

### **Company Background**

The Land Trust is a national land management charity, specialising in sustainable stewardship solutions, who own and manage land in perpetuity for community benefit.

Initially piloted in 2004 by English Partnerships as a solution for long term sustainable land management and ownership, the Land Trust's portfolio now comprises of over 80 sites (measuring over 2,800ha) across the country, which we use to deliver social value, including improving health and wellbeing, providing an educational resource and uplifting the local economy, and improving and enhancing the natural environment.

We currently have 13 service charge sites under our management, with a significant pipeline of other sites coming to us, which we operate with these same principles.

## *Road adoption*

### **Question 1**

a) N/A

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

As has been set out in the paper, our experience concurs that in some cases, the barriers to the adoption of roads tends to come from local authority resistance, rather than developers having an incentive to not seek adoption. We would agree that it is beneficial for roads within a development to be adopted by the local authority.

### **Question 2**

a) N/A

b) N/A

c) N/A

d) N/A

### **Question 3**

a) N/A

b) N/A

c) N/A

## *Sewage, drainage and SuDS adoption*

### **Question 4**

a) N/A

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

As SuDS become mandatory and standards are increasingly regulated through the implementation of Schedule 3, this will likely increase adoption by local authorities.

However, the question of how local authorities will be able to fund the extra resource needed to maintain and inspect the SuDS remains unresolved. SuDS maintenance requires a high level of expertise, and the skill set needed varies from site to site: SuDS are bespoke, taking into account the unique geophysical aspects of the landscape, meaning there is a level of specialism required to adequately maintain them to deliver their technical requirements in terms of water management. Poor SuDS maintenance reduces their effectiveness and can, in some flood prone areas, increase flood risk downstream.

Additionally, with proper management, SuDS can replicate complex greenfield ecosystems which have otherwise been lost to urbanisation, creating a huge opportunity for habitat enhancement and contributing to Biodiversity Net Gain requirements. Likewise, with good communication with local residents, they can understand the benefits of SuDS, providing an educational resource. Underfunding of local authorities mean they do not have the resource to look at all these aspects on a granular level, and much of the opportunity to create social and environmental value on these sites will be lost.

c) N/A

### *Possible measures to address emerging concerns*

#### **Question 5**

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

A combination of the enhanced consumer protection measures outlined in the paper would address these concerns, particularly:

**Transparency:** A significant part of the problem is that buyers are largely unaware of the service charge agreements they are entering into when purchasing their home, with many highlighting that they only became aware of the fee upon receiving the first invoice. Developers' sales teams, conveyancers etc. need adequate training in how to explicitly communicate the arrangement as early in the process as possible and allow buyers to make an informed decision. It is our policy to include promotional material within the sales office providing details of the management charge, our customer charter and what the level of charges are likely to be.

**Cost-reflective and accountability:** The Land Trust communicates fees openly with residents and provide a full breakdown of costs annually. Residents are consulted on the management of their site and on fees, and are only charged what we pay for services rendered, in line with the Landlord and Tenant Act 1985. Our management costs are normally fixed and rise only in line with inflation to cover our costs; this, again, is communicated openly with residents. This should be standard practice across the industry to ensure consumers do not feel exploited, as indicated by the CMA.

**Switching:** Where the Land Trust is the freeholder, we work with residents to ensure that they are involved with choosing and appointing the contractors which are used. Right to Manage is very difficult to provide for in multi-phase, large residential service charge estates of over 1000 homes. The complex nature of the green infrastructure, SuDS and other infrastructure, alongside the opportunities to generate income from the estate to help subsidise residents' fees, means that to unpick the freehold ownership and transfer to residents or another body could cause significant downside risks. This should therefore be exercised with caution and only used in the most extreme of circumstances. There is a high level of expertise required to manage these sites, despite the commonly held viewpoint that estate management simply involves cutting the grass and emptying bins, and there is a danger of people with no experience in this field making decisions with significant implications. To avoid this, planning packs could include documentation that outlines how the space should be managed (focusing on outcomes rather than detail), so that residents are fully aware of

the complexities, liabilities, and associated risks that they would be taking on and allowing them to make an informed decision on the best option; even then, there is still the risk of residents unwittingly taking on expensive liabilities that fall to them to rectify. We believe that the best way of dealing with this, therefore, is to provide 'real teeth' for the residents to challenge and seek redress from poor management.

**Redress and liability:** The Land Trust are one of just two management companies who are already members of the Property Ombudsman, allowing residents to seek appropriate redress by an independent party should charges be contested. A significant element of the Land Trust model includes accepting liability for the sites we manage to alleviate residents of any management responsibility. Again, both of these factors should be standard practice in the industry to enhance consumer protection.

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

There is no blanket approach to adoption, and all public amenities cannot be viewed with the same lens. It makes more sense for roads to be adopted as standard, as there is little variation and their maintenance can more easily be accommodated within local authorities' existing resources and budget than more complex amenities, such as public open space and green infrastructure on housing developments. Amenities should be taken on a case-by-case basis.

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

Some estate management companies, such as the Land Trust, add much-needed knowledge and capacity, taking on liabilities and specialisms where local authorities are unable to. Rather than seeing management companies as at odds with local authorities, a series of protection measures, in addition to the ones outlined by the CMA, could cement their position as trusted partners.

All management companies should immediately be required to become members of the Property Ombudsman (or other Ombudsman scheme) as a short-term measure so that residents have a route to challenge and seek redress.

Longer term, the industry needs an independent quality assurance body along with a framework of best practice to act as a regulator. This would need a level of public influence and to be representative of all stakeholders, including residents, to ensure proper balance and fairness.

This could eventually evolve into management companies receiving approved supplier status from this regulatory body, which would align them with a robust standard of best practice, allow much better transparency, avoid maintenance contracts changing hands between third parties and ensure all developments are maintained to a minimum agreed standard.

This would also mean that estate management contracts would need to align with public sector procurement practices, which include social value delivery as standard, creating healthy, thriving communities.

There is potentially further opportunity to hold developers accountable for their service charge estimates through having to take out bonds. If actual service charge fees are a certain percentage above what was estimated, it could fall to the developer to provide recompense; this would provide further transparency and reassurance for residents on the consistency of their fees.

### 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?

There absolutely needs to be enhanced customer protections in place and far tighter regulation of the industry to remove exploitative practices. However, mandatory adoption introduces a host of other issues that will likely have a detrimental effect in the long term. This is explored in further detail in question 9.

Properly enforced, these enhanced consumer protection measures would contribute to eradicating the emerging concerns outlined in the CMA's report, alongside the further measures indicated in question 5c.

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

See question 5c.

- c) N/A

- 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.

As has already been alluded to in the working paper, government legislation will be the most appropriate and comprehensive action to address these issues rather than a market investigation by the CMA. A surmountable response to these challenges needs to be underpinned by changes in law rather than behavioural remedies.

### Question 7

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

Common adoptable standards would, in all likelihood, increase the adoption of amenities by local authorities. However, the CMA should be aware of the associated pitfalls of this approach.

Innovative design plays a huge part in placemaking, as we look to adapt to the challenges of climate change and create healthy, thriving places to live. The market demand for the Land Trust and similar organisations is due to our ability to take on the complexities of sites with a range of assets and green infrastructure in the long term; mandatory adoption would stifle this innovation, as local authorities would be unable to take on sites that are too complex. Lack of innovative placemaking will likely have a knock-on effect far into the future.

Additionally, common adoptable standards still do not resolve the issue of funding after commuted sums are spent, and how local authorities would keep these sites maintained to an acceptable level. Local authorities would also be unable to deliver the wider social value to communities that the Land Trust and similar organisations create, due to lack of capacity. As set out above, local authorities do not currently have the skill set and resource to manage these complex sites.

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

There are adoptable standards for roads and SuDS already. For wider infrastructure on developments, basic CDM regulations should form the basis of these standards; currently, sub-standard infrastructure can be passed to management companies to manage and bring up to standard at the residents' cost.

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

This would also fall to the local authority as part of the planning regime, which is further burden on their already stretched resources. However, as the working paper published by the CMA on the planning system highlights, there is a lack of consistency and predictability in the current planning system, which would likely be the case in determining and enforcing adoptable standards, too.

**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?**

Bringing all existing sites up to an adoptable standard, if they fall below this, would be problematic. Not only would there be potential for huge disturbance to residents while the work was carried out, but there is also the issue of funding for the capital cost of bringing all existing sites up to standard, and then payment of any commuted sum to enable adoption for both new and existing developments.

Additionally, in theory it is possible that certain sites would be downgraded, with some designs and landscaping removed so that the council could afford to adopt the asset. This would decrease the value of the site and therefore the value of the homes, while also having a series of environmental implications and impeding social value delivery.

## Question 8

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

Developers should be finishing developments to an acceptable standard, with this guaranteed through bonds.

The Land Trust already employ a similar model: our onboarding process stipulates that we will not manage a site until it is up to an acceptable standard in accordance with approved plans, with a robust set of criteria which each site is assessed against before it is taken under our management and customers are charged. Local authorities could follow a similar approach.

- 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?

Fines should be imposed, proportional to the level of which the housebuilder has failed to bring amenities up to standard.

This should be the case whether these amenities are being adopted or not – residents should not have to pay to bring their estates up to a basic standard.

- 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?

The Building Better, Building Beautiful Commission produced the Living with Beauty Report in 2020, which aligns with many of the guiding principles of the Land Trust philosophy.<sup>1</sup>

The report proposes a new development and planning framework which asks for beauty, refuses ugliness, and promotes stewardship in placemaking and placekeeping, calling for long-term vision that ends the scandal of left-behind places and cares for settlements far into the future.

It is through this lens that estate management should be viewed, moving away from a purely short-term, lowest cost, utilitarian and often profit-focused approach and instead centring the value created in the long-term by professional placekeeping.

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<sup>1</sup> [Living with beauty: report of the Building Better, Building Beautiful Commission \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874247/living-with-beauty-report.pdf)

## 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.

(As applies in general terms)

Ideally, local authorities would be in a position to adopt all public amenities on new developments and maintain them to a high standard. However, the past 20+ years have demonstrated that local authorities are unable to effectively manage public open space to a standard expected by homeowners and developers; the quality of maintenance is poorer than that of some management companies due to lack of specialism and technical knowledge.

It is of crucial importance to note here that the Land Trust was set up in 2004 by English Partnerships (now Homes England) expressly for this reason.<sup>2</sup> Local authorities had proven that they were unable to ringfence funding to turn derelict land into public open space and provide long term management solutions for this land, despite significant sums of public (and private) investment. The Land Trust was piloted to solve this problem, regenerating coalfield sites for development initially - but it soon became apparent that there was opportunity not just to reclaim land for jobs and home, but to create environments that people wanted to live and work in. Long term stewardship of land for the benefit of communities has been the Land Trust's guiding principle ever since.

There is a proven track record, therefore, of local authorities' inability to provide the level of maintenance required for public open space; they have a long list of priorities and diminishing resources to tackle these priorities with. The commuted sums approach outlined would only ensure a maintenance solution until these funds run out – after this, maintenance would have to be paid for out of already-stretched local authority budgets, which would have stretch even further to accommodate for the multiple developments coming under their control, not to mention the £millions in social value that will go untapped as a result.

Commuted sums would need to be huge in order to properly maintain new developments even for 20-25 years, especially to account for inflation over time. Additionally, passing this cost on to landowners via lower land prices would not see an impact for a number of years; most developers will already have land under option agreements with the purchase price set for years into the future which cannot retrospectively be increased, meaning the cost of these commuted sums will fall directly to the developer in the meantime. This is likely to be unaffordable, meaning land will be effectively 'mothballed' and therefore less new homes will be brought onto the market.

This approach is myopic and runs the risk of seeing these well-designed developments falling into cycles of disrepair and regeneration, which costs far more in the long run. Having a long-term stewardship solution in place from the beginning, with a trusted provider, ensures that sites remain fit for purpose and beautiful places to live.

Mandatory adoption also removes homeowner choice in how their estate is managed, as the local authority will apply a blanket approach. This may work in some cases, but there is no 'one size fits all'

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<sup>2</sup> The Land Trust is happy to provide documentation from the time the Trust was set up to the CMA on this point.



for newer developments, many of which require a bespoke management plan to cater for specific infrastructure. This would not be feasible for local authorities to maintain long-term.

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 would be unfeasible for a variety of reasons, not least due to cost as indicated. Bringing multiple developments under Council control would be too burdensome for already-stretched local authority budgets and resources and would likely see the quality of maintenance immediately begin to suffer. Retrospectively requesting commuted sums from housebuilders is also unworkable and would mean that future development would slow due to developers having to redirect cashflow to provide funding for completed estates.

However, stretched authority budgets remains an issue even with adoption of future developments. The reasons for this have been outlined in questions 9a, 9c and 9d.

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.

As outlined in question 6a, chronic underfunding has left local authorities unable to cope with their existing priorities; adding further burden to these stretched resources will have a string of consequences on housing developments further down the line.

The scale of new housing stock required to meet demand over the coming years is such that it could cripple many housebuilders through having to pay commuted sums (and therefore slow the rate at which this much-needed housing is delivered) and be too burdensome for local authorities to manage with limited resources. Even with commuted sums, local authorities are not equipped to deal with the myriad of specialised technical considerations on many newer sites, alongside delivering Biodiversity Net Gain over the required 30-year period and social value for these new communities.

Mandatory adoption would also miss the opportunity for developments to reach their full potential. Innovative, well-designed sites with creative green infrastructure have the potential to deliver £millions in social value if managed correctly, but they need time, resource and expertise for this to be achieved.<sup>3</sup> Larger developments also have income-generating potential to enable them to pay for upkeep, such as EV charging point installation and advertising opportunities, that require innovation, specialism, and again, time - local authorities are unlikely to be able to pursue this.

The CMA has already outlined a host of issues around the planning system in its most recent working paper, including lack of predictability, clarity and consistency in decision-making, the complexity of

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<sup>3</sup> Using figures from our Economic and Social Value Model, the Land Trust conducted analysis based on the goal of 300,000 new homes per year that was laid out in the 2019 Conservative manifesto, finding that lack of guidance is holding back almost £1bn in social value delivery across the residential development sector: [More detailed guidance on social value delivery could unleash almost £1B worth of benefits the Land Trust claims - The Land Trust](#)

the planning process and its negative effects on SME housebuilders in particular. Mandatory adoption will likely see many of these same issues, and could act as an inhibitor for new developments if housebuilders are required to seek adoption and pay commuted sums.

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

As aforementioned, a blanket approach cannot be applied to adoption of public amenities on housing estates due to the wide variation between them, particularly with public open space.

It makes more sense for roads to be adopted as standard by local authorities; maintenance tends to be less complex and less varied in terms of technical skill set required (though it is important to note that local authorities are already struggling to maintain the stock of existing roads, with around six potholes per mile on council-controlled roads in England and Wales)<sup>4</sup>.

The Land Trust's main concern on this point is that the CMA may not have a full understanding of the time, resource and expertise that goes into the management of new large housing developments of 1000+ homes. Modern developments are very different to sites of old, containing a host of complex features which require professional, technical knowledge to maintain, such as SuDS, green infrastructure, Biodiversity Net Gain environments, landscaping, possible historic contamination and so on. This professionalism is essential in maintaining healthy, thriving neighbourhoods, and also protecting homeowners' investments – intervention by management companies such as the Land Trust is by no means light touch, going far beyond simply cutting the grass and keeping paths clear of weeds.

The Land Trust place great emphasis on the importance of placekeeping, not just placemaking, and the role of long-term stewardship in maintaining healthy places and establishing communities. The success of developments should be judged on how they look in five, ten, or 20 years' time, and how they foster community cohesion for the people that call them home. Well-managed developments help to defend the quality of the housing, adding value and protecting homeowners' investments, even for those living in affordable homes. Passing these sites wholesale over to local authorities will see a significant decline in the quality of placekeeping, which in turn impacts the local environment and reduces the amount of value delivered to communities, including the elements outlined above.

As the UK seeks to hit a plethora of environmental targets in the coming decades, it is paramount that opportunity is levied wherever possible. With proper management, these developments have enormous potential to deliver biodiversity net gain, alleviate flood risk, increase carbon sequestration through increased urban green cover and much more. Adoption should be considered on the basis of the local authorities' ability to deliver these elements, alongside wider social value.

### Question 10

a) N/A

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<sup>4</sup> [RAC Pothole Index – statistics and data for UK roads | RAC Drive](#)

### 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 commuted sums approach would only function until the funds run out; after that, sites would have to be managed out of the local authorities' existing budgets, the risks of which have already been outlined.

Another approach would be to fund long-term maintenance through an increase in council tax, though it seems unfair to levy these charges on all council tax payers to fund maintenance of a new site.

A third option would be to put a precept on all the houses within the new development, which is essentially service charge under another name and would be unlikely to deliver as much value as if a fee was paid to a specialised estate management company for all the other reasons set out above.