
**REBUTTAL PROOF OF EVIDENCE OF RICHARD ST
JOHN WILLIAMS IN SUPPORT OF AN APPLICATION
SUBMITTED TO THREE RIVERS DISTRICT COUNCIL,
ON BEHALF OF BURLINGTON DEVELOPMENTS
LONDON LIMITED, FOR OUTLINE PLANNING
PERMISSION FOR THE PROPOSED DEVELOPMENT
OF LAND TO THE EAST OF OXHEY LANE,
CARPENDERS PARK, HERTFORDSHIRE – APPEAL**

PINS REF: APP/P1940/V/26/3378268

1 Background

- 1.1 This rebuttal proof of evidence responds to points raised in the Proofs of Evidence of both Roy Pinnock and Adam Ralton, both of which are dated 11th June 2026. These proofs of evidence were given on behalf of Three Rivers District Council (the **Council**) in respect of matters relating to the Mortgagee in Possession provisions and specifically the duration of the Mortgagee Exclusion Clause that is proposed to be incorporated into the Unilateral Undertaking pursuant to Section 106 of the Town & Country Planning Act 1990 (amended) in support of the application for Outline Planning Permission 25/1020/OUT, (APP/P1940/V/26/3378268) the subject of this Call-in Inquiry.
- 1.2 I do not respond to each and every point raised by Messrs Pinnock and Ralton. If I do not respond to a point in this Rebuttal, it should not be taken as my acceptance of it and this rebuttal is not intended to be exhaustive. Instead, I have identified certain points of disagreement in this rebuttal, which I hope may be of assistance to the inquiry if covered in writing in this Rebuttal. For the avoidance of doubt, I continue to rely upon my main Proof of Evidence.

2 Executive Summary and structure of this rebuttal proof of evidence

- 2.1 The following is an executive summary of the key points made in this rebuttal and an overview of its structure.
- 2.2 **Purpose of the mortgagee exclusion clause.** Notwithstanding the differences in expertise and professional background between Mr Pinnock and myself, there is one matter of fundamental importance upon which we are in agreement: the purpose of the mortgagee exclusion clause (**MEC**). Both Mr Pinnock and I describe the purpose of the MEC in materially identical terms — namely, to strike an appropriate balance between the planning purpose of preserving affordable housing in perpetuity and the commercial need for certainty that, in the event of default, a lender will be able to recover the monies owing under a charge. The dispute between the parties is therefore not about what the MEC is designed to achieve, but about what moratorium period is necessary and appropriate to achieve it.
- 2.3 **The NHF/PFWG joint letter.** A joint letter dated 11 June 2026, signed on behalf of both the National Housing Federation (**NHF**) and the Property Finance Working Group (**PFWG**), is included at Annex 1 to this Rebuttal Proof of Evidence. That letter, which represents the authoritative and considered view of the principal sector trade body and the working group responsible for the development of the standard mortgagee protection clause (the **Affordable MPC**), sets out the terms of the Affordable MPC which includes a three-month moratorium period. The letter confirms that the Affordable MPC has been adopted widely and facilitates the greater delivery of affordable housing. The letter also explains the critical importance of Market Value Subject to Tenancies (MV-STT) valuations to registered providers, having regard to the significant demands on their funding for regulatory compliance, health and safety, retrofitting, building safety, new development and net zero obligations.
- 2.4 **Regulation 122 and the planning balance.** I understand both from Counsel to the Applicant and from the evidence of Mr Allin (on behalf of the Applicant) that the ultimate question for the Inspector is whether the MEC in the terms contended for by the Council is “*necessary to make the development acceptable*” within the meaning of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 58 of the NPPF. This in turn requires the Inspector to consider the level of risk of the potential loss of affordable housing resulting from the exercise of a power of sale under a MEC; if there is no or no significant risk arising, then it is very difficult to see how the MEC could be judged necessary to make the development acceptable. If there were to be a significant risk, the question then becomes how

much of a difference the MEC would make, and whether that would outweigh (or be outweighed by) the harm that would result from any delay to the delivery of new homes — including affordable homes — arising from the inclusion of a moratorium period in excess of three months. If in this context the benefit of the MEC (in the terms proposed by the Council) does not outweigh, and/or is outweighed by, the harm, then again it is very difficult to see how the MEC (in the terms proposed by the Council) could be judged necessary to make the development acceptable. Neither Mr Pinnock nor Mr Ralton has carried out any such assessment. This is especially relevant as the Applicant has proposed a MEC in line with the model form of wording recommended by both the NHF and by the Greater London Authority i.e., consistent with the Affordable MPC as appended to this evidence.

- 2.5 **Argument 1: The role of the Council in a distressed disposal.** Mr Pinnock's contention that a three-month moratorium period is inadequate proceeds on a fundamental mischaracterisation of the role of the Council under the model form of MEC. The Council's detailed timeline — which contemplates the Council itself marketing the affordable housing units, inviting and evaluating bids, and completing the conveyancing process — does not reflect the operation of the MEC as drafted. Under the model clause (and as proposed by the Applicant), it is the mortgagee or receiver — not the Council — which bears the obligation to use reasonable endeavours to procure a disposal within the moratorium period. The Council's timeline is therefore directed at a scenario which does not arise under the clause, and the Inspector's acceptance of that timeline in the Church Lane Decision must be understood in that context.
- 2.6 **Argument 2: The South Oxhey precedent.** The Council's attempt to distinguish the South Oxhey regeneration scheme — in which it accepted a three-month moratorium period in respect of 65 affordable homes — on the basis of its familiarity with the initial registered provider does not withstand scrutiny. The MEC is not concerned with the identity of the initial registered provider; it is triggered precisely at the point at which that provider has defaulted and its involvement has come to an end. The factors relied upon by the Council to distinguish South Oxhey are irrelevant to the operation of the clause in a distressed sale scenario. It is therefore difficult to understand the Council's rationale as to why the Council is willing to accept 3 months in some instances but not others.
- 2.7 **Argument 3: The primacy of the Regulatory Framework.** Mr Pinnock's analysis treats the MEC as the primary — and, in effect, the sole — mechanism for the protection of affordable housing assets in the event of registered provider financial distress. That approach is fundamentally flawed. The MEC is a mechanism of last resort, which would only fall to be considered after the exhaustion of a comprehensive hierarchy of regulatory and statutory protections administered by the Regulator of Social Housing (**RSH**), including ongoing regulatory oversight, informal intervention tools, the statutory moratorium under section 145 of the Housing and Regeneration Act 2008, and the housing administration regime under the Housing and Planning Act 2016. No housing administration order has ever been made, and there are no known cases in which a MEC has been triggered on account of a registered provider becoming insolvent. The three-month moratorium period, as endorsed by the NHF and the Greater London Authority, strikes the appropriate balance between the protection of affordable housing and the preservation of the capacity of the registered provider sector to raise the third-party finance necessary to deliver it.
- 2.8 **Structure of this rebuttal proof of evidence.** Following this Executive Summary, this Rebuttal Proof of Evidence is structured as follows: (i) further general comment relevant to this rebuttal, including observations on the agreed purpose of the MEC, the significance of the NHF/PFWG joint letter, and the Regulation 122 assessment; (ii) Argument 1, addressing Mr Pinnock's contention regarding the adequacy of the three-month moratorium period and the role of the Council in a distressed disposal; (iii) Argument 2, addressing the South Oxhey precedent and

the relevance of the identity of the initial registered provider; and (iv) Argument 3, addressing the primacy of the Regulatory Framework and the secondary role of the MEC. The Affirmation follows at the conclusion of this Rebuttal Proof of Evidence. Annex 1 contains a copy of the joint letter from the NHF and the PFWG dated 11 June 2026.

3 Further general comment relevant to this rebuttal proof of evidence

3.1 As noted in Mr Pinnock's Proof of Evidence, the experiences and areas of expertise between Mr Pinnock and myself are very different.

3.2 I do not advise on planning issues (unlike Mr Pinnock) and neither of us claims any expertise in valuation matters. Instead, and as stated in my Proof of Evidence, I specialise in providing corporate, governance, regulatory and charity law advice to clients operating in the social and affordable housing, social care and charity sectors and this requires me to understand a range of issues relevant to them, including of the regulatory and funding regimes within which registered providers operate. At paragraphs 3.1 and 3.2 of his evidence, Mr Pinnock acknowledges his lack of expertise and experience in valuation matters or of the RSH's regulatory framework that is germane to registered providers. This lack of experience is reflected in Mr Pinnock's failure properly to understand both the role of the RSH and the impact of mortgagee exclusion clauses on the ability of registered providers to access appropriate levels of funding to develop and acquire new (and much needed) social housing. This dynamic is covered in greater detail in my main Proof of Evidence.

3.3 Notwithstanding those differences in expertise and professional background, there is a matter of fundamental importance upon which Mr Pinnock and I agree: the purpose of the mortgagee exclusion clause. Mr Pinnock's Proof of Evidence describes the purpose of a mortgagee exclusion clause (which he refers to as a "MEC") as being "to strike an appropriate balance between the planning purpose of preserving the affordable housing in perpetuity and the commercial need for certainty that in the event of default a lender will be able to recover the monies owing under a charge if it has not been possible to sell the property as affordable housing." He further states that it does so "by specifying a realistic, achievable, timeframe to arrange the transfer of the affected affordable dwellings in the event of a RP default." My own Proof of Evidence is to the same effect. As I explain therein, the mortgagee exclusion clause serves the dual purpose of protecting the commercial interests of lenders whilst simultaneously facilitating the delivery of affordable housing by ensuring that registered providers can access the finance necessary to acquire and manage affordable housing units. The model clause produced by the National Housing Federation and by the Greater London Authority achieves this by providing that, upon an event of default by the registered provider, the mortgagee (or a receiver appointed by the mortgagee, or any person acquiring title from the mortgagee or receiver) is not bound by the affordable housing obligations in the section 106 agreement, subject to the mortgagee or receiver first *using reasonable endeavours over the moratorium period to dispose of the affordable housing units to another registered provider or to the Council* (emphasis added).

3.4 The dispute between the parties is not about what the mortgagee exclusion clause is designed to achieve; it is about what moratorium period is necessary and appropriate to achieve it. The Council contends that a period of between four and six months is required in order for the clause to fulfil its purpose of providing a realistic and achievable timeframe for the transfer of the affordable housing units. The Applicant contends that a three-month moratorium period — as endorsed by the NHF and the PFWG and the Greater London Authority — is both sufficient to fulfil that purpose and necessary to ensure that the clause does not operate as an impediment to the very lending it is designed to facilitate. It is against that agreed understanding of purpose that the evidence in this inquiry falls to be assessed.

- 3.5 I understand both from Counsel to the Applicant and from the evidence of Mr Allin that the ultimate question for the Inspector is whether the MEC in the terms contended for by the Council is "necessary to make the development acceptable" within the meaning of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 58 of the NPPF. This in turn requires the Inspector to consider the level of risk of the potential loss of affordable housing resulting from the exercise of a power of sale under a MEC; if there is no or no significant risk arising, then it is very difficult to see how the MEC could be judged necessary to make the development acceptable. If there were to be a significant risk, then the question then becomes how much of a difference the MEC would make, and whether that would outweigh (or be outweighed by) the harm that would result from any delay to the delivery of new homes — including affordable homes — arising from the inclusion of a moratorium period in excess of three months. If in this context the benefit of the MEC (in the terms proposed by the Council) does not outweigh, and/or is outweighed by, the harm, then again it is very difficult to see how the MEC (in the terms proposed by the Council) could be judged necessary to make the development acceptable. Neither Mr Pinnock nor Mr Ralton has carried out any such assessment. This is especially relevant as the Applicant has proposed a MEC in line with the model form of wording recommended by both the NHF and by the Greater London Authority i.e. consistent with the Affordable MPC as appended to this evidence.
- 3.6 In addition, I further understand:
- (a) the risk that the Council is purporting to address by its insistence upon a moratorium period in excess of three months — namely, the risk that affordable housing units might be lost to the open market in the event of a distressed sale — must be weighed against the harm that would result from any consequential delay to the delivery of new homes, including affordable homes, arising from the inclusion of a moratorium period in excess of three months; and
 - (b) as explained in my main Proof of Evidence and in the evidence of Mr Stevenson, the overwhelming weight of the evidence before this Inquiry demonstrates that a moratorium period in excess of three months causes significant detrimental issues for registered providers in terms of their funding arrangements with institutional funders and lenders, and that the practical consequence of the Council's position is that registered providers are unable or unwilling to acquire the affordable housing units on such terms.
- 3.7 The risk that the Council's requirement would result in a material delay to — or, in the worst case, the complete frustration of — the delivery of the 128 affordable homes proposed as part of the Proposed Development is therefore not merely theoretical; it is, on the evidence, a real and substantial risk.
- 3.8 Mr Allin's evidence addresses in detail the scale of the need for new housing, including affordable housing, in the Three Rivers District. Having regard to that evidence, the harm resulting from a consequential delay in the delivery of new homes would, I understand, be substantial and would fall upon those in the greatest housing need. The risk of such harm arising is, for the reasons set out in my main Proof of Evidence and in Mr Stevenson's evidence, high.
- 3.9 It is notable that neither Mr Pinnock nor Mr Ralton has carried out any assessment of this nature, nor have they sought to weigh the risk of affordable housing loss — which, as set out in my Proof of Evidence and elsewhere in this rebuttal proof of evidence, is in practice extremely remote having regard to the comprehensive Regulatory Framework — against the immediate and material harm to housing delivery which the Council's position would occasion.

- 3.10 It is also relevant to draw the Inspector's attention to a joint letter dated 11 June 2026 addressed to the Inspector and signed on behalf of both the NHF and the PFWG (a copy of which is included at Annex 1 to this Rebuttal Proof of Evidence). The PFWG explains the context of the mortgagee exclusion clause and sets out the terms of a standard clause (i.e. the Affordable MPC) which was agreed by the PFWG in 2015 for use in all relevant documents within the affordable housing sector, including planning obligations such as the proposed Unilateral Undertaking. The letter is of considerable significance and the Inspector is respectfully invited to have regard to the following key points arising from it:
- (a) First, the letter confirms the standing and composition of the PFWG. The PFWG is constituted of key stakeholders operating in and providing professional services to the affordable housing sector, including borrower and lender legal advisers, valuers and those representing the borrower community. It was established primarily to identify areas of inconsistency in property security transactions, with a view to achieving a standardised approach to the completion of property security and related due diligence. The standard mortgagee protection clause (the Affordable MPC) was agreed by the PFWG in 2015 and has been adopted widely across the affordable housing sector.
 - (b) Secondly, the letter sets out the intention of the Affordable MPC, which is to provide a template that, if incorporated correctly into the relevant documentation, will provide the lender with a mechanism to sell the property assets on the open market — either to a registered provider or a non-regulated purchaser — free of any affordable housing restrictions. By doing so, the affordable housing borrower is able to secure private finance on a Market Value Subject to Tenancies (MV-STT) basis, which gives a higher value than would otherwise be available were the affordable housing obligations to continue to apply. The letter expressly states that this facilitates greater delivery of affordable housing.
 - (c) Thirdly, the letter identifies three fundamental requirements of the Affordable MPC which must be satisfied if it is to be effective. These are: (a) Beneficiaries — the Affordable MPC must ensure that all relevant funding parties may benefit from the exclusion, having regard to the different methods of enforcement of the lender's security that may be utilised; (b) Timings — a lender must have certainty as to the time period in which it must first try to preserve the property assets within the affordable housing sector, and this must not be excessive, so that the ability of the lender to realise the secured assets quickly is not compromised; and (c) Consideration — a lender must not be forced to dispose of the property assets for less than the secured debt. The letter makes clear that where the Affordable MPC is absent, or where it is incorporated but deemed by a lender or valuer to be ineffective because it does not address these fundamental requirements, the MV-STT funding valuation basis will be unavailable and the value of the property assets will be limited to the lower Existing Use Value for Social Housing (EUV-SH) basis, with a correspondingly lower level of secured funding available.
 - (d) Fourthly, and of particular relevance to the issues before this Inquiry, the letter explains why MV-STT valuations are of critical importance to registered providers. Registered providers need to leverage their property assets for affordable housing regulatory compliance and ongoing expenditure on health and safety standards, to pay for retrofitting, building safety, new development and net zero challenges. MV-STT valuations are therefore an important consideration for registered providers, as higher valuations can support increased borrowing against assets. Lenders in the affordable housing sector typically require assurance that mortgagee protection clauses will

enable MV-STT valuations as part of their credit assessments, making the impact of the inclusion of the Affordable MPC a material consideration.

- 3.11 The Inspector is respectfully invited to note that the joint letter represents the considered and authoritative view of the principal sector trade body and the working group responsible for the development and promulgation of the standard mortgagee protection clause, and that it directly supports the Applicant's case that the three-month moratorium period – which is specified in the Affordable MPC itself - represents the established market standard and is necessary to ensure that the clause fulfils its purpose of facilitating the delivery of affordable housing.
- 3.12 In conclusion, Mr Pinnock's evidence raises nothing substantively new beyond his reference to the Council's position previously rehearsed in correspondence dating back to 7 March 2025. Neither the evidence contained in Mr Pinnock's Proof of Evidence, nor that of Mr Ralton, addresses the fundamental issues of risk and harm, nor the satisfaction of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). No substantive assessment is provided in the Council's evidence of the balance between the risk of a mortgagee exclusion clause being triggered and the substantial harm resulting from the consequential delay to the delivery of housing, including affordable housing, resulting from a mortgagee exclusion clause in excess of three months.

ARGUMENT 1: THE ROLE OF THE COUNCIL IN A DISTRESSED DISPOSAL AND THE ADEQUACY OF THE THREE-MONTH MORATORIUM PERIOD

SUMMARY OF MR PINNOCK'S ARGUMENT

- 1 Mr Pinnock contends that a three-month moratorium period is inadequate to complete the transfer of 128 affordable homes in the event of a distressed sale. He relies upon the Council's timeline submissions in the Church Lane Decision, which estimated that a distressed disposal could take 19 to 23 weeks (approximately 5 to 6 months) to complete, encompassing the marketing of the properties, the evaluation of bids, the contract stage and the post-contract stage. Mr Pinnock notes that the Inspector in the Church Lane Decision accepted this evidence as "compelling" in relation to the 44 and 48 affordable homes in the two conjoined appeal schemes and observes that the 128 affordable homes in the present case represent a considerably greater number. He further contends that the Council's concern is not that it is theoretically impossible to conduct the full chain from event of default to disposal in three months, but that it is very risky to assume that this is the case, particularly where there are 128 affordable homes.

REBUTTAL

- 2 Mr Pinnock's argument proceeds on a fundamental mischaracterisation of the role of the Council under the model form of mortgagee exclusion clause. The Council's timeline submissions in the Church Lane Decision, and Mr Pinnock's reliance upon them, assume that it is the Council which would be responsible for marketing the affordable housing units, inviting and evaluating bids, and completing the conveyancing process. That assumption is incorrect. Under the model form of mortgagee exclusion clause published by the PFWG (and the GLA's equivalent template clause and the Applicant's proposed approach), it is the mortgagee or receiver — not the Council — which is entrusted with the obligation to use reasonable endeavours to procure a disposal of the affordable housing units to another registered provider or to the Council within the three-month moratorium period. The Council is a potential recipient of a transfer, not the party charged with effecting it.
- 3 The mortgagee or receiver is subject to a positive contractual obligation to use reasonable endeavours to complete a disposal to another registered provider or to the Council within the

moratorium period. This is not a passive provision; it imposes an active duty upon the mortgagee or receiver to take all steps that a reasonable and prudent mortgagee would take to identify and secure a willing transferee for the affordable housing units, having regard to all the circumstances.

- 4 Critically, if the mortgagee or receiver were to fail to discharge its obligation to use reasonable endeavours during the three-month moratorium period — for example, by failing to take any meaningful steps to identify or engage with potential registered provider purchasers — such failure would constitute a breach of the mortgagee exclusion clause. The Council would, in those circumstances, be able to seek injunctive relief to restrain the mortgagee or receiver from disposing of the affordable housing units on the open market in circumstances where it had not first complied with its reasonable endeavours obligation (under section 106(5) of the Town and Country Planning Act 1990). The availability of such remedies provides a significant and enforceable safeguard for the Council's interest in preserving the affordable housing, and one which Mr Pinnock's analysis does not acknowledge.
- 5 Accordingly, the Council's detailed timeline — which contemplates the Council itself preparing particulars of sale, inviting bids, evaluating tenders, instructing external advisers and completing a conveyancing process — is directed at a scenario which does not reflect the operation of the mortgagee exclusion clause as drafted. The timeline describes a process which has no basis in policy nor statute, wherein the Council assumes the responsibility for securing the transfer of affordable housing to an alternative registered provider in the event of a mortgagee exclusion clause being triggered. This does not reflect the obligation imposed by a mortgagee exclusion clause, which falls to the mortgagee to be discharged and not the Council. The three-month moratorium period is not a period within which the Council must complete a transfer; it is a period within which the mortgagee or receiver must use reasonable endeavours to do so. The distinction is material, and the Council's reliance upon its own hypothetical timeline as the basis for extending the moratorium period is, with respect, misconceived.

ARGUMENT 2: THE SOUTH OXHEY PRECEDENT AND THE RELEVANCE OF THE IDENTITY OF THE INITIAL REGISTERED PROVIDER

SUMMARY OF MR PINNOCK'S ARGUMENT

- 6 Mr Pinnock acknowledges that the Council adopted a three-month moratorium period in the case of the South Oxhey regeneration scheme in 2020. However, he seeks to distinguish that case on the basis that the Council had an existing contractual relationship with the delivery partner (the Home Group (which is a registered provider)) and intimate knowledge of the scheme, which he contends mitigated the identified concern regarding the shortness of the three-month period. Mr Pinnock relies upon the Committee Report, which noted that the scheme was a multi-phase long-term project where the three-month period was used at the outset, and that the Home Group was the established development partner with a contractual relationship with the Council. He contends that the circumstances were materially different from the present case.

REBUTTAL

- 7 The Council's attempt to distinguish the South Oxhey precedent on the basis of its familiarity with the identity of the initial registered provider does not withstand scrutiny. The mortgagee exclusion clause is not concerned with the identity of the registered provider which initially acquires the affordable housing units. Its purpose is to address the scenario in which the mortgagee is compelled to enforce its security following a default by the registered provider — that is, a scenario in which the initial registered provider has, by definition, failed. The clause operates to ensure that, in those circumstances, the mortgagee uses its reasonable endeavours

to procure a successor registered provider or the Council to acquire the affordable housing units, thereby preserving them as affordable housing. The identity of the initial registered provider is wholly irrelevant to the operation of the clause, because the clause is triggered precisely at the point at which the initial registered provider's involvement has come to an end.

8 The Council's reasoning in the South Oxhey case in fact undermines its position in the present proceedings. If the Council was satisfied in 2020 that a three-month moratorium period was adequate to protect 65 affordable homes in the context of a regeneration scheme, it is difficult to understand why a materially different conclusion should be reached in the present case. The factors relied upon by the Council to distinguish South Oxhey — namely, its contractual relationship with the Home Group and its knowledge of the scheme — relate to the Council's confidence in the initial delivery of the affordable housing, not to the operation of the mortgagee exclusion clause in a distressed sale scenario. In a distressed sale, the initial registered provider will have defaulted, and the Council's prior relationship with that provider will be of no relevance to the question of whether the mortgagee can, using reasonable endeavours, procure a successor within the moratorium period. Mr Pinnock has not explained why the three-month period was sufficient to protect the affordable housing at South Oxhey in the event of a distressed sale but would be insufficient to do so in the present case.

9 As an aside, it is interesting to note that the Home Group:

9.1 is one of the RPs referred to in Nathan Stevenson's letter to the Council dated 22nd October 2024 (and annexed to Mr Pinnock's proof of evidence – see Annex 1); and

9.2 indicated that they could not accept a moratorium period in excess of 3 months.

ARGUMENT 3: MR PINNOCK'S MISCHARACTERISATION OF THE INSPECTOR'S FINDINGS IN THE CHURCH LANE DECISION

SUMMARY OF MR PINNOCK'S ARGUMENT

10 Mr Pinnock contends that the Inspectors considering the Council's practical concerns have "agreed that a 3-month period would create a real risk that the MIP protections would be ineffective" (please see paragraph 4.8 of Mr Pinnock's evidence, which reproduces the comments made by the Council in its letter to Mr Stevenson on behalf of the Applicant dated 5th November 2024 (paragraph 9 of that letter)). He relies upon this characterisation to support the proposition that the concerns raised by the Council have been "accepted on appeal regarding the impact of a 3 month period", and that a valuer reaching the same conclusion may be prepared to commit to a MV-STT valuation on the basis that the moratorium period is, in effect, too short to be operative. Mr Pinnock treats the Inspector's findings in the Church Lane Decision as establishing, as a matter of principle, that a three-month moratorium period is inherently inadequate.

REBUTTAL

11 Mr Pinnock's characterisation of the Inspector's findings in the Church Lane Decision is not supported by the terms of the decision itself. The Inspector did not state in the Appeal Decision that a three-month moratorium period would "create a real risk that the MIP protections would be ineffective". What the Inspector in fact stated was that he found "the Council's detailed submissions on this matter compelling and am satisfied that a five-month period would be appropriate in this instance" (paragraph 70 of the Church Lane Decision). That is a materially different finding. The Inspector was expressing satisfaction that a five-month period was appropriate in the particular circumstances of that case; he was not making a general finding that a three-month period would render the mortgagee exclusion clause ineffective or create a

real risk of its failure. The distinction between a positive finding that a longer period is appropriate in a particular instance and a negative finding that a shorter period is ineffective as a matter of principle is significant, and one that is not warranted by the language of the decision.

- 1 Moreover, the Inspector expressly acknowledged at paragraph 68 of the Church Lane Decision that there were "disagreements" and at paragraph 70 that "contradictory evidence has been submitted on the matter". The Inspector noted the appellant's submission that three months represented a standard approach widely accepted, including by the Greater London Authority, and the Council's contrary position. The Inspector resolved that dispute in favour of the Council's position in the circumstances of that case, not on the basis of an uncontroverted finding that a three-month period is inherently inadequate. Mr Pinnock's presentation of the Inspector's findings as an established and unqualified endorsement of the proposition that three months creates a "real risk" of ineffectiveness is, with respect, a misreading of the decision.
- 2 Critically, the Council's "detailed submissions" which the Inspector found "compelling" were the very timeline submissions addressed in Argument 1 above — that is, submissions which proceeded on the premise that it would be the Council which would be responsible for marketing the affordable housing units, inviting and evaluating bids from registered providers, and completing the conveyancing process. As set out above, that premise is incorrect. Under the model form of mortgagee exclusion clause, it is the mortgagee or receiver — not the Council — which bears the obligation to use reasonable endeavours to procure a disposal within the moratorium period. The Inspector's acceptance of the Council's submissions must therefore be understood in the context of the case as it was put to him in that particular matter; it does not follow that the same conclusion would be reached where the correct allocation of responsibilities under the mortgagee exclusion clause is properly identified and explained (including with the safeguards available to the Council, namely the injunctive relief available under s106(5) of the Town and Country Act 1990).
- 3 Furthermore, the analysis adopted by Mr Pinnock — and, it would appear, by the Council in its submissions to the Church Lane Inspector — proceeds on the assumption that the mortgagee exclusion clause is the sole or primary mechanism for the protection of affordable housing in the event of registered provider financial distress. As addressed in detail below, that assumption overlooks the comprehensive hierarchy of regulatory and statutory protections administered by the Regulator of Social Housing, including ongoing regulatory oversight, informal intervention tools, the statutory moratorium under section 145 of the Housing and Regeneration Act 2008, and the housing administration regime under the Housing and Planning Act 2016. These embedded protections are specifically designed to safeguard affordable housing assets in perpetuity and would, in practice, come into operation well before the mortgagee exclusion clause falls to be considered. The Inspector in the Church Lane Decision does not appear to have been addressed on the significance of these prior protections, and the weight to be attached to his findings must be assessed accordingly.

ARGUMENT 3: THE PRIMACY OF THE REGULATORY FRAMEWORK AND THE SECONDARY ROLE OF THE MORTGAGEE EXCLUSION CLAUSE

SUMMARY OF MR PINNOCK'S ARGUMENT

- 4 Mr Pinnock contends that the mortgagee exclusion clause provisions are intended to operate in a scenario where a distressed sale is taking place, and that the effectiveness of the drafting can only logically be considered taking that scenario as a given. He accepts that the relative risk of such a scenario arising is a different matter but argues that querying whether an event of default is likely "misses the point", since the drafting is providing comfort to the mortgagee in a scenario where it has occurred. He relies upon the House of Commons Levelling Up, Housing and

Communities Committee's observation that there is an increased chance that some social housing providers may encounter serious financial difficulties, potentially becoming insolvent. Mr Pinnock's analysis thereby treats the mortgagee exclusion clause as the primary — and, in effect, the sole — mechanism for the protection of affordable housing assets in the event of registered provider financial distress.

REBUTTAL

- 5 Mr Pinnock's analysis is fundamentally flawed in that it treats the mortgagee exclusion clause as if it operates in isolation from the comprehensive Regulatory Framework administered by the RSH. As set out in detail in my proof of evidence, the mortgagee exclusion clause is not the primary mechanism for the protection of affordable housing assets in the event of a registered provider's financial distress. It is, at most, a mechanism of last resort which would only fall to be considered after the exhaustion of a series of prior regulatory and statutory safeguards, each of which is designed to ensure that social housing assets are preserved within the regulated sector without recourse to enforcement of security by mortgagees.
- 6 The hierarchy of protections which would operate before any question of the mortgagee exclusion clause could arise is as follows. First, the RSH's ongoing regulatory oversight — including its extensive reporting requirements, the Governance and Financial Viability Standard, and its co-regulatory approach — is designed to identify early warning signs of financial difficulty at a registered provider and to enable the RSH to intervene at an early stage. Secondly, where financial or governance difficulties are identified, the RSH possesses a range of informal regulatory tools, including the power to impose regulatory requirements, to agree voluntary undertakings with the registered provider, and to facilitate mergers with or acquisitions by other registered providers. As my proof of evidence demonstrates, in every known case of serious registered provider financial difficulty, these informal tools have been sufficient to secure the preservation of social housing assets within the sector. Thirdly, in the event that informal intervention does not resolve the position, the statutory moratorium under section 145 of the Housing and Regeneration Act 2008 is triggered upon a mortgagee giving notice of its intention to enforce security, creating a 28-day period (subject to extension) during which the RSH may take further steps to protect the social housing assets. Fourthly, the RSH (with the consent of the Secretary of State) may apply for a housing administration order under the Housing and Planning Act 2016, pursuant to which a housing administrator would be appointed with the statutory objective of ensuring that the registered provider's social housing remains in the regulated sector.
- 7 It is only in the event that all of these prior regulatory and statutory mechanisms have been exhausted — and have failed to secure the preservation of the affordable housing assets — that the mortgagee exclusion clause in the related section 106 agreement would fall to be considered. The scenario in which the mortgagee exclusion clause is the operative mechanism for the protection of affordable housing is therefore not merely remote; it is one which presupposes the failure of the entire Regulatory Framework, including the informal regulatory tools which have to date succeeded in every known case, the statutory moratorium, and the housing administration regime. No housing administration order has ever been made and, so far as I am aware, there have not been any cases in which a mortgagee exclusion clause has been triggered on account of a registered provider becoming insolvent. The successful function of the Regulator continues to ensure the health of this sector and that solutions are found in all instances where the performance of a registered provider is called into question and certainly long before a mortgagee exclusion clause may be triggered. The Council's timeline is based on a series of actions which, at the point a mortgagee exclusion clause is triggered, would have already been exhausted by the RSH, which itself has the statutory power to invoke its own moratorium period and, if necessary, to refer a registered provider to housing administration or

special administration. The Council's process therefore serves no practical purpose. The consequential delay to the delivery of housing resulting from a mortgagee exclusion clause in excess of three months will, however, result in substantial harm. The incorporation of such extended mortgagee exclusion clauses in section 106 obligations secures none of the benefit to which the Council aspires but will result in substantial harm caused by consequential delay to the delivery of housing and affordable housing.

- 8 Mr Pinnock's approach of treating the mortgagee exclusion clause as the primary safeguard, and of insisting that its drafting must be assessed solely by reference to the distressed sale scenario taken as a given, has the effect of inflating the significance of the clause at the expense of the comprehensive Regulatory Framework which, in practice, provides the real and effective protection for affordable housing assets. The consequence of this approach is that the Council seeks to impose a moratorium period which, whilst directed at a scenario of extreme remoteness, has immediate and material adverse consequences for the ability of registered providers to raise finance against the affordable housing units and, thereby, for the delivery of affordable housing. The appropriate approach is to assess the mortgagee exclusion clause in its proper context — as one element within a multi-layered system of regulatory and statutory protections — and to recognise that the three-month moratorium period, as endorsed by the NHF and the GLA, strikes the appropriate balance between the protection of affordable housing and the preservation of the capacity of the registered provider sector to raise the third-party finance necessary to deliver it.

Conclusion

- 9 In conclusion, I have considered the following 3 questions (questions emboldened):
- 9.1 **Is there a *significant level of risk of the potential loss of affordable housing resulting from the exercise of a power of sale under a MEC?***
- (a) In my opinion, there is not.
 - (b) The MEC does not operate in isolation; it must be read against the comprehensive hierarchy of powers available to the RSH and to any housing administrator, both informal (including ongoing regulatory oversight, the imposition of regulatory requirements, voluntary undertakings and facilitated mergers or acquisitions) and formal (including the statutory moratorium under section 145 of the Housing and Regeneration Act 2008 and the housing administration regime under the Housing and Planning Act 2016). These protections are specifically designed to intervene at an early stage and to secure the preservation of affordable housing assets within the regulated sector well before any question of enforcement of security by a mortgagee could arise.
 - (c) No housing administration order has ever been made, and there are no known cases in which a MEC has been triggered on account of a registered provider becoming insolvent. The risk of the provisions within the MEC ever being relied upon is, accordingly, extremely low.
 - (d) In addition to the safeguards contained in the regulatory framework:
 - (i) under the Affordable MPC, it is the mortgagee or receiver — not the Council — which is subject to a positive obligation to use reasonable endeavours to procure the transfer of the affordable housing units to another registered provider or to the Council within the moratorium period; rather than as the Council contends that a longer moratorium period is necessary based on the incorrect premise or interpretation of the Affordable MPC, such that in its view

it is the Council which would be responsible for marketing the units, inviting and evaluating bids, and completing the conveyancing process. That is not the case;

- (ii) furthermore, in the event that the mortgagee or receiver were to fail to discharge its reasonable endeavours obligation, the Council has the statutory protection afforded by section 106(5) of the Town and Country Planning Act 1990 to seek injunctive relief, thereby restraining any disposal of the affordable housing units on the open market and preventing the loss of affordable housing.

9.2 Even if there were to be a significant risk, then the question becomes how much of a difference would the Council's proposed moratorium period under the MEC make?

- (a) For the reasons outlined elsewhere in this rebuttal proof of evidence and my main proof of evidence, a moratorium period in excess of the standard 3 month period (as advocated by both the NHF and the GLA and proposed by the Applicant) will have a detrimental effect on the delivery of new affordable housing caused directly by the Council's insistence of a moratorium period greater than 3 months negatively impacting on the basis on which the affordable housing will be valued (EUV-SH compared to MV-STT). I draw the Inspector's attention to my main proof of evidence which (based on information published by Savills) comments on how much the RP sector's capacity to deliver would be impacted assuming an EUV-SH valuation compared to MV-STT.
- (b) The combination of the mortgagee's positive obligation and the Council's right to seek injunctive relief provides a robust and enforceable safeguard which operates irrespective of the length of the moratorium period. The extension of the moratorium period beyond three months would not, therefore, make any material difference to the protection of the affordable housing.

9.3 Would any such positive effect be greater than the likely negative effect that would result from any delay to the delivery of new homes — including affordable homes — arising from a moratorium period in excess of three months?

- (a) In my opinion, it would not.
- (b) As set out above, the positive effect of the Council's proposed moratorium period is, at best, negligible.
- (c) By contrast, the negative effect of a moratorium period in excess of three months is significant and immediate.
- (d) As demonstrated by the evidence of Mr Stevenson, the responses received from registered providers confirm that a moratorium period in excess of three months would deter registered providers from acquiring the affordable housing units on the Proposed Development, because of the negative impact that such a period would have on their ability to charge and borrow against those properties on the higher MV-STT valuation basis.
- (e) Where the MEC is absent or is deemed by a lender or valuer to be ineffective — including where the moratorium period is considered excessive — the MV-STT funding valuation basis will be unavailable and the value of the property assets will be limited to the lower EUV-SH basis, with a correspondingly lower level of secured funding available.

- (f) This would impact negatively not only on the ability of registered providers to acquire the 128 affordable homes proposed as part of the Proposed Development, but also on their capacity to build and acquire affordable housing more generally, including within the Three Rivers District.
- (g) Mr Allin's evidence demonstrates that there is a real and pressing need for new housing in the Three Rivers District, including social and affordable housing.
- (h) The Council's approach to the moratorium timeframe in the context of the MEC would, for the reasons set out above, directly and adversely affect the delivery of affordable housing to meet that need.
- (i) In the circumstances, the harm resulting from the Council's proposed moratorium period substantially outweighs any benefit, and the MEC in the terms proposed by the Council cannot be judged necessary to make the development acceptable within the meaning of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 58 of the NPPF.

Affirmation

The evidence which I have prepared and provide for this appeal – PINS Ref: APP/P1940/V/26/3378268 - (in this rebuttal proof of evidence) is true and I confirm that the opinions expressed are my true and professional opinions.

I understand that my duty as a witness is to the Inquiry/Inspector and that my role is to assist the Inquiry/Inspector on matters within the scope of my expertise. I also understand that my duty as a witness overrides any duty to those instructing me. I have complied with this duty in giving my evidence impartially and objectively.

This rebuttal proof of evidence is dated 22nd June 2026

Annex 1

National Housing Federation
Property Finance Working Group

11 June 2026

Inspector Owen Woodward
C/O Nathan Stevenson,
Burlington Developments London Limited
Foresters Hall,
25-27 Westlow Street,
Upper Norwood,
London
SE19 3RY

F.A.O: Inspector Owen Woodward,

Re: PINS Ref: APP/P1940/V/26/3378268

This letter is issued in conjunction with and on behalf of the Property Finance Working Group (PFWG), which is constituted of various key stakeholders operating in and providing professional services to the affordable housing sector (including borrower and lender legal advisers, valuers and those representing the borrower community). The PFWG was established primarily to identify areas of inconsistency in property security transactions, with a view to achieving a standardised approach to the completion of property security and related due diligence.

A standard mortgagee protection clause was agreed by the PFWG in 2015, for use in all relevant documentation within the affordable housing sector including, but not limited to, Section 106 Agreements. A copy of that mortgagee protection clause (**Affordable MPC**) is set out below. The availability of the Affordable MPC has been publicised through the National Housing Federation and has been adopted widely in the affordable housing sector.

The intention of the Affordable MPC is to provide a template by which, if incorporated correctly into the relevant documentation, it will provide the lender (including a mortgagee acting on its behalf and other appointed parties) with a mechanism to sell the property assets on the open market, either to a housing association / Registered Provider (RP) or a non-regulated purchaser, free of any affordable housing restrictions. By doing so the affordable housing borrower is able to secure private finance at a higher level (known as the Market Value Subject to Tenancies or 'MV-STT' basis) than otherwise would be available should affordable housing obligations continue to apply. This facilitates greater delivery of affordable housing. Of particular note are the following fundamental requirements:

- **Beneficiaries** – the Affordable MPC anticipates that different methods of enforcement of the lender's security could be utilised and ensures that all relevant funding parties may benefit from the exclusion.
- **Timings** – a lender must have certainty as to the time period in which it must first try to preserve the property assets within the affordable housing sector and this must not be excessive, so that the ability of the lender to realise the secured assets quickly is not compromised.
- **Consideration** – a lender must not be forced to dispose of the property assets for less than the secured debt.

Where there is no mortgagee protection clause, or where this is incorporated but deemed by a lender/valuer to be ineffective (because it does not address the fundamental requirements), then the

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Page 1

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MV-STT funding valuation basis will be unavailable. The value of the property assets would then be limited to a lower Existing Use Value for Social Housing (or 'EUV-SH'). In that scenario the relative secured funding available would also be lower.

Registered Providers (RPs) need to leverage their property assets for affordable housing regulatory compliance and ongoing expenditure on health and safety standards, to pay for retrofitting, building safety, new development and net zero challenges. MV-STT valuations are therefore an important consideration for RPs as higher valuations can support increased borrowing against assets. Lenders in the affordable housing sector typically require assurance that mortgagee protection clauses will enable MV-STT valuations as part of their credit assessments, making the impact of the inclusion of the Affordable MPC a material consideration.

Affordable MPC

*The [affordable housing provisions] in this Agreement **[DN: cross-referencing the specific provisions would be preferable]** shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the [affordable dwellings] or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:*

- *such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the [affordable dwellings] and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the [affordable dwellings] to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and*
- *if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the [affordable dwelling] free from the [affordable housing provisions] in this Agreement which provisions shall determine absolutely*



Jasdeep Nahl

.....
Signed on behalf of the
Property Finance Working Group



Tanya Bass

.....
Signed on behalf of the
National Housing Federation

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Page 2

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