under private estate management arrangements?

Crest does not have any further measures to add.

Question 6 (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.

Crest is not able to respond to this question as it does not operate in Scotland.

Question 6 (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.

At this stage Crest does not have any comment on how such measures should be implemented. We anticipate we will be able to comment further when specific proposals are made by the CMA.

Question 7 (a) - Would the determination of common, adoptable standards support an increase in the adoption of amenities by local authorities?

Crest considers that the determination of common, adoptable standards would likely support an increase in the adoption of amenities. Such standards would improve certainty in the planning and adoption process and have the effect of reducing disputes with adopting authorities.

Question 7 (b) - Are there existing standards that could be used to support the determination of common adoptable standards?

Crest is not aware of any common standards that apply to public open spaces.

For drainage the common standards published by Water UK for sewers and drainage ([Design and Construction Guidance for foul and surface water sewers offered for adoption under the Code for adoption agreements for water and sewerage companies operating wholly or mainly in England \(the "Code"\) Approved Version 2.1 25 May 2021](#)) generally work well. However, water authorities often have their own addenda to the Code which deviate from the common standard. Addenda should be limited/excluded when implementing true common standards.

For highways the [Design Manual for Roads and Bridges \('DMRB'\)](#) already forms the basis of existing approval standards used by most adopting authorities and could be confirmed as the basis for a national standard. We would note that complaints from adopting authorities in relation to the adoption of roads tend to be less about construction materials and methods, and more about layout and dimensions. Any common adoptable standards would need to adequately cover both aspects of road construction.

Question 7 (c) - Who should be responsible for determining and enforcing common adoptable standards?

Due to the necessary national scope of such standards Crest Nicholson agrees that the determination of common adoptable standards should be made at a national level by each government in the UK, through the relevant government body (e.g. National Highways) with enforcement undertaken by local authorities.

Question 7 (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?

Crest Nicholson would strongly suggest that any application of common adoptable standards should only apply to future housing estates (where planning applications have not already been submitted` at the point of implementation). Estates are built to the standards in place at the time of construction. Crest Nicholson foresees a number of practical and legal challenges in seeking to apply such standards retrospectively to existing housing estates, in addition to the significant costs associated with aligning existing estates with anew common 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?

Crest Nicholson is uncertain of the focus of this question. As such, we have provided responses below intended to cover the different possible interpretations of the question.

If the question relates to remedial works to amenities that are intended to be adopted:

Broadly, the current approach to bringing amenities up to an adoptable standard is for the adopting authority to conduct an inspection of the amenity and, if necessary, request that the developer undertakes and funds any remedial work. This is sometimes supported by the requirement for a performance bond to be provided when entering into adoption agreements to protect the adopting authority and residents in the event that the housebuilder fails, or is unable, to undertake the necessary remedial work. There is, therefore, no requirement for local authorities to fund the cost of remedial work.

If the question relates to remedial works to amenities, in the context of an adoptable standard being enforced regardless of whether formal adoption is sought/required:

We refer to our response to question 5(a), and reiterate that we do not support this approach.

If the question relates to retrospective works to bring amenities up to new standards:

We would note some concern with the CMA's reference to the Responsible Actors Scheme and would echo our comments on retrospective application made in response to question 7(d) above. Developers need clear parameters so they understand when duties and responsibilities for amenities on an estate arise and when they fall away.

Question 8 (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 use of sanctions against housebuilders would be unnecessary. Crest Nicholson would submit that the system outlined in response to question 8(a) above, namely a request for housebuilders to undertake remedial work where the amenity is intended to be adopted, supported by the use of bonds, provides residents with adequate protection such that sanctions would not be needed. The use of bonds is proactive as it enables access to funds for remedial work available up front and eliminates any risk for residents. It is noted that existing adoption processes do not routinely rely on sanctions against housebuilders.

Question 8 (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?

Crest Nicholson does not have any particular examples to raise at this time.

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.

In general, Crest Nicholson does not believe mandatory adoption would be an effective or feasible option to address the CMA's emerging concerns. We refer you to our comments on the effectiveness and feasibility of mandatory adoption made in response to question 5(a).

Question 9 (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.

Crest Nicholson agrees with the CMA's view that mandatory adoption would not be practicable for existing housing estates. However, as per our response to question 5 (a), we also consider that mandatory adoption would not be practicable for new housing estates.

Question 9 (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.

In the absence of further detail on common design standards that would apply to mandatory adoption it is difficult to consider all implications. However, the following could be unforeseen consequences:

- Mandatory adoption will add further costs to developments, by way of approval fees, legal fees, commuted sums and performance bonds. The CMA comment (in paragraph 4.38) that additional costs are unlikely to be passed through to purchasers of new homes through an increase in sale price and instead are likely to be offset by lower land payments. Whilst that may be the case in some instances, Crest Nicholson considers it unrealistic that in all cases the cost of building houses can continue to be increased due to increasing levels of regulation and legislation, with land values being reduced to offset such costs. In areas of low sales values, there will be a point at which it is not viable and / or there is not sufficient incentive for a landowner to sell their land for development. An unforeseen consequence may be that land

values cannot continue to reduce and other variables such as affordable housing provision and Section 106 contributions must reduce.

- Enforcing standards that do not adequately provide flexibility for the wide range of applications and allow high quality materials without a prohibitive/unviable commuted sum, may restrict and/or disincentivise high quality placemaking

We also refer to Crest Nicholson's general concerns in relation to mandatory adoption, set out in our response to question 5(a).

Question 9 (d) - Are there circumstances where it may not be appropriate for a local authority to adopt a public amenity? Please provide an explanation.

In paragraph 4.47 of the Working Paper, the CMA sets out a list of amenities that can be adopted. It refers to "(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. There are some existing homes in Britain that are not connected to the sewer and drain network due to their distance from the network. Only those homes that are built in appropriate proximity to the network would have to be connected to it; and (c) Public open spaces on housing estates that are accessible to the general public)". We consider this is a reasonable list of amenities that it would be appropriate for a local authority to adopt.

For clarity, Crest Nicholson considers the following would not be appropriate for adoption by local authorities:

- Private roads and shared access driveways;
- Roads serving a very small number of dwellings;
- Parking courts;
- Sewers and drains not connected to the network;
- Open spaces not accessible to the general public;
- Private streetlights to above areas; and,
- Communal electric vehicle charging points.

Question 10 - 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?

Notwithstanding Crest Nicholson's comments on the viability of the mandatory adoption of amenities as outlined above, Crest Nicholson has no objections to the proposed criteria outlined in 4.47 to 4.49 of the CMA's Working Paper. Crest Nicholson does not have any other amenities to the list of those that should be included.

Question 11 - 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).

Crest considers this would be a policy decision for central and local government. All things being equal we would anticipate this would be budgeted and paid for through Council Tax receipts and central government allocations. For legal and practical purposes we do not consider developers should be required to contribute to the long term maintenance of amenities once they have been adopted by local authorities.