

Homes for Scotland response to the Private management of public amenities on housing estates working paper

We are in broad agreement with many of the issues raised in this paper and share concerns that local authorities are increasingly failing to adopt public amenities delivered by homebuilders. Local and national public policies are increasingly requiring the provision of additional public infrastructure and the consequence of these policies is that they will need to be maintained by the public purse for the public good.

We have provided answers below to those questions applicable to Scotland.

Question 3

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

Overall, the process for the adoption of roads is fairly straightforward as set out in The Roads (Scotland) Act 1984. However, whilst the process is straightforward homebuilders have reported a very significant slowdown in the granting of Roads Construction Consent and then the subsequent adoption process.

Generally, the engagement with Local Authority Engineer regarding site inspection and agreement to remedial works necessary is straight forward however getting to final sign off prior to adoption and return of bond is problematic in most authority areas.

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

Local authority building department resourcing, willingness from local authorities to complete adoption, and a lack of national standards in terms of road adoption and their design are the three core barriers to slow adoption in Scotland. The delays to granting a road construction consent (RCC) and release of a road bond (where required) are particularly detrimental to the efficient build out of sites, but especially so for SME home builders.

Local Authority Resourcing

A 2021 survey carried out by Local Authority Building Standards Scotland (LABSS) found that 81% of local authorities stated that building standards teams have reduced in FTE numbers, with the potential loss of a further 25% of the workforce through retirement within the next five years.

Local Authority Variation and Lack of National Standard

As there is not national standard in terms of design used by Local Authorities (currently only guidance is provided through SCOTS National Roads Design Guide), this has created inconsistency in practice across Local Authorities. Further, there are concerns over the lack of joined-up working between roads and planning departments, with a road department frequently only commenting on the geometry and road design after the planning consent has been received, often imposing additional standards or deviations from the original application.

Road Bonds

An acute problem throughout the RCC process is the requirement for and provision of road bonds by SMEs. The up-front costs of providing a road bond by an SME are hugely significant, in some cases the level of road bond required by certain Local Authorities means that developers, in principle fund the costs of roads and sewers twice the cash flow cycle until the roads get adopted.

The variation across authorities in how bonds are set again provides a further unnecessary complication in the system which a national set of tariffs would be helpful in addressing. In most authority areas the setting of bond levels appears to be inconsistent with the actual cost of works to be covered and in some cases the bond levels set are punitive. Again, a lack of resourcing or lack of appetite from local authorities to adopt roads and associated maintenance, creates subsequent delays in having the road bond released upon completion of the road to the appropriate standard and timescales. In particular this has a negative impact on SME homebuilders, restricting their access to finance and slowing down their ability to move on to the next development site and again reducing the pace at which homes are delivered.

Willingness to Adopt

Anecdotal evidence from our homebuilder members have advised that there has been a noticeable slowdown in the length of time taken to be granted a road construction consent (RCC) in Scotland. With Local Authorities not responsible for their maintenance until adopted and with the financial and resourcing constraints they are currently facing, they have no incentive to adopt roads in a timely manner. These delays are hugely detrimental to SMEs who not only continue to maintain the roads but continue to have capital locked in as the road bonds they provide are kept in place for longer than necessary.

The RCC should be streamlined with the Planning Consent but in many instances, this is not happening and thus acts as a further drag on the pace of delivery of new homes with work unable to start until such consent is received. Getting to a position where consent is agreed and granted can be dragged out for months which in many cases is unnecessary and leads to developers either working at risk or suspending works until such a time as consent is formally granted.

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

Whilst we cannot comment authoritatively on the position in England and Wales in comparison to Scotland; the presumption of road adoption on the completion of a development is welcomed.

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.

In Scotland, Scottish Water are responsible for sewers, drains and SUDS once adopted, and the adoption process appears to be a relatively straight forward process with a consensus that on the whole, that the working relationship between home builders and Scottish Water has improved in recent years.

Scottish Water appear to be pro-active in their wish to have legacy schemes covered and handed over at the earliest opportunity, and this is borne out by the low number of developer legacy schemes still to be formally adopted.

Question 5

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

With regards to the adoption of amenities the best solution needs to lie with increased resourcing of local authorities or other public agencies to allow adoption of amenities provided by the private developer for the public good. The increasing emphasis on upfront infrastructure provision, demands

associated with adequate public open space will see additional public infrastructure created. It is only appropriate then that this infrastructure is subsequently adopted by the relevant agent.

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?

A balance of the two approaches is likely to be required. Mandatory adoption should be the primary route; for cases where this is not possible, then enhanced consumer protection for those needing a private management option should be provided.

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

The consumer protection codes which new home builders operate within provide a strong level of protection for the consumer.

In particular the newly introduced New Homes Quality Code and ombudsman service does provide an additional level of protection in ensuring customers are advised of the extent of their obligation in regard to future estate management processes and costs. Furthermore, the role of the purchasers lawyer in advising them of these issues should provide additional protection.

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.

We are unable to comment on the process open to purchasers in the rest of the UK but the provisions in Scotland with regards to regulation of factoring services do appear to be stronger than elsewhere.

c) 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 many of these policy areas are already devolved it would appear to be the responsibility of the devolved nations to implement measures. There would however, be significant benefit to home builders and consumers both in having a consistency of approach across the UK. This is already the case with the NHQB and ombudsman to ensure that consumers have the same level of protection regardless of where they buy a home or live in the UK.

Question 7

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

Yes, we are of the opinion that consistency in approach would allow for a more efficient system of adoption that would be easier to navigate for all parties.

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?

If common national standards are to be set, then it needs to be done either at central government level or by COSLA or similar body e.g. SCOTS. They will need to be set and enforced locally by the adopting agency.

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?

It would not be appropriate to retrospectively introduce this approach.

Question 8

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

The initial cost of creating a facility to the adoptable standard is met by the homebuilder in the first instance. Once completed and adopted then the cost of any future remediation work lies with the public agency or central Government. If the facility was never required initially to be built to an adoptable standard but now retrospectively requires to do so, then again that cost lies with central government or the relevant agency.

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?

Sanctions already exist through the existence of road bonds which are only discharged once the road is constructed to the appropriate adoptable standard. If the developer fails to provide the appropriate standard the bond is available to the local authority to cover the cost of upgrading.

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?

As per B above, the provision of road bonds in Scotland works well but the process for release of bonds on completion of the works by the developer needs speeded up.

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, adoption should be mandatory for all infrastructure created for the public good.

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, it is only practicable for new build developments going forward

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.

There will undoubtedly be increased call on the public purse for the ongoing management and maintenance of public facilities. Given that other public planning policies generally resist the

introduction of 'private' spaces other than gardens and are generally intent on increasing the volume of public open space created then it is likely that the requirements for public adoption will only increase.

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

If the facility is purely and exclusively for the use of residents and not the public for example open space on a development, then it could be appropriate for that not to be adopted. Enforcement of the 'no public use' of such facilities is likely to be problematic.

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?

No comment.

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)

In broad terms the local authority block grant along with the Council Tax system is the appropriate mechanism for the maintenance of adopted public amenities.