CMA Housebuilding Market Study

Private management of public amenities on housing estates working paper - 3 November 2023

1. Overview

1.1 Redrow plc ("Redrow") welcomes the opportunity to comment on the CMA's Private management of public amenities on housing estates working paper which was published on 3 November 2023. Redrow remains committed to working with the CMA on this Market Study with a view to ensuring that the CMA has a full and proper understanding of the market and how it operates and can therefore draw appropriate conclusions in its final report. In this response, Redrow wishes to highlight certain key points from its perspective.

1.2 Redrow is a national housebuilder, with a focus on high quality homes designed to complement the style of existing local housing in developments that meet local demand and enhance the community. Redrow has a responsible and sustainable approach to managing its business with a strong track record of being customer focussed. It is rated as a five-star builder by HBF, and this is indicative of the importance that Redrow attaches to customer care and its relationships with its customers.

Question 1

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

The process is effective in principle as there is a clear legal framework for offering roads for adoption under a Section 38 Agreement (‘Road Agreement’) under the Highways Act 1980, getting them inspected during construction and then inspecting them at the end of the development. The reality though is that the process takes substantially longer than the anticipated timescales, please also see our response to Q1b below.

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

The key barrier is the requirement to get the foul and surface water sewers adopted first. Problems are often identified late (post occupation) and can be difficult, timely and costly to fix.

Other factors include:

- Local Authorities (‘LAs’) requiring changes to approved drawings and citing discretion clauses in most S38 model Road Agreements.
- LAs being inconsistent regarding standards and definitions.
- Availability and willingness of contractors to return to site to make good remedial works.
- Quality of sub-contractors decreasing and complexity of works increasing, (e.g. backfill specifications, aggregate types, compaction specifications).
- Apparent lack of desire for LAs to adopt new highways (existing budgets stretched).
- No arbitration provision or over-arching authority to mediate between developers and LAs.

- Difficulties between planning approved layouts and changes the S38 engineers require that may affect adoption.
- Increased time frame for LAs to respond (resource issue at LA).
- Existing residents making alterations to their properties which has an impact on the adopted highway, (e.g. widening driveways, gravel driveways).

Some highway authorities' legal departments are slow to produce draft Road Agreements following instructions from their technical officers which is disappointing given generally these are in a standard form. This is cited as being a resource issue notwithstanding the fact that the developer must pay for the legal fees for preparation and completion of the Road Agreement.

Question 2

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

The process in our experience in Wales is generally poor. It is not just inconsistencies between local highway authorities but between officers within the same local highway authorities. A change in officer can effectively re-start the highway authority consideration to the S38/S278 process. It often requires changes during the S38/S278 process that alters the planning approval, which the highway authority was a consultee to during the application stage. A developer not undertaking a change (at cost for re-plan etc) to suit the S38/S278 requirement can affect the ability to adopt.

There is also a total inconsistency and lack of transparency in relation to calculation of the bond value and commuted, which are required for insertion into Road Agreements, which is particularly unhelpful. This can affect site viability especially as the requested sums are increasing significant, and the knock-on effect is that inspection fees (based on a percentage of that figure) are increasing disproportionately also.

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

We consider that consistency of guidance and advice from highway authorities and individual highway officers are the key barriers to adoption of roads in Wales.

It should also be noted that sprinklers are now required in Wales for all new houses. Until this year house builders had been providing a private sprinkler main within the highway to provide a water supply for this (to avoid process of tanks and pumps being installed in each property with added insurance/maintenance issues). The ability to provide this private main within an adopted highway has now been stopped, led by Welsh Government.

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

We have not seen this document widely advertised for designers to us.

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

On the basis that we have not really seen these in widespread operation we would have to say that the standards have not achieved greater consistency.

Question 3

(a) As this question relates solely to Scotland and we no longer construct dwellings in Scotland no response has been provided.

(b) As this question relates solely to Scotland and we no longer construct dwellings in Scotland no response has been provided.

(c) As this question relates solely to Scotland and we no longer construct dwellings in Scotland no response has been provided.

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 respect of Wales:

i) In our experience, generally, the local statutory water provider, Welsh Water provide a good service in this area. However, we have had instances where certain items have been approved for use during the design stage process, then when we come to get these sites adopted several years later, the regulations have changed, and Welsh Water have refused to adopt the previously approved items. (by way of example - plastic A15 drainage covers originally approved, metal B125 drainage covers then requested at inspection stage).

ii) There is now a mandatory approach to SuDS in Wales through the approval body (SAB). The adoption stage is in its infancy. The design of SuDS and obtaining technical approval is a slow process, and there is huge inconsistency between local authorities into what SuDS solutions are acceptable. For example, Cardiff Council will not accept permeable paving as a default. There probably needs greater guidance and consistency across all local authorities,

There are also inconsistencies between officers within SAB authorities and just a change of mind of what they are willing to accept. For example, Redrow is developing a large multi-phased development in South Wales and what has been accepted and built in earlier phases is not now being accepted in later phases. The adoption process on the earlier phases has not taken place which will therefore cause issues going forward together with the inevitable likely additional cost and the process being slowed down.

A big issue is also the transparency for calculating a commuted sum for adoption of the SuDS. Management by private management company is not accepted and ability for the SAB to clarify the commuted sum is difficult to obtain even at the point of technical approval. Redrow has obtained permissions (including SAB technical approval), acquired land, built properties, sold properties and is still yet to understand the commuted sum, which is neither good for the Developer and ultimately the consumer. This is a significant issue especially when the commuted sum is likely to be in the region of £5-£10k based on experience in Wales to date.

In respect of England:

We are in a period of transition as we move towards adoption of sewers by non-statutory water authorities ('NAVs' - New Appointments and Variations companies). The traditional model of handing sewers to the incumbent water authority has become increasingly difficult over the last 10 years. Delays are often encountered due to factors including:

- Inflexibility of incumbent water authorities – expected standards over and above what can generally be delivered in a real-world environment.
- Standards becoming more and more onerous due to numerous legislation changes (for example water quality, climate changes calculations, urban creep requirements, permission to discharge into watercourses, legal issues).
- Quality of sub-contractors decreasing and complexity of works increasing, (for example SuDs requirements).

The emergence of NAVs is also the cause of some confusion for homeowners as this is a move away from adoption by the more traditional statutory water and sewage undertakers. Whilst NAVs suggest they will adopt the arrangements, these are not always satisfactory and it is not always adoption in the true sense with attenuation facilities sometimes being transferred to the non-licenced group company of the NAV and in effect another management company regime being set up, which can make the process more unwieldy and potentially more expensive for the consumer.

Further, some traditional statutory water and sewage undertakers will adopt the surface water piped networks being the pipes up to and exiting an attenuation pond but not the pond itself, while others will adopt the pond. Accordingly, the approach is not a consistent one. In addition, some water undertakers will not adopt highways surface water drains and therefore these must go into a separate network, which may or may not be adopted by the highways authority and if not be maintained by a management company. The industry needs consistency and not different approaches which essentially should be the same regardless of who is adopting.

The preference would be to have these areas and apparatus adopted. However, even though all the traditional statutory water and sewage undertakers are regulated by OFWAT they do not all have the same approach to adoption.

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

The introduction of NAVs may help in the short term as the adopting authorities may become more customer focused on an open market. We are seeing Section 104 Water Agreements under the Water Industries Act 1991 being processed more quickly by NAVs.

The implementation of Schedule 3 of the Flood and Water Management Act 2010 may in fact introduce barriers. The sewer network is only likely to become adoptable (by either the statutory water authority or a NAV) once the downstream network is adopted (by the SAB). Given the lack of resources within Local authorities it is unclear how they will cope with the demands of design approval, inspection, adoption, and ongoing maintenance.

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?

The introduction of a national commuted sums approach would greatly assist. Developers and consultants would then have a good understanding when designing schemes what the associated commuted sums would be. This should assist with up-front viability consideration. For example, a softer/greener SuDS solution potentially utilising more land with lower associated commuted sum versus all the opposite. A National standardised commuted sum lifespan calculation would be useful also, as it currently differs between authorities, as some calculate on 30/60/100 years basis.

Whilst a commuted sum is payable at point of adoption, Redrow is concerned whether the money is suitably ring-fenced within the local authority. In a similar manner to local authorities struggling with maintenance of open space, parks etc will the same realisation result with SuDS. The significant concern with this is lack of maintenance is not just an amenity matter like open space but functional and could lead to other problems such as localised flooding. The ability for the SAB to adopt SuDS but for management and maintenance to be undertaken by a management company should be an option, thereby ensuring annual commuted sums in perpetuity through service charge. The reality being that a service charge will be in place because the local authorities tend to not adopt POS any longer (unless for 20 years plus maintenance period with fees ever increasing).

Question 5

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

It is agreed that legislation to allow freeholders the same rights as leaseholders whether it be the right to challenge the reasonableness of estate rent charges and services charges and the right to create an RTM company is sensible and an oversight from the existing legislation.

Transparency of charges should not be an issue as that is already embraced by existing legislation, the Consumer Code for Home Builders and the New Homes Quality Code. Homeowners should also be able to freely switch managing agents and hence the embedded management company solution is a particular hurdle to that and one which can only be addressed by legislation.

The drawback to residents' management companies (RMC) and the lack of expertise by residents to run the same is acknowledged but this has largely been brought about by the reluctance of local authorities and water and sewage undertakes to adopt more complex amenity areas and the introduction of more complex ecological requirements via the planning process. However, at least with the RMC route the residents have control of their own environment albeit there is tension in the sense these generally include open space areas and sometimes roads all in private ownership but often available for general public use.

The draconian enforcement measures contained in S121 LPA 1925 in relation to rent charges should be repealed.

Paragraph 4.26 of the working paper refers to a right to progress sales without approval of the management company. Generally, the obligation to pay future services charges is

protected by a restriction on title and there is a clear procedure which must be followed to comply with such restriction to ensure that future service charges can be collected. Unless unambiguous legislation is enacted to ensure new freehold owners are automatically legally bound, like the concept of privity of estate in the landlord and tenant relationship, this would not be a welcome move as it could de-stabilise the management company arrangement set up for a particular development and be used by consumers to pay legitimate charges.

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

The most appropriate solution for internal estate roads is that they are adopted, save for private drives, apartment schemes and smaller freehold developments. It would also be more administratively straightforward for homeowners and developers if larger areas of public amenity areas and SUD's were also adopted. If this can't be achieved the measures referred to above ought to be implemented.

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

No response provided.

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?

Mandatory adoption of certain facilities would achieve a comprehensive solution for those facilities, but this is unlikely to follow for all facilities so there needs to be a combination of the two.

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

No response provided.

c) Do the protections to households in Scotland by virtue of the Property Factors (Scotland) Act 2011 provide adequate protection, in accordance with the principles outlined above.

As this question relates to Scotland and we no longer construct dwellings in Scotland no response has been provided.

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.

We consider that making changes to legislation or introducing new legislation to implement changes is preferable rather than the CMA undertaking a market investigation. Notwithstanding the undertaking of a market investigation likely it would still be necessary to introduce new legislation for the benefit of the consumer thereby enforcing the whole of the industry to comply with any new regime introduced. Moving to change legislation is

in our view a speedier process to make changes rather than undertaking a market investigation.

Question 7

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

Redrow would support the introduction of common standards for the whole of Wales that bind local highway authorities. This would rule out subjectivity and should speed the process up. Any such common standards should include standard calculations for bonds and commuted sums.

And in again England hopefully yes, as it would likely speed up design approvals and it should enable contractors to work more effectively (eg they could work across multiple regions with similar/the same drawings).

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

Some individual local authorities have written out standards, but they are often not readily available or gone through any formal sign off process. They are more of an aid to internal officers and can sometimes be simply updated with no recourse. Overall, all existing practice examples could be reviewed to aid producing a single set of standards for the nation.

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

In our view each government in the UK. Each highway authority has their own standards, but many are close relations of each other and could be combined into one new document. It may be that regional variations are required.

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 bought up to the agreed common standard?

There are fundamental issues with this option applying to completed developments eg. the tension between homeowners and the former developer as to how any future commuted sums would be funded, and it could not apply to estates during construction given the uncertainty for homeowners and the developer this would create.

Question 8

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

As these works are bonded, they could call in the bond. However, the value of the bond needs to relate to the cost of the remedial works. The ability to reduce a bond to the reflect the amount of works completed can be difficult (please see our response to question 1).

Local Authorities should not have accepted the responsibility of areas or facilities without ensuring practical completion of the same to adoptable standards has occurred and an appropriate maintenance period has expired. Thereafter, the responsibility for maintenance rests with the Local Authority to manage their own funding and finance arrangements.

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?**

These already exist through the planning legislation and the s106 covenants, as well as planning conditions and bond retention – they just need to be enforced by the relevant competent authority.

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 1985/20280 (as amended) that should be considered across England and Wales?**

As we have no experience of these arrangements, we are unable to properly comment.

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.**

Mandatory adoption is concerning especially with Public Open Spaces. Local authorities becoming bankrupt is now evident and such a scenario occurring in Wales would not be surprising based on discussions with Welsh local authorities.

If a management company is set up appropriately and there is transparency for all parties (developer, local authority and prospective purchasers) from the outset of the development then there is no reason why this method for on-going management and maintenance is not appropriate. In Redrow's experience it can often lead to better management and maintenance than if the local authority adopt.

A management company set up in an appropriate manner for a new estate combined with the new properties having to pay Council tax charges should assist local authorities with their budgeting moving forward.

In England yes, in general terms it is considered it would be. Please also refer to the responses given to Questions 6a) and 7d) above.

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, but mandatory adoption is not considered feasible in all cases (for Wales), and in general terms as a regime will already have been legally set up and costed which cannot easily be unwound.

(For England) It would be more practicable for new housing estates as commercial contracts could be amended to reflect the new legislation. Bond levels / triggers may need amended to reflect new legislation.

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.

Yes, it will create comparable issues to those seen on older developments. Schemes plus 20yrs old are now being affected by reduced management and maintenance by local authorities. For example, more infrequent grass/vegetation cutting, closing play areas rather than repair as having to wait for a budget to undertake works.

Public Open Space ('POS') covers a wide variety of things. Redrow's experience on a particular development was that the local wished to adopt POS. When it got into the detail though it was selective taking formal open space, an equipped play area and walkways within green spaces. It did not want to adopt a woodland area with woodland trails. The increased management, tree surveys, tree works and overall increased public liability for such an area would add in the local authority's mind was not feasible. Equally, if they had insisted it would have generated a significantly larger commuted sum which would have affected the scheme viability. An answer could be fencing off the woodland and not making it publicly accessible but that would be seen as an unwelcome consequence.

The concern would be what the impact would have on bond levels? Would they increase disproportionally due to the increased risk of call-in? Would it adversely impact SME's?

It may release more sites for development and increase housing numbers as ransom strips would be harder to preserve.

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

As above (c), and it may not be appropriate for private drives, apartment schemes and smaller freehold developments but these would have to be looked at on a case-by-case basis or in the context of a statutory agreed set of guidelines.

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 response provided.

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 our view a combination of development costs and the public purse via council tax. Developers cannot be expected to fund the maintenance forever.