National Association of Local Councils

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PR13-23 | COMPETITION AND MARKETS AUTHORITY HOUSEBUILDING MARKET STUDY

Introduction

We are writing in response to the Competition and Markets Authority (CMA) housebuilding market study which we are grateful to CMA for considering.

The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils.

Local councils and their 100,000 councillors are the first tier of local government, closest to the people, and play an essential part in delivering hyper local services, building strong communities, and strengthening social fabric.

Local councils cover two thirds of England and a third of the population and invest over £3 billion per year to improve and strengthen communities.

Summary

- The government should effectively regulate land management companies in relation to management charges and shared facilities and we are particularly concerned about facilities such as children's play areas and parks.

- The government should make provision for the regulation of fees charged by management companies to both freeholders and leaseholders of residential properties, to ensure legal step-in rights, in perpetuity, for the self-management of shared facilities by such freeholders and leaseholders, local councils, or other appropriate community groups.

- The role of local councils in their communities is being undermined as they have no status or protections once a new management company has been approved for part of their village or community. Residents still perceive their local council to be the indisputable area authority providing efficient maintenance and management of public open spaces and amenities in a guaranteed not-for-profit manner, and accountable locally. Over the last 10-15 years, the introduction of management companies has not changed

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public perception of the role of local councils, but it has severely eroded councils' powers.

- We firmly advocate that local councils' right-to-manage public open spaces and amenities be protected in legislation, both at the point of delivery, but also in perpetuity. We have received offers of support within the sector from relevant national stakeholders in trying to get local councils first in line (if they want) to take on new play areas in developments.
- We are not aware of any legislation at present, that protects freeholders' rights as part of this equation.
- As a consequence of its housebuilding market study, the CMA should add weight and press the government concerning implementing consumer rights to challenge management companies fees and services as part of the ongoing "Freeholders and Estate Service Charges" casework being considered by government.
- CMA should therefore recommend to government the concept of a statutory right for local councils to manage any public open spaces or amenities within their boundaries.

Consultation questions

NALC's responses to the main consultation questions applicable to local councils in the consultation document are below:

3. Market investigation reference

Question 3.30 (i)

Do you agree with the CMA's reasons for suspecting that there may be features of the land and housebuilding markets leading to competition issues in the supply of houses and estate management services?

Yes. We completely agree with the suggestion in paragraph 3.11 of the CMA report that there are reasonable grounds to suspect that there may be a feature (or combination of features) of the housing market in the UK which prevents, restricts and distorts competition.

We also concur (based on feedback on what our councils tell us) that the likely causes of the prevention, restriction and distortion of fair play and competition in the English housing market are as below:

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(a) Restrictions on the availability of developable land as a result of volume housebuilders holding large landbanks. Although we accept that this does act as a barrier to entry, particularly for small and medium sized housebuilders.

(b) Concentration in certain local markets through the control of a significant proportion of developable land by a small number of housebuilders. If evidenced, this may lead to poor outcomes for purchasers of new homes and for the housing market at large, including lower quality or less diverse new homes, and slower build-out rates. We know this happens in many rural areas as we advised the government in our responses to the main Planning White Paper consultations in August 2020.

(c) The extent to which land banks compound the negative impacts of any lack of transparency as to the ownership (and control via options) of land. A lack of transparency may hinder small and medium sized housebuilders from identifying and securing suitable land for development and make it more difficult for them to appraise the nature of competition in a given local area. This effect is likely to be more pronounced the more land banking occurs. As a consequence, we know that residents, especially young families, in such rural areas then cannot afford to buy affordable homes in their local area.

As such, we agree that the CMA is right to have reasonable grounds for suspecting that the following feature or combination of features of prevents, restricts or distorts competition in the UK housing market for the following reasons:

(a) Lack of transparency for consumers in relation to material aspects of the way in which a newly built estate will be managed, including the actual costs that will be involved, the obligations of house buyers and consequences of the involvement of an estate management company.

(b) Significant market power conferred on estate management companies by housebuilders through the processes they use, and have used, for the appointment of estate management companies. All too often, these management companies are run (either directly or indirectly) by the housebuilder itself.

(c) High barriers for homeowners to switch estate management companies.

(d) Inadequate rights for freeholders facing unsatisfactory freehold management arrangements. For example: no legal right to manage, require the removal of a management company or challenge the reasonableness of fees; no ombudsman; potential exposure to disproportionate sanctions under the Law of Property Act 1925 and lack of redress should such sanctions be wrongfully imposed.

Consequently, we fervently believe that regulation of these management companies is long overdue.

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(e) Management companies benefit from covenants written from property deeds. However, buyers often do not find out about their liabilities until it is too late. Developers say little about service charges in the sales process and solicitors (who should be looking after their client's interests) often fail to bring this issue to their client's attention. The Law Society of England and Wales should be requested to remind solicitors of the need to always bring the implications of management company arrangements to clients' attention.

Question 3.30 (ii)

Are there any reasons why a market investigation reference may not be the most appropriate outcome of the market study? If so, please elaborate by reference to the criteria set out in paragraph 3.20, and in particular:

— Suitability of the use of the CMA's order making powers, given the issues that may exist in these markets.

— Alternative possible solutions, drawing out, if appropriate, long-term solutions and measures to mitigate the issues the CMA has identified in the short-term.

— Views on likelihood of alternative solutions being implemented and what factors may increase their likely success.

Yes. The CMA should recommend to government that housebuilding sector regulators are given suitable powers to make provision for the regulation of fees charged by management companies to both freeholders and leaseholders of residential properties, to ensure legal step-in rights, in perpetuity, for the self-management of shared facilities by such householders and local councils. Such a recommendation, as NALC itself has made, should also be made by the CMA to the Home Builders' Federation.

In general terms, play areas and recreational open spaces are successfully managed and maintained to a high standard across England by local councils. A recent study by De Montfort University – refers to 68% of these local councils running play areas and 65% owning or managing open spaces. An alternative would be for developers and local planning authorities (LPAs) to engage early with the local council (where there is one) about adoption of public amenities. These local councils should be involved at the S106/CIL/Infrastructure Levy negotiation stage for new developments where public amenity is included. Commutable sums should be standardized to make transfer easier. Local councils taking on any public amenity will then have time to plan for precept requirements, rather than taking on say a play area later where it has fallen into disrepair through poor management.

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Financially stretched LPAs are increasingly looking to devolve assets such as play areas and open spaces to the hyper local level. So, it would be much better to make it a mandatory requirement to give a local council the option of taking on a public amenity ahead of development. Otherwise, the risk is that communities can be split where part of a neighbourhood is paying through a third - party agency for the benefit of a planned or completed public amenity for all residents with no guarantee that it is being properly designed or maintained and no powers for the local council to intervene.

The most direct evidence as to why we believe this can best be furnished from the recent experience of Hunts Grove Parish Council in Gloucestershire as set out below.

The village is equally divided between management company areas and areas that will be adoptable. Tensions with the developer/management company were exacerbated by the fact the management company areas were not maintained for several years, so residents were paying annual service charges for maintenance that was not being carried out. Under the management company, residents have no rights or protections to challenge fees, or the services provided.

The new public open spaces and amenities that should serve the complete village are being paid for by only one section of the community. The parish council established a “One Hunts Grove” vision for the village whereby all residents have equal rights, equal access, and contribute equally for the long-term maintenance via their council tax precept. The council lobbied all stakeholders locally (the District Council as planning authority, the developer, and the landowner) that it wished to adopt both the adoptable areas and management company areas and unite the management and maintenance of all open spaces and amenities under the auspices of the parish council. All stakeholders were fully supportive of this approach with the exception of the developer.

Despite the intervention of the local MP and the Chief Executive of the District Council, there is nothing that can be done under current legislation to protect the role of the parish council. Once a management company has been approved, all powers reside with the developer. The parish council has neither status nor rights to manage public assets in its own community. The new parish of Hunts Grove fears for the viability of the council in the long term as it has simply been made irrelevant and unable to fulfil the role residents demanded of it when it was formed.

The example of Hunts Grove Parish Council is being repeated across the United Kingdom. In addition to the lack of any statutory right-to-manage, local councils are suffering considerable issues with new developments in terms of non-delivery of promised amenities, quality of maintenance, and the inability to influence distant management companies.

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We reiterate here that it is still the public perception that residents should address complaints regarding these issues with their parish council and this is why councils need more powers and rights over public open spaces and amenities in their area.

Hunts Grove Parish Council has been contacted by local councils across the country, from Kent to Cheshire, from Northamptonshire to Devon. In several cases, management company issues have been ultimately resolved as it has been expedient for the developer to voluntarily cooperate (e.g. Cranbrook Town Council, Devon), or the management company has failed (e.g. Kingsmead Parish Council, Cheshire).

Based on the experience of Hunts Grove Parish Council and many similar local councils nationwide, there is clearly a need for government and the CMA to address these issues and ensure that the interests of both householders and local councils are protected.

For further information on this response contact Chris Borg, NALC policy manager via email at chris.borg@nalc.gov.uk or policycomms@nalc.gov.uk .