

CMA Housebuilding Market Study
Taylor Wimpey PLC's Response to Private management of public amenities on housing estates working paper dated 3 November 2023

24 November 2023

1. Overview

- 1.1 Taylor Wimpey PLC ("**Taylor Wimpey**") welcomes the opportunity to provide comments on the Competition and Market Authority's (the "**CMA**") working paper on the private management of public amenities on housing estates (the "**Working Paper**").
- 1.2 TW recognises many of the issues that the CMA has identified in its Working Paper, and agrees with the CMA that these can be broadly divided into two categories: (a) the lack of adoption of public amenities on housing estates; and (b) the possible negative outcomes for consumers arising from the private management of these amenities.¹

Lack of adoption

- 1.3 As previously discussed in TW's response to the CMA's Update Report,² TW considers that the issues identified in relation to the lack of adoption are a function of a legal and regulatory regime that is not fit for purpose. More specifically:
- (i) Local authorities ("**LAs**") are increasingly concerned about the ongoing cost of maintenance in perpetuity of open and public spaces, including the impact additional maintenance would have on council tax. The lack of a statutory regime governing the adoption of open spaces or other public amenities (as exists for the adoption of roads), means that LAs have significant discretion as to whether to adopt, and as to the size of the commuted sum charged to the housebuilder for the adoption. This leads to wide variation in the approach taken by different LAs, with the majority of LAs resisting the adoption of these public amenities (largely owing to the resource and financial constraints that they face).
 - (ii) The statutory regime for the adoption of roads means that road adoption is generally working effectively (from the perspective of the consumer), as the vast majority of roads put forward for adoption by LAs are ultimately adopted. As explained in detail in the Update Report Response,³ the primary issue faced by developers with respect to the adoption of roads is delay, but this does not impact the consumer as the developer continues to pay to maintain the road while the adoption is pending.⁴

¹ Paragraph 16 of the Working Paper.

² Dated 19 September 2023 ("**Update Report Response**").

³ Paragraph 3.4 of the Update Report Response.

⁴ The process for the adoption of roads in Wales is broadly the same as the process in England. However, TW believes that the adoption process for roads in Scotland works better than the adoption process in England and Wales. This is supported by the fact that the percentage of TW's legacy bonds that comprise TW's bond limit is significantly lower in Scotland than in England, implying that the process is faster in Scotland. However, there are nonetheless issues with the process for the adoption of roads in Scotland that contribute to unnecessary delays. For example, prior to the start of construction, housebuilders are required by law to obtain authorisation by way of a 'Road Construction Consent' ("**RCC**"), as well as post a road bond (as security for failing to comply with the RCC). Depending on how quickly the roads department processes RCC

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Issues with private management of public amenities

- 1.4 With respect to potential negative consumer outcomes resulting from the private management of public amenities:
- (i) TW recognises many of the concerns raised by the CMA, particularly with respect to embedded management companies (“**MCs**”) and their managing agents.⁵ As explained in the Update Report Response, for this reason, [REDACTED].⁶ Where TW has (historically or unavoidably) appointed an embedded MC, [REDACTED].
 - (ii) Where the private management of public amenities is necessary, TW ensures that customers are treated fairly and provides clear and transparent information on the charges and obligations that will apply at an early stage in the sales process. This information is provided by members of TW’s team who are specifically trained in the importance of transparency and treating customers fairly. TW also considers that there are strong indications that the industry generally is moving in this direction, as there are significant transparency obligations in the New Homes Quality Code (“**NHQC**”), which the vast majority of significant housebuilders have signed up to.

The CMA’s findings

- 1.5 The views set out in the Working Paper are broadly aligned with TW’s views, and in particular that the Working Paper finds:
- (i) The “*root of the problems*” in this area is an increasing trend for LAs not to adopt open and public spaces.⁷
 - (ii) This trend is being driven by “*pressures on local authority resources and finances*” and the “*discretionary nature of adoption*” with respect to open and public spaces.⁸
 - (iii) This may lead to certain consumers with embedded MCs “*experiencing poor outcomes*”.⁹
 - (iv) The concerns that the CMA has identified could be reduced by both “*reducing the prevalence*” of public amenities that are not adopted by the LA, and by improving the

applications, work can be delayed even if planning permission has been granted. Furthermore, some road departments do not consider RCC applications until planning permission is obtained, creating further delay.

⁵ Broadly categorised at paragraph 3.97 of the Working Paper.

⁶ The position is broadly the same in Wales. However, as the Working Paper notes (at paragraphs 3.77 and 3.78), the model is different in Scotland. In Scotland, open spaces and public amenities are no longer adopted by LAs. Instead, unless the residents would like to use a resident management company (“**RMC**”), a ‘property factor’ is appointed on behalf of the residents to manage and maintain the common parts of the land or property owned by multiple residents or homeowners, and residents pay management fees to the property factor. See TW’s response to Questions 41 and 50 of the First RFI for further detail. A property factor in Scotland is therefore broadly equivalent to an embedded MC in England. However, as explained at paragraph 3.28(ii) of the Update Report Response, unlike embedded MCs in England, property factors are regulated in Scotland, and there is a clear process in place for residents to change property factor, challenge charges, or make a complaint.

⁷ Paragraph 12 of the Working Paper.

⁸ Paragraph 13 of the Working Paper.

⁹ Paragraph 12 of the Working Paper.

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outcomes for certain customers “*living under current private management arrangements*”.¹⁰

No basis for an MIR

- 1.6 TW supports the Working Paper’s view that a market investigation reference (“**MIR**”) would not be the appropriate route to addressing the CMA’s emerging concerns, including for the reasons set out at paragraphs 24 to 27 of the Working Paper.¹¹
- 1.7 In particular, TW agrees that government action would be a more appropriate and comprehensive response than a market investigation, and would welcome CMA recommendations to the government in accordance with those set out in the Update Report Response (paragraphs 3.26 – 3.28) in order to improve the current system.
- 1.8 TW reiterates that any proposed solution must ensure that it does not entail an unnecessary increase in costs or complexity for developers, as this could result in fewer viable developments and a reduction in housing delivery overall. While TW notes the argument in paragraph 4.38 of the Working Paper that an increase in costs is unlikely to be passed on entirely to consumers given the constraint on pricing from existing housing stock, it in any event remains the case that any government recommendations or legislative intervention that raise costs in excess of that which is truly necessary should be avoided in order to minimise the risk of any unintended negative impact on housing delivery (and so ultimately on consumers).

The remainder of this response

- 1.9 While TW generally agrees with the overarching conclusions of the Working Paper (as explained above), there are various important points in relation to which TW would like to set its views. These are dealt with in Sections 2 and 3 of this response.

2. Lack of adoption

Housebuilder incentives

- 2.1 The Working Paper notes that the CMA has seen some evidence indicating that housebuilders may have financial incentives not to seek adoption of roads.¹² However, TW does not consider it correct that housebuilders typically have such incentives, or in any event TW considers that this does not provide the full picture. There is an important distinction to be made between the adoption of roads and the adoption of open and public spaces in this regard, so this point must be considered separately:
- (i) Due to the statutory regime that applies to the adoption of roads, the vast majority of roads that are built to the requisite standard will ultimately be adopted by the LA. This is because under the statutory regime, the LA is required to adopt such roads and, when charging the housebuilder a commuted sum for the adoption, the commuted sum

¹⁰ Paragraph 17 of the Working Paper.

¹¹ TW also does not consider that the statutory test for a market investigation in respect of the private management of public amenities has been met. See paragraphs 3.20 – 3.24 of the Update Report Response.

¹² Paragraphs 3.25 to 3.27 of the Working Paper.

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is required to be set at a level that is commensurate with the maintenance costs that the LA will have to bear. Housebuilders are therefore incentivised to build roads to the requisite standard and have them adopted as quickly as possible so that they no longer have to pay for the maintenance of the roads.

- (ii) The difference for public spaces is not housebuilder attitudes or incentives, it is the lack of an effective regime. There is no such statutory or regulatory regime with respect to the adoption of open or public spaces. Most housebuilders would prefer to seek adoption of these spaces just as they are for roads. If an equivalent statutory or regulatory regime were in place with respect to the adoption of these spaces, the significant majority would be adopted. It is TW's strong preference for public amenities to be adopted at a reasonable cost wherever possible.¹³ However, adoption rates are lower with respect to open and public spaces for two primary reasons: (a) LAs choose not to adopt (primarily due to the high cost of maintenance); and (b) LAs notionally agree to adopt but propose such an exorbitantly high commuted sum for the adoption that the housebuilder is forced to manage the space privately (a 'constructive refusal' to adopt). Therefore, to the extent that housebuilders currently have a financial incentive to avoid adoption of these spaces, this is a direct function of the lack of a legal and regulatory regime governing adoption that is fit for purpose.

Common adoptable standards

- 2.2 The Working Paper suggests that one solution to the lack of adoption by LAs would be to introduce common adoptable standards that are enforced to ensure that all housebuilders develop open and public spaces to agreed standards.¹⁴ The Working Paper suggests that this might encourage LAs to adopt, and might provide housebuilders with clarity as to the standard that needs to be met for adoption.
- 2.3 While TW does not object in principle to a common set of standards, TW does not think that the proposed solution would be effective because:
 - (i) This would not address the root issue which is that LAs are under-resourced and have discretion to avoid adoption.
 - (ii) The reason LAs choose not to adopt is primarily related to the ongoing maintenance costs of these spaces, rather than an issue with the quality of the development.
 - (iii) TW (and many other housebuilders) already build these spaces to the requisite standard, and they are still not adopted.
- 2.4 TW also considers that the process of determining a common set of standards would be highly complex and would raise a number of practical challenges that would be very difficult to overcome. For example, a set of common adoptable standards with respect to open and public spaces would need to somehow account for the significant geographic variation in the plants and fauna, soil types, ground conditions, native variance and environmental conditions. These

¹³ Paragraph 1.4(ii) of the Update Report Response.

¹⁴ Paragraph 4.33 of the Working Paper.

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factors, and many others, would all need to be considered and can vary significantly between sites.

- 2.5 TW also considers there to be a material risk that regulation and enforcement on this particular issue could unnecessarily increase the cost and complexity of a development, which would either lead to reduced housing delivery or increased costs for consumers (as explained further in paragraph 1.8 above).

Mandatory adoption

- 2.6 The Working Paper also considers the possibility of mandatory adoption to address the lack of adoption:¹⁵
- (i) TW does not consider mandatory adoption to be necessary with respect to roads. As explained above, the vast majority of roads are already ultimately adopted (the issue with roads is the speed of adoption).
 - (ii) With respect to open and public spaces, forcing LAs to adopt these spaces will not necessarily solve the underlying issue. As the Working Paper notes, the LAs will need to be properly funded to be able to meet the mandatory adoption.¹⁶ Instead of mandatory adoption, to avoid a negative impact on housing delivery, an equivalent statutory or regulatory system should be put in place as currently governs the adoption of roads. In particular, any regime governing the adoption of public spaces should have a requirement for a consistent and transparent process for determining the size of the commuted sum. Without this, LAs would be free to charge exorbitant sums that do not reflect their ongoing maintenance costs. A significant proportion of these costs would either need to be borne by the consumer or would otherwise ultimately lead to reduced housing delivery.

3. Changes to the private management of public amenities

Transparency

- 3.1 The Working Paper notes (as a possible solution to certain customer having poor outcomes) that all housebuilders could be required to provide transparent information to customers in relation to estate management in advance of the sale. TW agrees that transparency is very important, but notes that this is already happening in practice (making intervention unnecessary).

TW

- 3.2 TW takes its obligation to treat customers fairly very seriously, and this includes the provision of transparent information with respect to all elements of the sale (including estate management) throughout the process.¹⁷ This information is provided by members of TW's

¹⁵ Paragraph 4.41 of the Working Paper.

¹⁶ Paragraph 4.51 of the Working Paper.

¹⁷ Paragraphs 3.16 to 3.18 of the Update Report Response, as well as its response to Question 7 of the RFI dated 14 August 2023 ("Second RFI").

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team who are specifically trained in the importance of transparency and treating customers fairly.

- 3.3 The Working Paper suggests that housebuilders provide information in relation to estate management charges at the reservation stage, when buyers are already “*psychologically committed*” to the purchase, and it is therefore too late for consumers to properly take these charges into consideration.¹⁸ This is not correct. The reservation stage is one of the earliest stages in the process of buying a house and is the first formal stage in the process.
- 3.4 Generally, it would not be sensible or appropriate to engage in detailed discussions on estate management prior to this point. Customers at e.g. the viewing stage would typically not be interested in receiving this granularity of information given that they will normally be viewing a number of different properties at that stage. However, to the extent that a customer wanted to see this information at an earlier stage, TW would of course provide it.
- 3.5 TW also notes that not only does it provide homebuyers with the information they need to be aware of estate management charges and to understand their *immediate* obligations around the reservations stage,¹⁹ TW also provides homebuyers with the necessary information regarding *ongoing* expected costs at this time.

The industry

- 3.6 TW also considers that the bulk of the housebuilding industry is already moving in the right direction (with TW) in relation to transparency, such that additional intervention on transparency is likely to be premature. As the Working Paper states, the implementation of the NHQC in 2022, alongside pre-existing codes such as the HBF Code for Home Builders and Consumer Code for Homebuilders, specifically aims to mitigate issues around transparency and other issues that can affect purchasers of new build homes.
- 3.7 The NHQC provides a robust framework that promotes transparency, ensuring housebuilders provide clear and accurate information about the purchase of the new home. This includes information regarding potential future committed costs, including those relating to estate management, to enable purchasers to make informed decisions.
- 3.8 In addition to the relevant sections of the NHQC identified in the Working Paper,²⁰ the following sections of the NHQC are relevant to improving transparency, as they require registered developers to:
- (i) Provide a formal Reservation Agreement to a customer that wishes to reserve a home. The agreement must clearly set out relevant terms, including (among other things) the nature and annual estimated cost of any management services (section 2.2).
 - (ii) During the pre-contract of sale period, provide relevant information to help the customer make a fully informed purchasing decision, including the actual and anticipated costs

¹⁸ Paragraph 3.107 of the Working Paper.

¹⁹ Paragraph 3.107 of the Working Paper.

²⁰ Sections 1.2(i), (j) and (l), and section 2.1 (See paragraph 3.114 of the Working Paper).

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associated with the property, which includes a description of any management services which the customer will be committed and an indicative costs schedule (section 2.6(b)).

(iii) Follow a detailed complaints process for any dissatisfied customers (section 3.4).

- 3.9 TW does not consider the fact that the NHQC is a non-statutory code to be any barrier to its effectiveness. Rather, the fact that over 200 developers have, voluntarily, registered for the NHQC since registrations opened in January 2022 demonstrates that developers themselves are willing and committed to the objectives and requirements of the NHQC. This, as the CMA has observed, includes nearly all of the largest housebuilders.²¹
- 3.10 As demonstrated in paragraph 3.116 of the working paper, the New Homes Quality Board (“NHQB”) is committed to ensuring the effectiveness of the NHQC, evident through its current audit process, its work towards an onsite developer audit process, and in seeking Stage 2 approval under the Chartered Trading Standard Institute’s Consumer Codes Approval Scheme.²² Registered developers are also subject to a New Homes Ombudsman Service (“NHOS”) which can receive questions or manage complaints from consumers about their new home or developer in breach of the NHQC.
- 3.11 As such, TW is of the strong view that the introduction of the NHQC should significantly address any transparency concerns that the CMA may have. The implementation of additional measures in relation to transparency of estate charges during the purchasing process would therefore be premature at this time.

Problems with MCs

- 3.12 The Working Paper identifies various other problems that customers may face with private management of estates, as well as possible solutions.²³ However, TW notes that these issues (e.g. the inability to switch MCs, inappropriate redress, impact on onward sale, etc.) are primarily limited to households with embedded MCs rather than RMCs.
- 3.13 TW recognises many of the concerns identified by the CMA with respect to certain embedded MCs,²⁴ and TW notes that embedded MCs themselves have recognised issues in the way the market operates.²⁵ It is for this reason that [REDACTED].
- 3.14 TW notes that the Working Paper identifies some possible disadvantages of RMCs, in particular around the liabilities and burdens they place on directors.²⁶ However, TW also notes that the only stakeholder mentioned in the Working Paper as raising this concern was themselves an

²¹ Being Barratt, Bellway, Bloor Homes, Cala, Crest Nicolson, Miller Homes, Persimmon, Redrow, Taylor Wimpey, and Vistry.

²² Paragraph 3.116 of the Working Paper.

²³ See for example, paragraphs 4.11(b) to (h) of the Working Paper.

²⁴ Being: the level of estate management charges and potential for future increases; quality of estate management services; practices and arrangements that may impact onward sale of a property subject to estate management charges; consequences for non-payment / late payment of charges; issues with switching estate management companies; rights to challenge estate management arrangements and fees, and redress.

²⁵ Paragraph 2.49 of the Update Report Response.

²⁶ Paragraphs 3.74 - 3.75 of the Working Paper.

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embedded MC, and that when raising these concerns, the embedded MC “*did not provide supporting evidence*”.²⁷

- 3.15 TW does not agree with the concerns raised by the embedded MC with respect to RMCs. While it is true that to operate an RMC requires a small number of residents to take on certain responsibilities, TW is not aware of this being a barrier to setting up an RMC.
- 3.16 In TW’s experience, most residents involved in an RMC do not consider them to be an undue administrative burden on the directors, but rather something that enables residents to take control of the ongoing management of their developments (and avoids all of the issues identified by the Working Paper that are implicit when dealing with certain embedded MCs).
- 3.17 Further, as the Working Paper notes, it is common for the RMC to appoint a managing agent to deliver services in return for a fee.²⁸ However, crucially, the RMC retains the ability to easily switch managing agents if they are unsatisfied. This reflects the greater control that that residents have over the management of the amenities under an RMC structure, and acts as a check against managing agents to provide good quality services (unlike embedded MCs, which are generally appointed by housebuilders and, as the Working Paper notes, entail higher barriers to switching).²⁹

²⁷ Paragraph 3.74 of the Working Paper.

²⁸ Paragraph 3.68 of the Working Paper.

²⁹ Paragraphs 3.170 – 3.176 of the Working Paper.