

**CMA Housebuilding market study
Private management of public amenities on housing estates
working paper**

**Rushcliffe Borough Council Response
24 November 2023**

Roads adoption (Section 3)

Question 1

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

Adoption of roads is managed at County Council level. There can be a conflict between highways and engineer solutions with good design and layout on new housing estates.

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

Anything that is 'non-standard' tends to attract substantial 'commuted sums' which tend to dissuade developers from incorporating features such as street trees within what is to become adopted highway. Planning inclinations towards trying to create attractive spaces are often countered by a desire for payments to cover the additional costs of maintaining them. Another example is long private driveways feeding several homes, which remain unadopted and therefore without streetlighting.

Question 2

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

N/A

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

N/A

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

N/A

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

N/A

Question 3

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

N/A

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

N/A

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

N/A

Sewers, drainage and SuDS adoption (Section 3)

Question 4

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

England – The Council does not currently adopt any of these features. In respect of SuDS there is a concern that whilst routine maintenance might be reasonably affordable any significant maintenance issues which arise over time could have substantial costs, and require significant technical expertise to diagnose and address, which a local authority does not possess and may find unaffordable. As such a decision was taken not to adopt SuDS features.

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

No comment.

- 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?

No comment.

Possible measures to address our emerging concerns (Section 4)

Question 5

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

- Many of the issues arising are due to the lack of regulation for this sector. Without a Code, the market is free to act as it sees fit and this can be in detriment to the homeowners. The model can work to deliver an effective alternative to local authority adoption, but regulation is required to ensure best practice across the board, not being reliant on the ethics of each management company as is currently the situation.
- Legal requirement for housebuilders to declare in a clear and prescribed format to all purchasers:
 - The nature of the contract that a homeowner will be entering into e.g. with management company.
 - How public amenities will be managed and maintained.
 - Set annual charges, how/when these might increase.

- Any additional charges that homeowners will be subject to e.g. for re-mortgaging, erecting a shed.
- Householders right to challenge.
- Put Regulation or 'best practice' in place, similar to that provided by RICS Service Charges for Commercial Property Code of Practice – proposals in your documents at point 17 on page 8 a) to h) appear to be a reasonable basis for regulating this sector of the market.

There is a concern that as soon as a developer identifies how monies collected will be spent it could be used as an excuse for residents to not pay, or to not pay portions of the charge. For example “5% of the money goes to maintaining and emptying dog waste bins - I don't own a dog so here's 95% of what you've requested”.

Some costs may develop over time such that a standard increase “in line with inflation” might not adequately cover costs as they rise in future years. For example, the costs of maintaining 3 year standard trees might be relatively modest as most work can be done from the ground, but works of maintenance 20 years later could be inherently more costly, and some maintenance of SuDS features might be infrequent, or unforeseen. A binding future prediction of how charges might change would therefore be challenging.

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

Road design is fairly standardised, but the range of open spaces varies hugely as does the hard and soft structures within them, so it is difficult to see one solution working for all. The Housebuilding Market Study raises concerns that the residents are paying to maintain public open spaces that the wider public could use, but in relation to SUDS and sewers these specifically serve the new areas of housing and do not have wider public benefit.

There is also likely to be a requirement to build up a sinking fund or maintenance pot for SuDS, but open spaces where grass cutting might be the primary requirement will not require this. Similarly, the skills required to manage these different asset types is considerable.

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

Regulating the sector through a mandatory code would appear to be able to address most of the issues, which is reflective of your list as set out at point 17.

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?

The Council does not believe that mandatory adoption of public amenity spaces is required. Private estate management companies may have issues, but they successfully ensure the long-term maintenance of open spaces. Particularly prior to S106 agreements, many developers simply stopped maintaining areas of open space resulting in Borough and County Councils, along with residents having to take on maintenance responsibilities, the use of S106 agreements and management companies seems to have stopped this practice.

Where a developer is required to transfer open spaces to the Council, this is along with a 15 year commuted sum for maintaining the land. There are two issues with this: 1) Housebuilders will include this sum in their viability assessment, which will not come off land value, but instead the overall s106/CIL contribution and the first area to be targeted is usually a reduction in affordable housing provision. This is not an acceptable trade off to the Council. 2) Once the commuted sum has been spent, the costs will fall to the Council, which due to existing budgetary pressures, could not be met.

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

We understand residents' concerns are primarily in relation to transparency, or a lack of. Residents are generally aware of service charges when buying their home, but in a number of cases have not been aware of the full extent of the fees they will be charged under various circumstances (including in some cases for erecting a shed in a private garden). This seems to be an issue in some cases when buying a new build from a housebuilder, but even more so when houses are being sold on after their initial purchase.

NHQC seems to address this to a certain extent where housebuilders have signed up, but as it is non-statutory it will not cover all new developments and won't aid individuals when homes are being sold on after their initial sale.

- 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.

No comment.

- 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.

No comment.

Question 7

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

The Council stopped taking on new areas of public open space due to the ongoing cost of maintaining them in 2011. At the time, the Council had a simple rule, if the open space was not brought up to an adoptable standard the transfer would not take place. It was then in the interest of the developer to implement improvements in a timely manner if they wanted the land transfer to proceed.

The Council lacks expertise in relation to SuDS, adoptable standards in relation to these would be beneficial if adoption became mandatory. Adoptable standards would not encourage the Council to change its policy on not adopting public open space areas as the issue of long-term maintenance cost is key.

It is difficult to envisage how common adoptable standards could apply to public amenity space given the wide range of hard and soft landscape elements found within them; these elements will vary depending urban and rural locations. Whilst many smaller sized open spaces often share similar characteristics, on large developments the complexity of spaces and provision of facilities increases.

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

No comment.

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

In terms of SuDS it would be preferable if the Lead Local Flood Authority took the lead on determining and enforcing adoptable standards as they have the inhouse expertise.

- 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?

Retrospective adoption is likely to be impracticable in most cases. If developers no longer retain an active interest in site, who would councils be expected to liaise with in order to bring infrastructure up to adoptable

standards and who would take responsibility for undertaking and paying for any necessary work?

Question 8

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

If an owner wishes long term maintenance to be taken up by a public body, it seems reasonable that the owner should bring it to an adoptable standard first or themselves fund works to that end to be undertaken by the public body. The best way to ensure developers bring up public amenity to an adoptable standard is the ability to refuse to take on the land. The Council should not fund or implement such works.

- b) Which sanctions, if any, should be available to public authorities in case a housebuilder fails to build a public amenity to the adoptable standard?

The ability to refusal to adopt it.

- 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?

No suggestions.

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 will result in a significant cost burden to the Council. The Council used to apply a commuted sum to cover 15 years maintenance, but this was deemed an unsustainable solution as the size of our estates increased with time. The costs of addressing a major SuDS system failure, such as from a design defect or over a protracted period of time, could see a single project on a single site requiring significant financial sums to address. It is unclear how the Council could meet such costs. Mandatory adoption would not address the

costs, it would simply share them out amongst all taxpayers, and without an ability to increase taxation the only way to fund repairs to important flood mitigation measures, which the Council could not reasonably ignore, would be to cut services elsewhere, to the detriment of all.

- 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.

Retrospective adoption is not feasible given that some larger phased developments already have residents paying into management companies and this obligation being on their tile with Land Registry. Plus, where site developers no longer have an active interest in a housing estate, who would undertake and pay for any works required to bring infrastructure up to an adoptable standard?

The Council has granted permission for a large development of 3000 homes in the Borough, which is accompanied by significant areas of open space. If the Council was forced to take on the open space associated with this development it would increase the total area of land it maintains by a region of 50%. How the maintenance of mandatory adopted open spaces would be funded isn't clear, but using the Council's previous calculation we estimate that a commuted sum for an area of open space of this size (over 100 hectares) would be over £15 million and it is doubtful if the developer would want to outlay such a sum.

- 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.

Without the opportunity for long term planning, mandatory adoption would put the Council under severe financial strain. Unless there is a way to ensure adequate long-term funding of public amenity areas. Without additional funding, the burden is likely to impact on delivery of other services and for larger authorities could lead to severe financial difficulty in balancing the books.

Councils would need to create new teams to effectively deliver the management of the open space, securing the specialist skills required.

This is likely to cause tension within different departments within local authorities having different priorities when it comes to the planning of such spaces, with maintenance departments likely to seek simplified open spaces with less hard and soft landscape provision to ensure sites can be maintained easily and at low cost. This could be to the detriment to the quality of open space schemes and, therefore, of local residents.

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

The Council is aware of developments where residents do not want Councils to take on areas of public amenity space. This might be because they want greater control over the maintenance, or decisions to be taken at a local level or a greater level of maintenance than the Council can provide. For example, a recent transfer has taken place between a developer and a Parish Council, rather than the Borough Council. The Council has no funding mechanism to take over management of open spaces and associated infrastructure. Developers no longer have the cashflow to pay a commuted sum. If they did pay, it would offset other obligations, such as affordable housing numbers being reduced, which is not acceptable. Once the commuted sum has run out, the Council can not afford to maintain the land within existing budgets and this would put pressure on delivery of other services.

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?

Would open space adoption include functional utilities under it, or SuDS features within it? It is unclear how if these things are included, they can be considered 'accessible to the general public', and they would be the source of significant long-term costs.

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).

The Council used to apply a commuted sum to cover 15 years maintenance, but in 2011 took a decision to no longer take on open space areas unless there was an existing agreement in place. This was due to the long-term maintenance costs not being sustainable. The commuted sum was based on a standing rate based on the size of the area to be transferred, with additional costs for high maintenance items such as hard surfacing, watercourses, and dry and wet balancing ponds. If the Council was to reintroduce a commuted sum the calculation would need to be varied to include a much wider range of high maintenance items such as allotments, play facilities, sports provision, etc. The Council does not consider commuted sums to be a suitable solution as they only cover an initial period of maintenance. The Council is also aware of many developers who had the option to transfer public space to the Council

who did not want to pay a commuted sum (particularly when there was an economic downturn) and continued to maintain land in their ownership. The Council has no funding mechanism to take over management of open spaces and associated infrastructure. Developers no longer have the cashflow to pay a commuted sum. If they did pay, it would offset other obligations, such as affordable housing numbers being reduced, which is not acceptable. Once the commuted sum has run out, the Council cannot afford to maintain the land within existing budgets and this would put pressure on delivery of other services.

For the Council to take on ownership, it needs to come with a funding stream, such as per existing arrangements with Management Companies. SuDs should sit with the LLFA.