Private management of public amenities on housing estates working paper: HBF response

Roads adoption

Question 1

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

The process for adopting roads on new housing estates is falling woefully short of what is required. The past decade has seen record numbers of new homes built and on increasingly large sites with vast amounts of new roads to serve new communities.

HBF welcomes proper attention being paid to this subject. Many buyers of new homes have been let down by anachronistic legislation and inadequate processes. We have for many years appealed to policymakers to reform the process for adoption of roads. These representations have been made particularly on behalf of our SME members for whom the risks, costs and delays associated with the design, approval and adoption of new roads has a proportionally bigger impact and have been a cause of concern for at least the past decade.

Following a report published by HBF in 2017, we have promoted reform of the means through which new roads are designed and adopted. Through surveys and detailed interviews with small firms' representatives, the cost and delay of highways design approvals and adoption was consistently flagged as a major barrier to growth. We began conducting a frequent exercise surveying local highways authorities under the Freedom of Information Act to obtain information on local policies, processes and costs that was – up until then – entirely opaque.

Residents on developments with unadopted roads pay the same Council Tax in addition to estate management costs through service charges. Buyers of new homes do not receive discounts on Council Tax so the current tendency towards non-adoption of roads and other amenities is evidently short-changing one cohort of local taxpayers.

The non-adoption of roads and other public amenities by local authorities has coincided with a period of sustained high housing supply levels. Homes built in the last decade account for roughly 1 in 10 properties. Looking even more recently, new homes built in England just in the period between 2015 and 2022 generate estimated additional annual Council Tax receipts of £3.25bn per year.[1] But while the increases in housebuilding numbers recorded during the 2010s created significant additional revenue streams for local government, many of the new homes and households are simply not serviced the same extent as households in older properties. Yet councils – and central Government – too often view new homes and the households inhabiting them as a drain on resources. The benefits of new housing, including the Section 106 and CIL receipts are well publicised (although still under-appreciated) but the ongoing asset base and income stream provided to public authorities by housebuilders receives little attention.

[1] 1,573,000 homes were added to the Council Taxbase between 2015 and 2022 with average Band D Council Tax in 2022 standing at £2,065 per year. See Council Tax Levels Statistics (https://www.gov.uk/government/statistics/council-tax-levels-set-by-local-authorities-in-england-2023-to-2024/council-tax-levels-set-by-local-authorities-in-england-2023-to-2024) and Council Taxbase Statistics (https://www.gov.uk/government/collections/council-taxbase-statistics)

We recognise that the way local government is financed means that the local authorities with larger shares of new housing which are those generating additional Council Tax revenue do not necessarily see the benefits of growth because of the vagaries of the Local Government Finance Settlement. Similarly, political pressure on councils to freeze Council Tax levels has further eroded local financial independence leading to consequences that ultimately disincentivise housing delivery for local leaders. We acknowledge the political pressure that councils are under to minimise Council Tax increases but the impact is being felt in many areas of local services and being borne disproportionately by residents of new housing sites.

As well as the process leading, in many cases, to non-adoption of roads, or in some cases lengthy delays, the inconsistencies in the way and at what point highways authorities will engage in the process of design can create delay during the planning stage which, for small firms, creates even more cashflow pressure.

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

The process of highways design, approval and adoption of new highways has developed over time into one fraught with uncertainty and inconsistencies.

As HBF has shown with previous submissions to the CMA the timescales for Section 38 approvals vary wildly between highways authorities while bond values and commuted sums bear little relation to realities. Furthermore, as demonstrated by the results of HBF's Freedom of Information (FOI) survey exercise of highways authorities, individual items attract very different bond values, for example from £200 to £2,000 for trees and vary wildly between local authority areas with seemingly little logic. The surveys exercise also demonstrate the significant increases in bond values and the percentage of bond values charged by local authorities over the past five years with a degradation in service quality and timeliness.

Increasing bond values stipulated by local authorities are directly affecting the ability of SMEs to arrange and secure a surety provider as part of the Section agreement and adoption process. SMEs do not carry the same level of capitalisation and therefore as larger developers can find it very challenging to source and secure sureties. In addition, any funding that is able to be found often comes with higher lending or arrangement fees making the adoption route less practically achievable for smaller firms.

Beyond the measurable financial and timescale issues, in practice members report that behavioural differences between highways authorities also create frustrations at a local level with different approaches to the point at which substantive input at highways detailed design stage occurs. Late responses can lead to wasted time and money for builders which inevitably brings disproportionate consequences for SMEs. On this point, we welcome the options for reform put forward by the CMA in its 15 November planning working paper to introduce assumed consent where statutory consultees take too long to respond. It should be noted that with highways authorities often empowered to base their cases on safety grounds it is probably unlikely that the practical effect of the proposals could be achieved. However, measures are clearly needed in order to improve efficiency of process and incentivise timely feedback from statutory consultees so such a proposal, if implemented could bring indirect benefits.

Members report that highways departments are increasingly moving away from existing guidance, such as the Department for Transport's *Manual for Streets* and issuing local guidance and standards. Home builders already exist in a planning and regulatory regime that is highly localised with deviation between councils on many areas of policy – or even the presence of policies or local plans in some cases. Elsewhere across the wider

housebuilding policy agenda, Government has already allowed for councils to effectively adopt local building regulations. This presents obvious difficulties for businesses that are simply not replicated elsewhere in the economy and have contributed to the decline of SMEs in the sector.

In some instances, councils cite Section 37 of the Highways Act 1990 to suggest that new highways or road features are of 'insufficient public utility' as a justification for non-adoption.

The accelerated trend towards non-adoption of roads and amenities by local government can be traced to the tightening of local government budgets and thus a lack of capacity is inevitably making adoption of public assets less attractive over time.

Commuted sums, which were historically deployed for exceptional highways features such as bridges, tunnels or box culverts, have become more common in recent years and the costs associated with them have increased. With increased emphasis from the industry and policymakers on placemaking, highways departments have often sought commuted sums for generally standard estate road features such as drop kerbs, bollards, street lighting, gulley gratings and white lining.

With little guidance on what can and cannot be considered an appropriate item and with resources restricted, councils have expanded the commuted sum regime which has led to adoption agreements often stretching to hundreds of thousands of pounds worth of commuted sums.

Overall, the distinction between planning authorities and highways authorities, particularly where two-tier governance means that the latter has little incentive to support swift and smooth broad planning processes and gains little direct benefit from increased housing supply, has led to failure in the system and poor outcomes for businesses and homeowners.

Highways designs and layouts can be agreed with a planning authority with some input from highways departments only for other points and requirements to be imposed by the highways authority further along the process as that may be when they choose to participate in the process. However, highways authorities also have financial pressures and as a result inspection fees often do not reflect realistic costs and bond values have grown.

At a national level this dynamic also plays out. HBF's representations to Government on this subject have been split between the Department for Levelling Up given its responsibility for housing policy and the Department for Transport because it owns the relevant legislation governing road adoption matters, along with their Select Committee equivalents. With the non-adoption of roads falling at the margins of both departments and not representing a high profile topic for either of the relevant House of Commons Select Committees to explore, in parliamentary terms, the industry is reliant upon backbench MPs with constituency issues picking up the cause.

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?

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

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

The ongoing application of the Highways Act 1980 in Wales and the absence of devolved powers in this area means that builders in Wales experience the same problems and frustrations as those in England. Indeed, with divergent building regulations leading to additional on-site firefighting mains water requirements the challenge has been compounded.

It could be argued that the challenges for builders are even greater in Wales due to divergence of building regulations regimes between England and Wales. In Wales, firefighting water mains in new residential developments must be maintained privately as neither the local authority highways departments not Welsh Water are willing to adopt them despite the requirements brought into Part B (Fire Safety) building regulations in Wales in 2012. This unwillingness adopt the mains service has inevitably seen a significant rise in the appointment of private management companies on new residential housing developments in Wales as an indirect result of the divergent building regulations.

HBF supported the introduction of the Good Practice Guide and Common Standards on highways but members report it is not being used widely with the primary guidance coming still from the Department for Transport's *Manual for Streets*, although the use of that document is also diminishing.

Question 3

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

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

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

HBF represents housebuilders in England and Wales so we are not well placed to appraise the processes used in Scotland, nor to compare those with England and Wales.

Sewers, drainage and SuDS adoption

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.

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

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?

Adoption of sewers and drains is mandatory in Wales under Sewers for Adoption 7 which was legislated for through Section 42 of the Flood & Water Management Act 2010 and implemented in October 2011. This means that all new developments must have a completed S104 agreement for drains ahead of commencing work on site. All new drainage becomes adopted as it is laid and it is a criminal offence to commence construction without an engrossed agreement being in place. This should in theory mean that adoption of the roads that are sited on top should be more straight forward providing comfort and assurance

to the LA Highways dept that assets are already adopted. However, in practice this is not leading to the outcomes intended and highways adoptions are just as difficult.

Similar to the comments in relation to Question 1 and the additional Council Tax receipts created by the housing supply increases of the mid-2010s, the acceleration in the delivery of new homes has created an income stream and asset base for water companies.

The payments to water companies have been given close attention in recent months and years because of the ongoing embargo on development as a result of Natural England's nutrient neutrality rules. Builders have argued that alongside agriculture, a significant source of the pollution that the rules seek to eliminate comes from water companies. Through the development process, builders make payments to water companies for infrastructure upgrades as well as connection charges and the provision of new assets. However, no measures have been imposed by Natural England or other agencies to extract nutrient mitigation from water companies while developers, whose customers are ultimately responsible for a tiny fraction of potential pollution fund all mitigation with development sites effectively ransomed by the restrictions.

HBF reviewed the annual accounts of all water companies serving England and Wales. 12 of the 17 published figures on developer contributions and receipt of new assets from developers. Our research showed that across the 12 water companies, between 2021 and 2023, £349million was paid by developers with a further £490m handed over in the form of new assets for water company balance sheets. Extrapolating out to include the outstanding water companies, suggest that in the past three years more than £1bn has been provided by developers to water companies in the form of charges and fees or new assets.

	£million		
	Contributions	Assets received	Total value
Wessex Water**	20.8	27.6	48.4
Yorkshire Water	17.3	57.7	75.0
Northumbrian Water	8.9	53.2	62.1
South West Water	32	15.4	47.4
South East Water	20.3	3.4	23.7
Southern Water	18.9	39.5	58.4
Thames Water	74.1	2.5	76.6
Bristol Water	10.7	1.2	11.9
Affinity Water	13.4	3.4	16.8
Anglian Water	60.1	46.0	106.1
Severn Trent Water	68.8	212.5	281.3
Portsmouth Water**	4.07	27.6	31.7
United Utilities*	49.8	27.6	77.4
Hafren Dyfrdwy*	1.0	27.6	28.6
Dŵr Cymru*	22.1	27.6	49.7
SES Water*	1.8	27.6	29.4
South Staffs Water*	3.7	27.6	31.3
Total	**427.7**	**628.0**	**1055.7**

*Estimated figures
**Assets estimated

In Wales, the design and adoption of SuDS is a process separate from planning and not controlled by S106. If the SuDS Approving Body (SAB) approves a SuDS scheme it is required to adopt it with the legislation also allowing the SAB to choose a management company to adopt it, but the developer does not have a role in selecting a management company.

It is too early to offer a full perspective on the performance of the new SuDS regime in Wales. Because of transition periods and delays, few schemes are adopted under the new rules.

A recent review of SuDS in Wales has identified a number of issues with the system. These issues have led to significant delay in the ability of members to start building new schemes. One of the issues identified is the very high commuted sums which are being requested – potentially as high as £10,000 per new property. In the case of SuDS members do not have the option of using a management company so if they want to be able to build the consented homes they have to agree to the occurs at the end of the adoption process so developers are unable to factor it into the initial site viability considerations.

Another issue specific to SuDS is that a number of the SuDS features available can be incorporated into the overall highways scheme however this has raised issues where these have been approved by the SAB but the highways department will not adopt the highway. For example, some highways departments will not accept permeable paving in the main highway.

Possible measures to address CMA's emerging concerns

Question 5

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

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

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

Mandatory adoption, supported by common agreed and adoptable standards (including design standards, timescales, bond and commuted sums framework) is the best long-term solution to address the CMA's emerging concerns.

Addressing any outstanding issues relating to the regulatory and legal framework around privately managed estates is to be welcomed but we would caution against solely pursuing this approach as it has the potential to further normalise new developments remaining unadopted and actually incentivise the non-adoption of new sites in perpetuity. Transparency and consumer experiences have recently been improved with the introduction of the New Homes Quality Code (NHQC) by the New Homes Quality Board (NHQB) which requires builders to provide long-term projected cost schedules to homebuyers. However, this does underline, again, the difference between unadopted mainly new estates and fully adopted older schemes presenting long-term difficulties for the industry and potential confusion for homebuyers.

The requirement of the NHQB's NHQC look to address the issue of awareness and require the builder to clearly set out any charges the customer may face. Transparency is one of the 10 key principles of the new Code and it is a specific requirement to provide information:

- through the sales process when describing the home in sales and marketing literature;
- In the terms of the reservation agreement – this includes an affordability schedule for any 'known or expected costs' over a 10-year period;
- At pre contract stage, where an indicative cost schedule is required to be provided to the customers legal representative setting out estimated costs for the 10 yeas post sale.

NHQB's Code Developer Guidance sets out clearly the builder's responsibilities in these areas. As noted in the working paper, a significant majority of new home purchases are now covered by the new Code. The Consumer Code for Home Builders, introduced in 2010 and until the introduction of the NHQB the main code body, has the majority of the remaining non-NHQB registered builders registered with it. The CCHB reviewed its Code over summer 2023 and when its next revision takes place in early 2024, it is expected that there will be greater alignment with the requirements of the NHQC. The new version of the Code mirrors the NHQC by requiring greater clarity to be provided on any costs that are likely to be directly associated with the tenure and management of the home over the 10 years following the sale.

In the meantime, to improve transparency, consideration should be given to requirements on councils to report on their income from road adoption inspections and agreements. Up until 2018 this information was simply not available and since then publication of such material relies on HBF's Freedom of Information survey of highways authorities which invariably does not achieve full coverage. Greater understanding of the sums involved and inconsistencies across local government in relation to inspection fees and bonds, along with more performance information, may help to drive better outcomes.

As referenced in answer to Question 4, many water companies ascribe financial values to the new assets they take on from developers and report this to their shareholders on an annual basis. At present, in addition to providing new income streams for councils and funding and infrastructure through Section 106 and CIL agreements, housebuilders are also required to provide – or offering to provide – swathes of amenities and public assets which are going unrecorded while, in many instances, being unwanted by councils as public assets.

Acknowledging the potential for reform of the system to take considerable time, we would propose that households on new estates with unadopted roads and amenities benefit from a discount on their Council Tax. Ideally this discount would balance the expected annual service charge requirement, but even just a 10% discount would alleviate concerns about two-tier local taxpayers and provide a financial incentive for authorities to seek effective adoption of roads and amenities assuming they meet adoptable standards and other reasonable criteria. We acknowledge the political pressure that councils are under to minimise Council Tax increases but the impact is being felt in many areas of local services and being borne disproportionately by residents of new housing sites. As with so many areas of the home building industry's operations and the practical consequences for the sector and homebuyers/homeowners, politics trumps logic and fairness for households.

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?

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

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.

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.

Mandatory adoption and the reduction in prevalent of private estate management arrangements moving forward is crucial. As referenced above, introducing only consumer protections, would effectively entrench non-adoption and lead to more households needing those protections. Such an outcome would lead to an ever-increasing proportion of households living under private estate management arrangements

While improving the existing safeguards, ensuring greater transparency and creating a smoother process for private management is preferable to the recent experience, without addressing the root causes, few new estates will be adopted and the two-strand market will continue where newer properties are managed privately and older estates operate under the traditional council adoption model. The latter will likely be deemed preferable for homebuyers which would create saleability problems. This is already creating a reputational issue with increased media focus on this subject over recent years and will only grow over time. It is partly this realisation that has led to HBF's lobbying of successive government ministers in particular to recast the Highways Act 1980 on which we are dependent.

The non-adoption of roads and other public amenities by local authorities has coincided with a period of sustained high housing supply levels. Homes built in the last decade account for roughly 1 in 10 properties.

Councils – and central Government – too often view new homes and the households inhabiting them as a drain on resources. The benefits of new housing, including the Section 106 and CIL receipts are sizeable and well publicised (although still under-appreciated).

As stated in previous responses, should new build estates not benefit from the same service provision as existing homes in the local authority area then it is reasonable for residents to expect a reduction in Council Tax bills commensurate with or close to the level of private estate management charges.

Question 7

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

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

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

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?

Common adoptable standards would need to be a key feature of a new system underpinned by mandatory adoption of public assets. In most cases common adoptable standards are already being built to by developers but without any influence on the authority's adoption.

Planning and other policies at both a national and local level are being implemented with little regard to the long-term, practical management and maintenance of the features being required. The industry has supported the objectives associated with Biodiversity Net Gain, SuDS and general design principles that lead to greater land take for communal, often public uses, but policymakers should understand that all policies necessitate trade-offs.

Because of changing standards and local authority and industry capacity, we agree with the CMA's view that retrospectively reviewing all sites and introducing retrospective mandatory adoption may present legal and capacity challenges. Because of the volume of housing delivered over the past decade, such a review would take many years to complete.

The process for determining and enforcing common adoptable standards would require more consideration in some areas than others. In this regard, it may be helpful to draw the distinction between highways and SuDS on one hand which are technical on-site requirements for necessary infrastructure, and open spaces on the other which are more likely a planning policy requirement or a developer-led design feature.

One potential starting point for national standards would be for Government to bring together relevant interests and expertise. This is an approach that Defra is already exploring to support the new SuDS regime with work being led by civil engineering firm, Aecom. Because it is a new regime it is considered that there is broad scope to consider the relevant and appropriate standards but this process would bring enormous benefits more generally and HBF would be eager to participate in such work.

Common approaches for highways adoption standards could include consideration and clarification of:

- Inspection fee values/percentages
- Frequency of required inspections
- Sign-off processes
- Stage inspections and approvals

Consideration should also be given to commuted sums, their application, value and what constitutes a an 'initial period' for these purposes (most commonly 20-25 years for relevant items).

Many of these factors were explored by HBF 15 years ago which resulted in the *Position Statement on Section 38 Commuted Sums,* published in February 2009, and which highlighted all of the same issues when proposing to Government a nationally agreed and consistently implemented set of criteria for adoptable standards for highways. Although the issue is, today, much wider than just highways, the work of HBF and its members on this subject in 2008 and 2009 is even more relevant today.

HBF would support the creation of a nationally established pricing structure. This works elsewhere in government and in contract work, for example the National Schedule of Rates document. These published schedules have been widely used elsewhere in the built environment for decades, providing clarity and transparency for developers and other place-makers while being relatively easily updated to ensure fairness and consistency for all. Alternatively, a process could involve the provision of a number of quotations from contractors for the work with the bond value taken from that process rather than using only the council's own in-house estimates which members report often runs at 150% or 200% of competitive tenders.

We look forward to hearing other views from stakeholders on procedures for this and, again, welcome the CMA providing an opportunity to highlight these issues which we hope will

result in relevant Government departments and bodies engaging in dialogue with stakeholders, including the house building industry. As previously stated, while Government involvement is crucial, ahead of reaching that point, HBF would be delighted to help convene work or stakeholder groups on this issue.

In the small number of instances where adjudication may be required, an Ombudsman service could make determinations, ensuring that the developer has built the amenities to the suitable adoptable standard and enforces execution of the adoption agreement.

For open spaces, the commons standards are effectively already in place underpinned by planning conditions to ensure that the development has been built in accordance with the planning consent. Detailed landscape plans and detailed play equipment designs are submitted as part of the planning conditions process. In the case of play equipment this may involve a certification such as that from the Royal Society for the Prevention of Accidents. These procedures are already well understood and used but do not lead necessarily to adoption by the local authority. Formalising this further with mandatory adoption in these circumstances would be very welcome.

HBF would welcome the opportunity to work with Government and other relevant stakeholders to help determine the crucial common standards.

Question 8

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

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?

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?

Local authorities need not fund the cost of remedial work. This is the purpose of the bonding arrangements. While the public authority may maintain responsibility for completion of necessary work to meet adoptable standards, supported by bonds provided by the house builder (paragraph 4.39(b)). The developer pays for all highways work, from construction, to maintenance and upkeep as well as further remedial work right up to the point of adoption. The council only formally adopts when it is fully satisfied that the road is in fit condition for handover.

There is no risk to a local authority having to pay for the remedial work on an existing highway if the developer or landowner is known. The same would exist for an area of Open Space that a council is willing to adopt. The responsibility to bring the public amenity up to adoptable standard lies with the land/asset owner – mostly the house builder.

The Local Authority reserves the right to call in the bond for any asset or highway that is or has not been built to adoptable standards. Section agreements stipulate the need to be built to adoptable standards. If standards remain unmet the developer/landowner has not fulfilled their legal duties under the agreement and a local authority fully reserves the right to ‘call in’ the bond and arrange for the work to be carried out accordingly by a third-party contractor approved for use by the authority.

Councils can ask for cash bonds or higher inspection fees if they feel more supervision is required and impose the use of approved contractors on the construction of public assets if required. Meanwhile, staged certificates and sign offs are required at each stage of development. It is not in the developer's interest to aggravate and lose trust or sour relations with a local authority by failing to meet their obligations under a planning consent or adoption agreement. A local authority reserves many forms of sanctions that they can impose to control and gain assurance that public amenities are being built to adoptable standards. It is in the control of the local authority to determine when they consider a road has been built to a satisfactory standard. This leads to the issuance of a part 1 and part 2 certificate and reduction in the bond value ahead of handover of the road. Only then can a bond value be financially reduced by the developer via the surety provider. Only the local authority reserves this right of control. There is therefore full assurance available to the authority that they retain the ability to enforce and control highways and amenities being built to adoptable standards.

If this is ever not to be the case then they have the ability as stated above to 'call in' the bond and arrange for the necessary remedial works to be carried out in line with the legal obligations and standards set within the adoption agreement. In this scenario the surety provider provides the monies to the authority at no charge for the works to be carried out.

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.

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.

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.

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

Mandatory adoption is, in general, the fairest approach for new sites and definitely the one that will lead to the best outcomes for homeowners and other residents on new housing estates.

The legislative necessity, as set out by the CMA, is noted but we would expect much of the agenda for change to be uncontentious with common adoptable standards, which may require more debate and consultation, to be dealt with separately so as to allow for evolution over time.

Public amenities in new residential housing developments are increasing in scale, purpose and complexity. It is no longer the case that an area of open space is calculated simply using the 'six-acre standard'. Open space areas and other public amenities often serve multiple purposes and act as nature provision serving ecological enhancement for fauna and flora in addition to open space areas for recreation. Furthermore, 2024 will see the implementation of Schedule 3 of the Flood & Water Management Act 2010 in England. This follows the implementation of Schedule 3 in Wales during 2019. This will see the introduction of more nature based shallow surface level engineering solutions to address

surface water run-off from residential housing estates. This will result in the capture and retention of rainfall run-off to pre-filter and improve water quality leaving new housing estates. This legislative change again increases the total area of public amenities created on new residential housing developments that are all fully accessible by members of the public. These features further increase the responsibility on adopting bodies (whether private management company or local authority departments) to maintain.

Mandatory adoption would be feasible and optimised if Government updates relevant legislation and guidance. In the case of highways, a revision of the Highways Act 1980 and other Department for Transport documents such as *Manual for Streets* would be very welcome.

Updates and a new approach should be centred around having a national set of Standard Details for residential highways together with a centralised matrix for costing associated with commuted sums, inspection fees and bond values together with transparency around those costs to allow developers to reasonably plan and forecast.

If greater transparency existed for fees then developers would embrace appropriate valuations if meaningful steps were achieved towards mandatory adoptions within key timeframes. Independent Ombudsman services could be engaged to protect both local authorities and developers to deliver the best possible outcome for homeowners.

We agree that retrospective mandatory adoption is unlikely to be practicable. Mandatory adoption moving forwards should be accompanied by enhanced consumer protections for existing unadopted amenities.

HBF does not believe there will be any significant unintended consequences to the introduction of mandatory adoption. Up until relatively recent times it was the standard practice of local authorities to adopt public amenities.

Question 10

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

The proposed criteria are the right ones. This largely represents the status quo, but the addition of ‘a clear route for householders to enforce’ duties would represent a significant step forward, effectively giving householders a route to redress. Amenities such as community buildings or other bespoke site-specific features are not included, but providing a fully comprehensive list may be unachievable and those listed under paragraph 4.47 encompass the vast majority of relevant amenities.

It should be noted that the specification criteria set out under paragraph 4.47 of the working paper largely represents the current regime which, in practice, is not being delivered upon.

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 we have stated elsewhere, it is reasonable for new build residents who pay the same level of Council Tax as equivalent older properties to expect the same level of service. As well as payments made by the developer as part of planning agreements and at the time of adoption, it should be remembered that new developments create a revenue stream for local authorities via Council Tax – as well as for water companies through new connections, providing income on an annual basis in perpetuity. In the case of councils, homes built in the most recent eight years for which we have figures have increased Council Tax receipts by an estimated £3.25bn.

If further payments are required from developers for adoption, house building businesses would require the greatest level of certainty upfront. If authorities were to publish such information alongside local plans then it would allow firms – especially smaller companies with generally tighter cashflows – to plan in advance of acquiring, planning and developing a site. Under the residual land value model, as with other new build policy and regulatory requirements, this may balance ultimately against Section 106 or CIL contributions. If such payments were to become a feature, it should be noted that with many local plans out of date, the transition period to a new, fully-functioning system as envisaged by the CMA may take many years.

A system with defined developer payments to ensure mandatory adoption should also be subject to nationally set fees or with a range of fees, which could be regional, set out at a national level. Complete freedom for local authorities to set fees can create opportunities for some councils to use the powers as a tax raising mechanism as appears to be the case with inspection fees for new roads.