

Housebuilding Market Study

Persimmon plc's response to the CMA's working paper on private management of public amenities on housing estates dated 3 November 2023 (the "Amenities Working Paper")

1. Executive Summary

- 1.1 Overall Persimmon agrees with the CMA's provisional view in the Amenities Working Paper¹ that a market investigation reference may not be the most effective way of addressing concerns around the private management of public amenities by estate management companies, and that government action may be more appropriate as the root cause of concern is the declining levels of adoption by local authorities.
- 1.2 Persimmon also broadly agrees with the proposed remedies suggested by the CMA, consisting of a combination of consumer protection measures, common adoptable standards for amenities built in the future, and mandatory adoption. Persimmon has provided comments on these remedies in Section 3 below, including an indication of where these responses may be relevant to the questions the CMA sets out in Section 5 of the Amenities Working Paper.

2. Overall Persimmon agrees with the CMA's preliminary conclusion

- 2.1 Persimmon agrees with the CMA's emerging view that the root cause of the potential harm to consumers from the private management of public amenities is the declining level of adoption by local authorities, as set out at paragraph 4.2 of the Amenities Working Paper. Persimmon agrees with the CMA's provisional view that the most appropriate means of redress is therefore government action, as opposed to a market investigation reference (as set out at paragraphs 4.5 - 4.8 of the Amenities Working Paper).²
- 2.2 Persimmon agrees that the absence of an obligation on local authorities to adopt, the timescales (in particular, delays caused by local authorities and the planning process) and resource constraints at local authorities are the main barriers to adoption (as noted by the CMA at paragraph 3.60(a)-(c) of the Amenities Working Paper).³ (Relevant to Questions 1-4).
- 2.3 Specifically as regards adoption of roads in England, common issues include: the absence of a definitive standard to say which roads can and cannot be adopted;⁴ different standards for road construction in different local authority areas; obtaining approvals to designs and drawings to enable works to commence often takes a long time; a lack of coordination between local highways authorities and local authorities leading to situations where roads constructed in

¹ Persimmon notes that where a point is not addressed in this paper, this should not imply an acceptance of the CMA's, or as the case may be third parties', views. Unless otherwise specified all defined terms in this response have the same meaning as they do in the Amenities Working Paper.

² The impact of declining adoption by local authorities and the need for government measures are also highlighted in Persimmon's response to the CMA's update report dated 18 September 2023 ("**Persimmon's Response to the Update Report**") at paragraph 1.2(ii).

³ See also Persimmon's response to Questions 41 and 42 of the CMA's RFI dated 22 March 2023 ("**RFI 1**").

⁴ The government published a document "The Adoption of Roads into the Public Highway" in 2022. The aim was to promote best practice but no single set of standards for which roads should be adopted is being applied across England and Wales.

accordance with a planning permission cannot be adopted; lengthy legal process for the adoption agreement itself; length of time it takes to obtain sign-offs following construction; high inspection fees. (Relevant to Question 1).

- 2.4 Similar issues arise in Wales. Persimmon has not seen a step change in the roads adoption process in Wales following the introduction of the Good Practice Guide and Common Standards on highway design and construction. In Persimmon's experience, each local authority still appears to have its own standards, albeit some are a variation of the Common Standards. In Persimmon's view, it is not the case that the Guide and the Standards have reduced barriers to adoption nor achieved greater consistency in approach across local authorities. (Relevant to Question 2).
- 2.5 In Persimmon's experience, the process for road adoption in Scotland works more effectively than in England and Wales. The governing legislation (the Roads (Scotland) Act 1984) provides certainty as to what roads are capable of adoption, prescribes (together with local authority road design guidelines) the standards to which roads must be constructed and also prescribes the process which must be followed, thus avoiding many of the issues which hamper the process in England and Wales (as described above). That said, timescales for completion of the process laid down in the statute vary between local authorities and can be elongated.
- 2.6 In relation to adoption of drainage and sewers in England, Persimmon's experience is that the approval process can be lengthy due to lack of resource at the adopting authority. In relation to SuDS, local authorities have been increasingly reluctant to adopt these amenities in recent years such that ordinarily now the maintenance of a balancing pond (including related landscaping and grass cutting) will be the responsibility of the management company on behalf of the homeowners. (Relevant to Question 4).
- 2.7 Persimmon considers that the adoption process for foul and surface water systems (equivalent of drainage and sewers) in Wales is straightforward and efficient. (Relevant to Question 4). This is not the case for the adoption of SuDS in Wales – Persimmon finds this process to be very challenging as local authorities (rather than water/drainage authorities) are responsible for adoption. This leads to inconsistency as different approaches are taken by different local authorities, and lengthy timescales due to lack of resources. (Relevant to Question 4).
- 2.8 Persimmon's experience of the SuDS & Sewer adoption (vesting in Scottish Water terminology) process in Scotland is that the vesting process itself is clear and straightforward as Scottish Water will adopt all drainage assets i.e. sewers, pumping stations, SuDs and other attenuation structures. The adoption process can be lengthy due to the complexities associated with land transfers, particularly in relation to SuDS, Attenuation & Pumping Station assets. However, there is a clear and consistent approach to the expected condition of assets and developers are clear on the standards required by Scottish Water to facilitate adoption.
- 2.9 Persimmon believes that the key to improving the management of SuDS in England is to increase rates of adoption of these amenities. Therefore, Persimmon believes the forthcoming changes in England could have a positive impact on SuDS adoption in so far as they mitigate the scope for conflict between a water authority and a local authority, but only if all SuDS on

future developments are adopted by local authorities.⁵ However, Persimmon is currently not fully aware how Schedule 3 of the Flood and Water Management Act 2010 will impact England as the DEFRA consultation is still awaited. Persimmon agrees that, if implemented, the recommendations from the review of the implementation of Schedule 3 should remove barriers to adoption in Wales – in particular the practical implementation of standards for inclusion of SuDS within the highway and the need to build resource capacity within each authority. The funding of long-term maintenance is another issue which will assist in bringing schemes forward more swiftly. (Relevant to Question 4).

3. Remedies

- 3.1 Persimmon notes that the CMA proposes two main types of remedy, those aimed at: (i) providing greater protection to households living under current private management arrangements; and (ii) reducing the prevalence of such arrangements (paragraph 4.10 of the Amenities Working Paper). Persimmon supports the CMA's proposal that a combination of both types of remedy is needed. Mandatory adoption in particular is essential in order to address the root cause of the private estate management company system, i.e. declining adoption by local authorities. (Relevant to Question 6(a)). In relation to these remedies, Persimmon's view is that the government is best placed to enact and enforce these measures for the reasons the CMA sets out at paragraph 4.7 of the Amenities Working Paper. (Relevant to Question 6(d)).

Remedies aimed at providing greater protection to households living under current private management arrangements.

- 3.2 In relation to protective remedies for households with existing private management arrangements, Persimmon broadly agrees with the CMA's proposals. Persimmon notes that the CMA makes some proposals on increasing transparency in relation to estate management fees to improve the awareness of consumers (paragraphs 4.19 - 4.21 of the Amenities Working Paper). As noted in previous responses, Persimmon has always provided details of the service charge prior to reservation and has progressively improved the quality of the information given to consumers over the years. Persimmon now requires its sales team to provide a comprehensive breakdown of the estate management budget (including an explanation that these charges can increase) and has developed training for the sales team to improve their knowledge (e.g. informing customers about the public amenities on their development and which will be maintained privately).⁶ Persimmon notes that the introduction of the NHQC will require signatory housebuilders to achieve these standards. Persimmon has also recently introduced a group-wide standard managing agent agreement for new sites which (amongst other things) limits management fees, ensures services are provided at a reasonable cost and ensures that standards of service are maintained.⁷ Persimmon also requires managing agents to be members of ARMA (or equivalent industry body) and register and comply with the Property Ombudsman Redress Scheme or the Property Redress Scheme, which further ensures the

⁵ The adoption of all SuDS on future developments by local authorities is not guaranteed in the current proposals and could risk creating a second service charge for consumers if the SuDS are built to common standards but fail to be adopted due to unwillingness from the local authority, and therefore need to be managed by private management companies.

⁶ See Persimmon's Response to the Update Report, paragraph 3.7, and Persimmon's response to RFI 1 Question 46(n) and (o).

⁷ Note the standard agreements do not apply to pre-existing sites, or to new phases of existing sites.

protection of resident consumers⁸ living within RMC arrangements as ARMA requires its members to adhere to certain standards,⁹ and be part of an independent ombudsman scheme.¹⁰

- 3.3 Persimmon notes that the NHQC has specific provisions on transparency and accuracy. The NHQC also provides for an independent certified ombudsman and effective audit provisions to assess compliance. The CMA seems to dismiss the NHQC on the basis that it does not have complete coverage of the market (paragraph 3.120 of the Amenities Working Paper) but all major housebuilders have signed up to it and it would be open to the CMA to encourage others to act in a way that is consistent with its provisions.

Remedies aimed at reducing the prevalence of private estate management arrangements.

- 3.4 Persimmon notes that remedies to reduce the prevalence of estate management companies managing public amenities include both the introduction of common adoptable standards and rules for the mandatory adoption of certain amenities (paragraph 4.33 of the Amenities Working Paper). Persimmon broadly agrees that these measures would be effective in reducing the prevalence of private estate management arrangements (and thereby reducing the potential harm to consumers that the CMA considers in section 3 of the Amenities Working Paper).

- 3.5 In bringing forward measures to increase adoption rates it will be essential also to ensure that local authorities take a consistent approach to matters such as: inspection fees – there should be standard charging schedules; calculation of bonds and commuted sums; transparency; what can and cannot be adopted particularly in the case of roads; timescales for local authority approval of plans and for inspections and sign-off of works; and common specifications for materials.

- 3.6 Persimmon sets out below more detailed comments in relation to: (i) the common standards to be applied; (ii) the system of mandatory adoption and the matters which would be subject to it; (iii) how commuted sums should be dealt with as part of this new system; and (iv) Persimmon's view on the retrospective application of any common standards / mandatory adoption.

(i) Common standards

- 3.7 Persimmon supports the CMA's suggestion of developing common adoptable standards which housebuilders can use as there is currently variation in the standards set between local authorities, increasing the complexity of obtaining adoption for local amenities. Common standards may not directly drive an increase in adoption (since the principal barrier to adoption is its discretionary nature) but common adoptable standards would give greater certainty to

⁸ Persimmon notes although ARMA is an association predominantly concerned with leasehold (as stated by the CMA at paragraph 3.191 of the Amenities Working Paper); most ARMA agents Persimmon works with manage predominantly freehold estates and ARMA also produces resources related to freehold – for example, see the advice note ARMA prepared to inform freeholders about estate charges, https://arma.org.uk/wp-content/uploads/2022/04/Freehold_Houses_in_Estates_.pdf.

⁹ Including the RICS 'Service Charge Residential Management Code', ARMA's rules of membership, and ARMA's Standard and a Consumer Charter. Breaches of the ARMA standards can be a factor considered in relevant disciplinary, court, or tribunal proceedings.

¹⁰ <https://arma.org.uk/wp-content/uploads/2023/04/ARMA-Complaints-Guidance.pdf>

developers in terms of estate planning, costing and timing. The common adoptable standards could be developed jointly between a working group led by the HBF and all relevant departments of the local authorities (i.e. to ensure the planning department agrees standards that the relevant adopting authority will accept). It will be essential to ensure that all relevant departments are bound by the standards. (Relevant to Question 7(a)).

- 3.8 It will be important to avoid the gold plating of the standards. Persimmon believes the standards would need to be codified in legislation and to be enforced by a body such as the First Tier Tribunal. (Relevant to Questions 7(b) and 7(c)).
- 3.9 Persimmon believes the mandatory bond option (paragraph 4.39(b)) is the way to deal with the scenario where public amenities on new estates are not built to the agreed common adoptable standard. This would enable local authorities to undertake the work necessary to bring the amenity up to the relevant standard and as such in Persimmon's view there is no need for the local authority to have recourse to further sanctions. However, it will be important to ensure that there is greater consistency and transparency in the calculation of bond sums by local authorities. (Relevant to Questions 8(a) and 8(b))

(ii) Mandatory adoption

- 3.10 Persimmon agrees that mandatory adoption is likely to be an effective and feasible option to address the CMA's emerging concerns in relation to adoption of all relevant amenities on new housing estates. However, there would need to be (like in the Scottish road adoption system) a defined list of what can and cannot be adopted (as the CMA suggests) with clear obligations on both authorities and developers to dictate the requirements and timings relating to the adoption process. (Relevant to Question 9).
- 3.11 In relation to the amenities which the CMA suggests mandatory adoption will apply to (set out at paragraphs 4.47 - 4.48 of the Amenities Working Paper), Persimmon agrees with these criteria but suggests adding SuDs¹¹ and balancing ponds¹² to the list of amenities which should be adopted. (Relevant to Question 10).
- 3.12 In addition to the measures the CMA proposes, Persimmon suggests that local authorities should be obliged to provide a maintenance schedule in relation to the public amenities it will adopt (local authorities currently do not have to provide this). This will enable the consumer to understand the expected level of service and hold the local authority accountable if those standards are not met.

(iii) Commuted sums

- 3.13 Persimmon has previously highlighted problems in the way local authorities approach commuted sums. The commuted sum is intended to be used by the local authority for the initial maintenance of the amenity it has adopted (as noted at paragraph 4.53 of the Amenities

¹¹ Persimmon notes the CMA discusses SuDs in the Amenities Working Paper at paragraphs 3.53 – 3.58.

¹² Balancing ponds are ponds included on an estate for flood management purposes at the request of the drainage provider; they temporarily store overflow water and release it slowly to prevent the drainage system from being overwhelmed. Balancing ponds are currently not adopted by local authorities.

Working Paper). However, the value of the commuted sum and the way it is calculated varies considerably between local authorities (for example, some local authorities may use an ‘initial period’ of five years, whereas another may use many more years). Persimmon accordingly supports the CMA’s suggestion at paragraph 4.53(a) that guidance should be issued to encourage more consistent and transparent means of calculating commuted sums. Persimmon suggests that a fixed schedule of costs for various types of infrastructure (adjusted for regional labour costs) and fixed time periods should be used to ensure commuted sums are reasonable and accurately reflect the true cost of maintenance. The setting of these costs could also be subject to a review by BCIS (Building Cost Information Service) or a similar body with access to holistic data to ensure accuracy. The fixed costs should be subject to industry consultation before they are settled and should be subject to periodic review.

3.14 In addition to guidance on the calculation of commuted sums, Persimmon also suggests there should be a requirement for commuted sums to be ring-fenced so that they can only be used to maintain the adopted amenity intended (also as suggested by the CMA in paragraph 4.53(a)). Once the commuted sum has been spent on the initial maintenance period, the long-term cost of maintaining the amenity falls to the local authority as part of its overall budget as it has accepted responsibility by adopting the amenity. Persimmon notes the overall budget of the local authority includes a variety of sources including council tax but is not able to comment specifically on how local authorities should allocate their budgets. (Relevant to Question 11).

3.15 As noted, there is also a need for more consistent and transparent means of calculating bonds and inspection fees.

(iv) Retrospective application

3.16 Persimmon notes that the CMA states at paragraphs 4.36 and 4.43 of the Amenities working Paper that it considers the common adoptable standards and mandatory adoption would apply only to future housing estates. Persimmon agrees with this approach for the reasons the CMA sets out – i.e. that there would be significant challenges and costs associated with updating existing amenities. Persimmon considers that these challenges include in particular the following: (Relevant to Questions 7(d) and 9(b)).

(i) Variation in the adoptable standard applied by a local authority over time means that some amenities built to an adoptable standard at the time of their construction may not be compliant with a new standard through no fault of the housebuilder.

(ii) Evidence that one of the reasons why amenities do not get adopted is local authority policy not to adopt (see paragraphs 3.47 and 3.48 for example).

(iii) Landowners rather than housebuilders are likely to have been the beneficiaries of amenities not being adopted (in the sense that any saving on commuted sums may have been passed on to landowners in the form of higher purchase prices for the land).

(iv) Housebuilders responsible for the development of estates with unadopted amenities may no longer be trading.

(v) Multiple existing legal agreements would need to be unpicked.

- (vi) Relevant land may be in third party ownership making compulsion of remedial works difficult.

3.17 In Persimmon's view, these challenges would make it difficult for the CMA to design a proportionate scheme for the upgrading of existing amenities.

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