Vistry Group

Vistry Response to CMA Estate Management Working Paper

1 Introduction

(1) Vistry welcomes the opportunity to respond to the CMA's working paper on 'private management of public amenities on housing estates' ("**Working Paper**"). We commend the CMA on the work it has done to address the significant consumer issues in this area.

(2) Vistry broadly agrees with the proposals set out in the Working Paper. In particular, we support the consumer protection measures that the CMA has identified to rebalance rights between homeowners and estate management companies ("**EMC**"). This is an area which raises significant consumer detriment, and the proposals appear to be clear and targeted, so should be effective at overcoming the challenges identified. Furthermore, we strongly support the CMA's proposal to develop a national framework for the adoption of public amenities, which includes an obligation on both housebuilders and local councils to participate in the adoption process. We think this strikes an appropriate balance between stakeholders and will have significant benefits for consumers who purchase properties on new housing estates.

(3) As noted in our response to the Update Report, we do not consider a market investigation reference ("**MIR**") to be an appropriate means of addressing the concerns raised in relation to freehold estate management. We consider there to be more efficient (and effective) ways to address these issues, including for example by making the recommendations highlighted in the Working Paper to the Government.

2 Measures to protect households from estate management arrangements

2.1 Transparency of estate management arrangements and charges

(4) Vistry welcomes the proposed additional information disclosure requirements outlined by the CMA, which will provide new homeowners with a greater understanding of the ongoing costs involved with their purchase. We believe it is essential for housebuilders to be transparent about these costs to ensure they are fully informed at the time of purchase.

(5) In relation to the CMA's specific proposals, many of these are covered by provisions of the New Homes Quality Code. We recommend that the CMA coordinate with the New Homes Quality Board to ensure alignment (and avoid inconsistency) between the proposal and the significant work the industry has already done in this regard.

(6) Careful consideration should be given to the type of information provided to residents. We note that some estate management information should not be made available to residents, for example the habitat and species information (such location of badger setts) is routinely withheld from public information to protect the environment.

(7) The CMA should also consider how it could enhance access to information for customers. For example, there could be a default requirement for each housebuilder to make certain information available to prospective homebuyers on their website. This would give prospective purchasers additional opportunities to engage with the estate management costs outside the typical sales process and in their own time.

2.2 Level of estate management charges

(8) Vistry considers that one of the most effective ways to address consumer issues facing homeowners is to set clear, defined obligations in relation to estate management charges. Estate management charges are currently unregulated and can place a significant burden on households, especially where increases are significantly above inflation and/or contain substantial management overheads.

(9) It is important to note that master planning, landscape development and the initial management regime are designed with long term stewardship in mind. This does have a cost. A race to the bottom in terms of cost or service levels could impact on the ability to maintain estates at the standards intended.

(10) However, we broadly agree with the CMA's proposal to require estate mfanagers to provide a full breakdown of costs. Without being unduly prescriptive, we would support a broad principle that any increases in fees to be reasonable and referrable to the service provided.

(11) [✂]

2.3 Right for homeowners to change estate management companies

(12) Vistry agrees with the CMA that households should be able to readily switch EMCs if the charges are unreasonable or the service provided is poor. This should lead to greater competition between EMCs and drive higher standards over time.

(13) Many housebuilders, including Vistry, structure their housing estates so that a Resident Management Company ("**RMCs**") directly engages the EMC. This model provides residents with greater control, and allows them to switch EMC where they underperform or overcharge for their services. Vistry believes that this model should be standard across the industry to reduce the imbalance of power between residents and an EMC, and to promote competition between EMCs. If any broader policy of RMCs was adopted, however, the housebuilder would need a right to compel residents to adopt the EMC in order to avoid a situation where they were not engaging with the management of their estate (which would also place a significant burden on the housebuilder).

(14) However, there are some practical difficulties with switching EMCs which must be considered. First, the EMC may manage any biodiversity net gain ("**BNG**") land. Requirements to transfer BNG land and for the new entity to register as the entity responsible for maintaining the land may create friction in the switching process and prevent some EMCs from being appointed altogether. Second, there is a general reluctance from residents to be responsible for EMCs of tall buildings, where the Building Safety Act requirements apply. Where it is difficult or impractical for residents to switch, they must be supported by the other remedies the CMA has outlined in the Working Paper (in particular, on the level of estate management charges).

(15) Vistry would also support implementing an ombudsman to oversee disputes between residents and EMCs, particularly in relation to service levels and overcharging. This is likely to have a positive effect on the conduct of EMCs, for example by incentivising them to clearly articulate what management charges are for.

2.4 Impediments to selling property

(16) The CMA has identified a number of serious issues impacting a homeowner's ability to sell their property in a timely manner. This can be distressing for homeowners, especially where

the process has led to a homeowner's house sale falling through. We therefore support the CMA's proposed measures to limit costs and speed up the process more generally, subject to the comments below.

(17) Homeowners should have a right to access information in a timely manner, so they do not face unreasonable delays in selling their property. However, EMCs should equally be able to charge for any reasonable expenses incurred, which we expect will be relatively low in any event. This would strike an appropriate balance between EMCs and sellers. It will also ensure the costs for this service are paid by the seller of the house (who receives the service) and not shifted onto other estate management charges (such as 'administrative fees') which will be paid by other residents.

(18) A homeowner should also have a right to progress the same without approval from the EMC. However, a contractual nexus must exist between the EMC and the new purchaser of the house so that estate management charges can be recovered. One potential mechanism is to allow for deemed acceptance of a deed of covenant (between the purchaser and EMC) or a certification from the purchaser's solicitor. This will ensure the necessary legal relationship is in place.

2.5 Abolish remedies under Section 121 of the Law of Property Act 1925

(19) Vistry supports an amendment to Section 121 of the Law of Property Act 1925 to abolish remedies relating to non-payment of estate management charges. We consider this to be an antiquated remedy, and would waive these by deed of variation if requested. However, we understand there are practical difficulties in contracting out of the legal protection provided under this statute and therefore consider amendment to the legislation to be the most appropriate solution.

(20) Notwithstanding this, there should be effective avenues for EMCs to pursue residents who refuse to pay their estate management fees, because the costs of non-payment would otherwise ultimately be shared by the other residents in the estate.

2.6 MIR is not appropriate mechanism to address estate management issues

(21) For the reasons set out in the Working Paper, we agree with the CMA's preliminary conclusion that an MIR is not the best mechanism to achieve the reform outlined above. Many of these reforms would require Government legislation and would be more effective when underpinned by a broad legislative framework (particularly in the case of rights provided to residents). Proceeding to an MIR would be disproportionately costly (for the industry) and potentially slower than Government action given the targeted and specific remedies the CMA has identified.

3 Measures to improve adoption of public amenities

(22) Vistry strongly supports the CMA's proposal to develop a national framework for the adoption of public amenities. In our view, this targets one of the key sources of consumer harm in the housebuilding sector.

(23) As we noted in our response to the CMA's Update Paper, [✂]. A national standard, supported by a compulsory adoption process, would significantly reduce the uncertainty for housebuilders and residents.

3.1 Adoption process

(24) The CMA's proposal to develop and implement national standards for the construction and adoption of roads, drains and open spaces would significantly improve the efficiency and predictability of the adoption process. However, it is crucial that any national standards are supported by obligations on both LPAs and housebuilders to seek adoption.

(25) Clear guidance for housebuilders will lower overall infrastructure costs for each site, by reducing resources required for planning (to meet uneven guidance across the country), construction (to maintain and remediate roads for prolonged periods in circumstances where they should otherwise have been adopted) and limit penalty payments for bonds.

(26) Vistry broadly agrees with the scope identified by the CMA, covering (a) roads that meet the eligibility criteria for public roads; (b) connection to the sewer and drain network for homes that are built in appropriate proximity to those networks; (c) public open spaces on housing estates that are accessible to the general public. We note there is a regime already in place for the automatic adoption of sewers and drains under the Water Industry Act 1991, which could be used as a model for roads and public open spaces.

(27) As noted in Vistry's response to the Update Paper, we submit that compulsory adoption should only apply prospectively (and not retrospectively) given the significant financial implications for housebuilders to remediate projects (which would not have been considered in the original business case for the project) and the significant resourcing requirement on local councils and housebuilders (which would further delay adoption of current/future public amenities).

(28) To ensure the national standards are workable, they should be clear to both the housebuilder and local authority and must limit discretion, as far as possible, on the decision-maker on whether to adopt or reject the public amenities. This will hopefully eliminate any variation between local councils and between decision makers within a local council, leading to a more consistent regime.

(29) In relation to the standards more broadly, we note that:

- Section 37 of the Highways Act 1980 includes a concept of adopting roads where there is a "*sufficient utility to the public*". This is not clearly defined and capable of wide interpretation by the relevant authority – which can be used, for example, to avoid adopting cul de sacs which only benefit a smaller number of residents. Ambiguous guidance such as this should be avoided in any national standards (and clarified in existing legislation).

- National standards should be holistic and take into account other requirements on housebuilders, such as the "Building Beautiful" criteria.[1] For example, where trees are planted next to roads, a road engineer could refuse to sign-off on adoption because those trees could impact the road at some point in the future, even if the roads have otherwise complied with relevant standards.

- If national standards are introduced for drainage and sewers, the various roles of Lead Local Flood Authorities, Environment Agency and Highway Authorities should be clarified, as all three can be involved in a single building site, and each has different roles and interests that do not always align.

[1] All new developments must meet local standards of beauty, quality and design under new rules - GOV.UK (www.gov.uk)

- National standards should be set at an appropriate level to maintain design standards. For example, many local councils only want roads to be constructed from tarmac, although porous brick and bound gravel can be used to enhance the site.

(30) A robust inspection regime is also necessary to ensure public amenities are built to an appropriate standard and are adopted in a timely fashion. Currently, local authorities are responsible for inspecting public amenities and the approach to inspection and adoption varies significantly between LPAs. Vistry considers that it would be more appropriate for an independent body to carry out inspections, for example, the National House Building Council, a national statutory authority, or a private company. This will limit the inconsistent application of national standards between LPAs and limit any incentive an LPA may have not to adopt. Alternatively, there should be an avenue for housebuilders to dispute the outcome of an adverse inspection – either through a second inspection or through an enforcement mechanism (discussed below).

3.2 Sanctions and enforceability

(31) Vistry accepts that sanctions and mechanisms for enforcement will be necessary to ensure the process is workable.

(32) We note this is currently addressed under a housebuilder's agreement with a local council pursuant to section 106 of the Town and Country Planning Act 1990, which may contain conditions (e.g. a housebuilder cannot occupy/sell a certain number of dwellings until certain work is completed) and allows an LPA to draw down from the housebuilder's bond where work is not completed to an acceptable standard. However, to the extent that there will be a broader legislative framework supporting the adoption process, there should be robust mechanisms in place to ensure compliance.

(33) If a public amenity is not built to an acceptable standard, the responsibility for remediation could fall on either party. On the one hand, housebuilders are likely to be more efficient and cost effective when completing remedial work. However, given the LPA will ultimately judge when a work is completed to an adoptable standard, there will be more certainty if they complete the work (albeit likely at a higher cost).

(34) In our view, compliance mechanisms must also extend to the local authority required to adopt the public amenity. For example, there should be a deemed approval mechanism similar to the provisions section 37 of the Highways Act, which allows a housebuilder to apply for a court order where the road meets the required standard.

3.3 Funding and commuted sums

(35) Vistry considers funding to be the key obstacle to implementing the proposed national adoption framework. We appreciate that local councils are currently under-resourced, which has created delays in the adoption process, and do not have the finances to maintain large numbers of public amenities.

(36) Vistry agrees with the CMA's proposal that the initial costs of public amenities could be funded through payment of a commuted sum, which could support maintenance costs for a defined limited period of time before financial responsibility of the amenity is absorbed into a local council's general revenue. This reflects the current system.

(37) However, there is a danger that a local council will substantially increase the amount demanded for commuted sums, thereby turning this into an additional revenue stream – in circumstances where housebuilders would have limited countervailing power (given the

adoption process would be mandatory). Therefore, careful consideration should be given to any guidelines setting out how commuted sums are calculated and to ensure they are reflective of the true cost of ongoing maintenance for a defined period (for example, three to six months for roads or two years for public open spaces) . Given costs for commuted sums are generally reflected in the cost for houses, this will ensure customers are not unduly penalised for a prolonged period when they pay their council tax. At this point in time, we do not support including a detailed methodology for commuted sums being incorporated into a local plan without more information on how this would work in practice, but we would welcome further discussion on this.

(38) Alternatively, the CMA could also consider a national adoption levy, which would provide an objective and fixed charge for adoption of public amenities. For example, all local councils would receive the same amount per metre of road adopted. If this levy were uniform across all LPAs, this would limit local council's ability to charge large sums for adopting certain roads (e.g. tree lined roads).

(39) In the longer term, there is no silver bullet for solving the financial issues of local councils. Ongoing maintenance for public amenities would need to be covered by additional funding from the UK Government or increases to residents' rates (which are, ostensibly, levied on new residents of housing developments to fund maintenance of roads, public open spaces, and other public amenities).

3.4 MIR is not appropriate course of action to address the remedies identified above

(40) Vistry does not consider an MIR to be an effective mechanism to deal with the issues outlined above, given that: (a) the development and implementation of national adoption standards will require coordination across various levels of government, likely led by the Department for Levelling Up, Housing and Communities in partnership with a cross-functional working group of key stakeholders (including local authorities and housebuilders); and (b) there are already statutes in place for drainage (Water Industry Act 1991), roads (Highways Act 1980) and planning (Town and Country Planning Act 1990), which will need to be amended to give effect to the proposals.

(41) The CMA has also recommended some interim measures to remedy the issue in the short term. This includes amending existing codes of conduct to introduce requirements for the construction and handover of public amenities. However, these entities do not currently deal with built-environment issues, and it would be a significant step for them to take on this function. Additionally, the CMA has proposed to develop guidance for local councils that could help to coordinate and align a national adoption framework. While this would be useful, there would need to be an obligation on local councils to adopt public amenities otherwise the process is unlikely to work in practice.