LAND EAST OF OXHEY LANE, CARPENDERS PARK
CALL IN
(APP/P1940/V/26/3378268)

PROOF OF EVIDENCE ON BEHALF OF THREE RIVERS DISTRICT COUNCIL

ROY PINNOCK

DENTONS UK AND MIDDLE EAST LLP

CONTENTS

Land East of Oxhey Lane, Carpenders Park Call In (APP/P1940/V/26/3378268)

1 INTRODUCTION AND EXPERIENCE

1.1 I am a Solicitor and Head of Planning at Dentons UK and Middle East LLP (where I have been a Partner since 2015).

1.2 I am instructed by Three Rivers District Council (**the Council**) to provide evidence in relation to the wording within the proposed Section 106 planning obligation relating to mortgagees of registered providers of social housing (**RPs**).

1.3 I hold a BSocSc in Geography and Planning and a MSc in Urban and Regional Studies from The University of Birmingham. I am also a Solicitor Advocate with Higher Rights of Audience. Before qualifying as a solicitor in 2006, I worked in local government and in built environment consultancy.

1.4 I advise local authorities, developers, receivers, government Ministers, RPs and investment funds in relation to planning and compulsory purchase matters. This includes advice on planning obligations relating to affordable housing controls and viability reviews.

1.5 Annexures to this proof are referred to as follows **[Annex number]**.

2 BACKGROUND

2.1 The Applicant's Statement of Case states that, in addition to the main issues identified by the Secretary of State in this Call In, it raises:

> […] ***another main issue relating to the Council's position on S106 mortgagee in possession clauses, which is having serious negative implications for the delivery of the proposed affordable housing in this District and further afield, and as such is a point of general public importance in the planning sector***

2.2 It goes on to say that [1]:

> ***In relation to affordable housing, the Applicant will make the case that the affordable housing units shall be subject*** [sic] ***a S106 mortgagee protection clause to provide for a moratorium period of 3 months. The Applicant intends to call a witness to provide evidence on this.***

[1] Applicant's SoC [3.98]

2.3 The role of a Mortgagee Exclusion Clause (**MEC**) is well-described in the Addleshaw Goddard 'A-Z' guide[2]:

> […] [it] ***permits a mortgagee to dispose on the open market, free from affordable housing restrictions (often following a three-month process during which it must seek to dispose to another RP as affordable housing). An acceptable MEC can change the valuation basis of a property from EUV-SH to MV-ST.*** […]

2.4 MV-STT refers to 'market value subject to tenancies' [3]. EUV-SH refers to existing use value – social housing [4].

2.5 An MEC does not prevent a mortgagee dealing with the property in the event of a distressed sale [5]. It simply establishes when, in the event of a distressed sale, the affordable housing obligations would cease to apply.

2.6 The purpose of a MEC is to strike an appropriate balance between the planning purpose of preserving the affordable housing in perpetuity [6] 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. It does so by specifying a realistic, achievable, timeframe to arrange the transfer of the affected affordable dwellings in

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[2] Excerpt from Addleshaw Goddard Affordable Housing A-Z website

[3] This is helpfully defined as follows on the Addleshaw Goddard Affordable Housing A-Z website:

Valuation methodology which determines the value of the properties based on a disposal of the portfolio with the existing tenants remaining in occupation under the existing tenancies. It generally gives a higher value than EUV-SH as it assumes properties could then be sold on the open market out of the social housing sector when the existing tenant vacates, or that rents could be increased to market rents. There must be no binding restrictions on use as affordable housing and various other criteria satisfied for this valuation to be achieved. [emphasis added]

[4] Again, this is helpfully defined as follows on the Addleshaw Goddard Affordable Housing A-Z website:

Valuation methodology specifically created for this sector based on the rental income achievable. It determines the value of properties based on their existing use value and on the assumption it is to remain as social housing – generally where there is a binding restriction on its use as social housing.

Remember: This usually gives a lower valuation than MV-ST.

[5] i.e. where the Registered Provider who has borrowed against the affordable housing has defaulted in some way that allows the lender to exercise a power of sale

[6] In line with the NPPF Annex 2 Glossary definition of Affordable Housing (which states that affordable homes should remain affordable to future eligible households)

the event of a RP default. Once this moratorium period is over, the dwellings can be disposed of without the affordability restrictions.

2.7 The Applicant offers a 3-month moratorium period in its draft planning obligation, which is relied on to make the scheme acceptable in planning terms.

2.8 The Applicant's SoC does not say why the S106 mortgagee protection clause should / must be subject to a 3-month 'moratorium' period. I understand, however, that Counsel for the Applicant confirmed during the first CMC that he would call the Applicant's Managing Director and Richard St John Williams (of Addleshaw Goddard LLP) to explain this.

2.9 The issue for determination is therefore in my view whether such a period would be acceptable having regard to the purpose of the mortgagee protection provisions and the practical issues in the context of the scheme.

2.10 I have advised the Council in two cases where it has successfully resisted a 3-month moratorium period on appeal [7]. The Applicant in the current Call In case corresponded with the Council on the moratorium period issue in one of those cases (the Church Lane Decision, where the Inspector accepted the Council's concerns). I refer to this in section 4 below.

3 SCOPE OF EVIDENCE

3.1 I have been involved in distressed sales of properties and portfolios where there are planning issues to be addressed. I do not, however, supervise conveyancing matters. Nor do I advise RPs or their lenders on debt financing or deal structures. In short, my experience and area of expertise is very different from Mr St John Williams.

3.2 I do not claim any expertise in valuation matters or in the regulatory framework for RPs.

4 CONTEXT

4.1 The Applicant's SoC does not say why the moratorium period in the Section 106 obligation in this case must be 3 months. I therefore deal with the Council's position at this stage by reference to the detailed concerns the Applicant has previously raised in the context of its successful conjoined appeals on the 17-49 Church Lane, Sarratt site (**Church Lane Decision**)[8]. This is intended to best assist the Inquiry and limit the need for rebuttal evidence.

[7] The Church Lane Decision and Leavesden Park (APP/P1940/Q/17/381213, 22 March 2018)

[8] Conjoined appeals APP/P1940/W/22/3311477 and APP/P1940/W/22/3311479 (3 May 2024)

4.2 I refer to the chain of correspondence included at Annexes 1, 2, 3 and 4 to this proof:

(a) Letter from Burlington Property Group (**Burlington**) to the Council dated 22 October 2024;

(b) Letter from the Council to Burlington responding, dated 5 November 2024;

(c) Letter from Clyde & Co LLP, on behalf of Burlington, to the Council dated 9 January 2025;

(d) Letter from the Council to Clyde & Co LLP dated 10 March 2025.

4.3 I reviewed the correspondence at the time and was involved in drafting the letters from the Council in response.

4.4 The 22 October 2024 letter **[Annex 1]**:

(a) Explains Burlington's issues at that time – in short, that it said it was unable to progress the Church Lane appeal scheme because none of the 14 Registered Providers (**RPs**) it had contacted were "***prepared to progress our scheme*** […] ***unless the MEC clause is varied to 3 months***"[9];

(b) Provided emails from seven RPs (which I include separately in **[Annex 5]**, for ease);

(c) Asked for:

(i) examples, from the Council, of RPs that have progressed with a moratorium period longer than 3 months;

(ii) a variation to the planning obligation given in respect of the Church Lane Decision by way of Unilateral Undertaking.

4.5 I understand Burlington sent an email on 1 November 2024 enclosing a further RP representation (from Sovereign Network Group – included in **[Annex 5 as item 5(F))]**.

4.6 The Council's response (on 5 November 2024, **[Annex 2]**) addressed the following:

(a) The purpose of an MEC clause and its relationship with policy; in particular, the fact that if it "***is too short to realistically allow the stock to be placed unto another RP's hand, it fails the basic practical requirement***" – see paragraph 2;

[9] See Annex 1 (page 2, paragraph 2; page 3, paragraphs 1 and 2)

(b) The way that other Inspectors had approached the issue on the evidence put to them – see paragraphs 3, 4 and 5.

4.7 This letter is helpful in considering the issue raised in broad terms in this application so far, as noted at 2.1 and 2.2 above. It noted that several of the emails from the RPs provided with the 22 October 2024 letter were inconsistent with Burlington's position that none of the RPs would progress its scheme without a 3-month moratorium period.

4.8 I refer to paragraphs 6 – 13 of [**Annex 2**] in this sense, in particular the following excerpt:

> ***9 The Inspectors considering the Council's practical concerns have agreed that a 3-month period would create a real risk that the MEC protections would be ineffective. It seems logical that if a valuer has reached the same conclusion, he or she may be prepared to professionally commit themselves to a MV-STT valuation (which relates, by definition, solely to a distressed sale).***
>
> ***10 If so, it would serve to:***
>
> - ***Bear out the concerns raised by the Council and accepted on appeal regarding the impact of a 3 month period;***
> - ***Suggest that borrowing against the affordable stock would be possible, just not at a level which assumes that the MEC clause will be practically ineffective (in the way demonstrated by the Council's evidence and accepted by the Inspectors).***
>
> ***11 Clarion's response provided with your letter is clear in this sense:***
>
> ***The 5 months is a deal breaker <u>when it comes to achieving MV-STT</u>, providing the remaining of the MEC clause wording is all there then <u>EUV-SH will be achievable, so a business decision on whether we're happy with that would need to be looked into (case by case).</u> [emphasis added]***

4.9 Paragraph 11 excerpted above refers to part of the text of an email from Tom Hichisson at Latimer/ Clarion (dated 5 September at 9:41 AM) (see **[Annex 5(A)]**. I note, having looked again at this email, that the comment quoted above is also prefaced with a wider comment:

> "***Worth noting that EUV-SH is Clarion's <u>minimum</u> charging requirement but we're always tasked with seeking ability to charge to full market value (MV-STT) – this does give rise to exceptions clearly***".

4.10 I also note in this sense that:

(a) The email from Fairhive **[Annex 5(C)]** states both that "***no period beyond 3 months is acceptable to lenders*** […]" but then goes on to say that "***Thus 5 months will not be acceptable for charging at any more than existing use value***." [emphasis added];

(b) The email from (what appears to be Hightown) **[Annex 5(C)]** states that Hightown proceeded with schemes in the Council's area, charged at EUV;

(c) The emails from Home Group **[Annex 5(D)]** and Paradigm **[Annex 5(E)]** were in absolute terms but without any details;

(d) The email from Sovereign Network Group **[Annex 5(F)]** is clear that a period longer than 3 months "***would restrict values to EUV-SH***" and so the RP was not prepared to make "***an unconditional offer***".

4.11 While it is clear that several RPs were prepared to say that a period of more than 3 months was problematic, several of them in fact made clear that they did not consider a moratorium period of more than 3 months to be an absolute constraint to dealing with affordable housing. (but rather a question of ***how much*** debt they could secure on those properties).

4.12 The Council's 5 November 2024 letter noted that if Burlington's position was that no UK lender is prepared to lend to RPs in relation to affordable housing stock at the EUV-SH value of that stock, this would need to be evidenced in detail (**[Annex 2]** paragraph 12).

4.13 The letter back from Clyde & Co on 9 January 2025 **[Annex 3]** asked again for the MEC provisions of the planning obligation associated with the Church Lane Decision to be varied. At paragraph 2.5 it expressed regret that the Council had - it said - not properly respected the practical issues that were said to be preventing the disposal of the development. This letter raised a host of issues but did not in my view properly address the substantive issues raised by the Council.

4.14 I refer to the Council's subsequent response of 10 March 2025 ([**Annex 4**]). This was a careful and comprehensive response to the issues raised. It set out:

(a) At paragraph 7: The Council's fundamental concerns in relation to absence of justification for the 3-month MEC moratorium period;

(b) In the table at on pages 3-10: the differences between the Council and Burlington. It dealt with assertions made in the 9 January 2025 letter that were in many cases

generalised, unsubstantiated or contradicted by the RP correspondence that had been provided [10].

4.15 In light of the position noted at 4.1 above, the 10 March 2025 response at **[Annex 4]** is referred to because it gives a comprehensive statement of the Council's concerns in relation to:

(a) The shortness of the proposed 3-month MEC moratorium period in a case with a substantial number of affordable homes in play;

(b) The lack of substantive response to the issues raised.

4.16 I am not aware of any response to this letter by Burlington or Clyde & Co[11].

5 KEY ISSUES

5.1 Subject to sight of the Applicant's evidence on the MEC moratorium period, the issues would appear to remain as set out at paragraph 7 of the 10 March 2026 letter **[Annex 4]**:

(a) The absence of any explanation of why a professional valuer would be able to commit to a MV-STT valuation ***only*** with the moratorium period set at 3 months (**the Valuation Issue**);

(b) The RP correspondences suggest that borrowing against the affordable stock would be possible, at least for some RPs, just not at a much higher level. The higher level of borrowing presumably therefore assumes that the MEC clause will be practically ineffective given its shortness, in the way demonstrated by the Council's evidence to previous Inspectors (**the Obvious Inference**);

(c) No evidence has been provided that lenders will not lend to RPs in relation to affordable housing stock ***at the EUV-SH value of that stock*** (**the Suggested Evidence**);

(d) It would appear that the applicant's position, subject to sight of its evidence, is that RPs wish to gear such stock at a higher than EUV-SH value (as indicated by the RP

[10] I note that on page 5 of the 10 March 2025 letter, the table includes a cross referencing error: in responding to point 5.1 (***The MIP Clause is unworkable in practice and is jeopardising delivery of the scheme***), it states "***You do not address any of the critical substantive issued noted at paragraph 6(b) above".*** This should be "7(b)"

[11] Or Mischon de Reya LLP, where Mr Ginbey (previously of Clyde & Co LLP) now acts for the Applicant

submissions provided), but cannot do so unless the MEC Clause is sufficiently dysfunctional to allow a valuer to sign that lending off [12]. The Council considers that adopting such a provision on the basis that it is dysfunctional is not appropriate (**The Fundamental Issue**).

6 RELATIVE RISKS

6.1 Practical Issues - Timescales

6.1.1 The Council's concern is that there is a real risk that 3 months would be inadequate to complete the transfer of 128 affordable homes in this case.

6.1.2 It explained its concerns in submissions relating to the Church Lane Decision and I include the summary timeline that it submitted for that purpose, at **[Annex 6]**. The timeline illustrates that a distressed disposal could well take more than 3 months to complete from start to finish.

6.1.3 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 was satisfied that a five month period was appropriate in that instance).

6.1.4 In relation to the application in this Call In case, the number of homes (128) is considerably greater.

6.1.5 Although I am not a conveyancing expert, I know that conveyancing transactions can take longer than an idealised or quickest possible scenario. I am also aware that distressed disposals are not always straightforward.

6.1.6 Overall, the timeline in Annex 6 therefore looks to me like a reasonable cautious assessment.

6.1.7 It is important to note that the Council's concern is not that it is theoretically impossible to conduct the full chain from event of default to disposal in 3 months in some cases, but that it is very risky to simply assume that is the case (particularly where there are 128 homes). Indeed, if the moratorium period is obviously too short it would make sense that it would "***change the valuation basis of a property from EUV-SH to MV-ST***" (as noted at 2.3 above) by baking in this position.

6.1.8 Affordable housing is relatively scarce and meant to be secured in perpetuity for NPPF purposes, subject to the proportionate protection of the mortgagee's speed of exit as noted at 2.6 above. At least some degree of caution is therefore justified when weighing risks and

[12] Having regard to the point made at paragraph 10 of the 5 November 2024 Letter **[Annex 2]**

consequences of a moratorium period that is so short that it allows affordable homes to be valued at an open market value by, it is assumed, baking in the infeasibility of disposal within that period even for a smaller scheme.

6.2 Distress

6.2.1 It is important to note that MEC provisions are intended to operate in a scenario ***where a distressed sale is taking place***. The effectiveness of the drafting can only logically be considered taking that scenario as a given.

6.2.2 The relative risk of such a scenario arising is a different matter. I am not an expert in RP borrowing or liquidity. Nonetheless, I note that this issue was considered relatively recently by the House of Commons Levelling Up, Housing and Communities Committee, which noted that [13]:

> ***4.*** […] ***a small number of social housing providers have become or have come very close to being insolvent, by being unable to meet payments on loans (e.g. Ujima) or by having insufficient cash to cover their costs (e.g. Cosmopolitan). Both Ujima and Cosmopolitan housing associations were ultimately rescued by merging with other housing providers which prevented them from breaching the terms of their loans, protecting their tenants and properties, and keeping both in the social housing sector.***
>
> […]
>
> ***153. Despite the fact that the sector as a whole has been able to demonstrate resilience under significant financial pressures, there is an increased chance some social housing providers may encounter serious financial difficulties, potentially becoming insolvent and unable to repay loans or pay bills.***

6.2.3 Overall, therefore:

[13] House of Commons Levelling Up, Housing and Communities Committee ***'The Finances and Sustainability of the Social Housing Sector'*** Sixth Report of Session 2023–24

(a) Querying whether an event of default in which the distressed sale scenario would be in play is 'that likely' seems to me to miss the point – the drafting is, after all, providing comfort to the mortgagee in a scenario where it has occurred [14];

(b) It cannot properly be said to be a 'non-issue' – it is a risk that the MEC provisions are by definition there to address.

6.3 Loss of Affordable Housing

6.3.1 The MEC provisions are used to strike a proportionate balance between:

(a) On the one hand, preventing a mortgagee from realising value from the asset for so long that it would be an impediment to lending;

(b) On the other hand, allowing the affordable housing to be too easily lost given the scarcity of this asset and the complexity of potentially placing it with another RP in the event of a distressed sale.

6.3.2 I have not been able to understand from the correspondence to date why 3 months is acceptable to the Applicant but, say, 4 months is not.

6.3.3 The Council's position on the length of the moratorium period in its submissions on the Church Lane Decision was based the number of homes involved in a distressed sale. The same is true in this case – as noted above, there are 128 homes that would need to be disposed of within a 3-month period in this case.

6.4 The Council adopted a 3-month period in the case of the South Oxhey regeneration scheme in 2020. The reasons for doing so were noted in a Committee Report (**[Annex 7]**), as was highlighted to Burlington in the Council's 10 March 2025 letter.

6.5 In short, by reference to section 2 of the report, it is clear that:

(a) The Council faced the potential loss of the RP from an ongoing regeneration scheme because it had adjusted its original pricing of the units based on how they could be charged (not because the units were rendered unfundable);

[14] Which itself suggests that mortgagees do not exclude this scenario (and are in fact sufficiently concerned about it to want the protection)

(b) The Council had intimate knowledge of the scheme and a contractual relationship with the delivery partner which was considered to help mitigate the identified concern regarding the shortness of the 3-month period.

6.6 In contrast, the Applicant's position in this case appears to be that anything more than 3 months is unworkable ***per se*** (which some of the RP emails it submitted appear to contradict and, for the reasons given above, is not otherwise evidenced).

6.7 In this case, the Council considers that assuming 128 affordable homes would be fully disposed of in a distressed scenario with only 3 months to do so would be careless. That is a reasonable concern in my view, in the circumstances.

6.8 My understanding from the materials submitted by the Applicant previously is that some RPs evidently are willing to proceed on an EUV-SH basis as an acceptable "***minimum charging requirement***" (see 4.9 above). As such, there is no need to take this risk in any event.

7 AFFIRMATION

7.1 Insofar as the facts stated in this proof of evidence are within my own knowledge, I have made clear what they are and I believe them to be true. The opinions expressed represent my true and complete professional opinion.

7.2 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 it in giving my evidence impartially and objectively (and I will continue to comply with that duty as required).

7.3 I am not instructed under any conditional fee arrangement and I do not have a conflict of interest in relation to the application.

7.4 This proof of evidence has not been produced with the use of AI technology.

Roy Pinnock
Partner, Dentons UK and Middle East LLP

11 June 2026

Annex 1 – Burlington Letter of 22 October 2024

BURLINGTON
PROPERTY GROUP

22 October 2024

Claire Westwood
Head of Majors and Team Leader
Three Rivers District Council
Three Rivers House
Northway
Rickmansworth
WD3 1RL

Dear Claire,

LAND AT CHURCH LANE, SARRATT
MORTGAGEE IN POSSESSION CLAUSE

I write to you as a significant land promoter operating in your District and wanting to deliver much needed new affordable homes on the above sites.

I should be grateful for your assistance in connection with a major practical issue that is seriously threatening the delivery of our consented scheme at Sarratt. It concerns the Council's requirement for a 5-month moratorium period to be included in their mortgagee in possession ("MIP") clause as opposed to a 3-month period which is generally recognised as the industry standard (including by the Homes Builders Federation - HBF).

On 3 May 2024, we secured planning permission (on appeal) for two schemes in Sarratt with a combined delivery of 92 new homes including 48 new affordable homes: this equates to 52% affordable housing, which is well in excess of the Council's policy target. The affordable housing element would deliver 34 x social rent homes to those most in need, 9 x shared ownership homes and 5 x First Homes as agreed with the Council. In addition, we agreed that the Council should have 100% nomination rights on first lettings and 75% on all re-lets.

In allowing our appeal the Inspector found that the Council only has 1.9 years' housing land supply which equates to a shortfall of 2,843 new homes and stated that this is ***'a very serious shortfall'*** and ***'is pressing and acute. The very great need for housing is persistently going unmet'***. Unsurprisingly, therefore, the Inspector attached very substantial weight to this provision of new affordable homes.

This affordable housing provision is secured by a Unilateral Undertaking ("the UU") that we entered into on 7 December 2023 in support of our appeal. The UU was negotiated at length with officers. There was much debate between the parties regarding the moratorium period in the MIP clause, in particular, as to whether it should be 3 months (our view) or 5 months (the Council's view). Our concern at the time was based on advice that we had received from our affordable housing consultants and initial conversations with a number of Registered Providers ('RPs') about the fundability of affordable housing with a 5-month moratorium period. The UU, therefore, provided for alternatives i.e. a 3-month period or a 5-month period subject to the Inspector's final conclusions. Ultimately, the Inspector was satisfied that a 5-month period would be appropriate.

The principle of a MIP clause is agreed and well-established. In the event of any default on the mortgage of affordable homes, a lender to the RP would have the applicable period (in this case, 5 months) within which to try to sell the affected affordable homes to another RP or the Council. If a sale cannot be concluded in that period, the lender is able to dispose of the affordable homes on the open market. The purpose of such a clause is to guard against the possible loss of affordable housing.

We agree entirely with this principle and we are committed to delivering affordable homes at Sarratt. But, of course, this is dependent upon securing a RP which is prepared to acquire them given this restriction in the UU. You will appreciate that funding for new affordable homes has significantly reduced in recent years through large-scale grant reduction and more constrained government finance so RPs have become more reliant on private bank finance to deliver new affordable homes. Indeed, since Covid the ability to access bank funding has become much stricter for all businesses including RPs.

In this context, we have approached fourteen of the largest RPs in the UK including those on the Council's list of recommended RPs (per the Council's Affordable Housing SPD), many of which benefit from G1 and V1 ratings from the Regulator of Social Housing with extremely strong credit ratings and assets that are worth billions of pounds. In response, none of them are prepared to progress our scheme at Sarratt unless the MIP clause is varied to 3 months.

I enclose a copy of the written responses that have been received to date and I summarise below some of the comments that have been made by the RPs

RP	Comments
Abbeyfield	***Retirement and Care Provider – not suitable***
Fairhive Homes Limited	***On the MIP question. I am informed that no period beyond 3 months is acceptable to lenders and we are having to vary some older ones in MK that specify a four month period. Thus 5 months will not be acceptable for charging at any more than existing use value.***
Paradigm Housing	***Paradigm will require 3 months and have issues with staircasing and lettings restriction***
Hightown Housing Association	***That's correct*** [that Hightown would not buy the affordable homes in the scheme] ***as we won't be able to charge the units at market value***
Thrive Homes	***Unfortunately, the standard MIP clause in the Three Rivers S106 is not acceptable to us due to posing a problem for our lenders in addition to the 5 month moratorium period.*** ***We have held off making offers in the area until the LA is willing to revise their standard wording. If you think you can persuade them that would be really helpful***
Watford Community Housing	***I think it probably would to be honest*** [the 5-month period would prevent their investment in the site]***. It is all to do with lenders not allowing us to borrow against properties as they are only valued at existing use value. Typically any alterations from the agreed MIP standard wording is always a bit contentious unfortunately, with Three Rivers being very difficult.***
Home Group	***I have spoken with our legal team and they have advised we would not accept 5 months. Our Lenders would push back and request a variation from the LA in order to proceed.***
SNG	***Verbally confirmed that 5 month is not fundable. Await formal response.***
Clarion Housing Group (inc Affinity Sutton and Circle Anglia)	***Standard approach – no, 3 months required*** ***The 5 months is a deal breaker when it comes to achieving MV-STT, providing the remaining of the MIP clause wording is all there then EUV-SH will be achievable, so a business decision on whether we're happy with that would need to be looked into (case by case).***
L&Q	***Verbally confirmed too small and don't currently acquire s.106 units***
Metropolitan TV	***Verbally confirmed that they don't currently acquire s.106 units***
Origin (now Places for People	***Verbally confirmed that they don't currently acquire s.106 units***
Sanctuary	***Verbally confirmed that they don't currently acquire s.106 units***
Aldwych (Now Peabody)	***Verbally confirmed that they don't currently acquire s.106 units***

As is evident, RPs have been universal in their confirmation that a 5-month moratorium period is fatal to be able to secure support from their lenders/funders. As Clarion put it, it is a ***deal breaker***.

As matters stand presently, therefore, we are unable to progress with this scheme including the delivery of 48 much-needed new affordable homes. Indeed, it is clear from the selection of responses that we have received (as above) that this form of MIP clause is preventing investment by RPs in the District: it serves only to exacerbate the chronic undersupply of new affordable housing.

I should be grateful, therefore, if you would let me know whether the Council is aware of any recent examples in the district where a RP (and their funder) has accepted a 5-month moratorium period in a MIP clause. If so, please provide me with full details because we would be happy to engage with them in respect of our opportunity at Sarratt.

If not, however, we really need to find a way urgently to unlock this impasse. To facilitate the release of this scheme, I would ask the Council to consider a variation of the UU pursuant to which the 5-month moratorium period is reduced to 3 months. In addition to the points articulated above, I would emphasise that:

(a) there is no known case in the UK of an MIP clause ever being triggered in relation to assets owned by RPs, which is unsurprising given their huge asset profile and close regulation by the Social Housing Regulator therefore there is limited risk to the Council;

(b) the Council's own policy does not prescribe a 5-month period. Their Affordable Housing SPD (adopted in 2011) simply states that ***'Mortgagee in Possession clauses may be included in a Section 106 Agreement forming part of a planning permission, to facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment'*** whereas, in fact, the Council's insistence upon a 5-month period is having the reverse effect and stymieing affordable housing delivery (as is demonstrated by the enclosed correspondence);

(c) importantly, this change (from 5 months to 3 months) is not without precedent in the District. In fact, on Council-owned land at South Oxhey, the Council agreed to effect this change in order to facilitate a disposal of this land to Home Group Ltd (being the relevant RP). I understand that: (i) Home Group were unwilling to purchase the affordable homes without such an alteration to the MIP clause (which is consistent with their response in respect of our site at Sarratt, as enclosed); and (ii) officers were satisfied that, without the change, there was a real risk that the related planning permission would not be implemented resulting in the loss of 65 affordable rent and shared ownership homes. This position is no different from our development at Sarratt. As above, we cannot find a RP which is prepared to acquire the affordable homes without amendment to the MIP clause; and

(d) if unlocked, our scheme at Sarratt would deliver very significant benefits including much needed new housing, new affordable housing, a new GP surgery, over £2,300,000 of Community Infrastructure Levy, increased Council Tax and other socio-economic benefits.

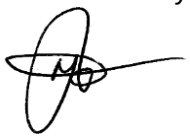
For all these cogent reasons, we would request the Council to accede to a variation of the UU pursuant to which the moratorium period in the MIP clause is reduced to 3 months.

We have been working diligently to resolve this issue since planning permission was issued in May 2024 but it has now become a serious issue affecting the delivery programme of these affordable homes.

We would welcome a meeting at your earliest convenience to discuss this matter further.

If you need anything else at all then please do not hesitate to contact me.

Yours sincerely,



Nathan Stevenson
Land Director
Burlington Property Group

Cc.

Joanne Wagstaffe – Chief Executive of Three Rivers DC
Adam Ralton – Development Management Team Leader

Enc.

- Fairhive response
- Hightown response
- Home Group response
- Clarion response
- Paradigm response
- Watford Community Housing response
- Thrive Homes response

Annex 2 – Council's Letter of 5 November 2024

Three Rivers District Council
Three Rivers House
Northway
Rickmansworth
Herts WD3 1RL
Tel: (01923) 776611
Fax: (01923) 896119

Mr Stevenson
By email

My Ref : MIP response
Date : 5 November 2024
Department : Regulatory Services
Tel: 01923 776611

Dear Mr Stevenson

Thank you for your letter of 22 October 2024. I have discussed with colleagues and addressed your comments below in light of the enclosures to your letter.

Request for Modification

1 As you are aware, the Unilateral Undertaking may only be modified by agreement with the Council or otherwise after the expiry of 5 years (under Section 106A of the 1990 Act). I set out my view on your request for the Council to agree a modification, having regard to the relevant issues and evidence.

My view is that the modification you are proposing is not appropriate. Notwithstanding the fact that the issues have been fully ventilated in recent appeal proceedings (and mindful of the additional enclosures you now provide), I explain the reasons for this below.

Overarching Issues

2 I should note at the outset:

- The purpose of a mortgagee in possession (MIP) clause is 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. It does so by specifying a **realistic, achievable timeframe** to arrange the transfer of the affected affordable dwellings in the event of a bank default. As you recognise: ***"the purpose of such a clause is to guard against the possible loss of the affordable housing."***

- The NPPF advises (Annex 2: Glossary) that subject to certain enshrined rights (eg right to buy/acquire) affordable housing should be provided in perpetuity: "Affordable housing should include provisions to **remain** at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision."

- The Council's Affordable Housing Supplementary Planning Document repeats this advice: paragraph 4.5 advises that affordable housing requirements will be secured by planning obligations or planning conditions and will include provision to ***'ensure long term affordability of dwellings***".

- If the period in an MIP clause is too short to realistically allow the stock to be placed into another RP's hands, it fails the basic practical requirement.

3 The Council's concerns, and its position, in this regard have been validated repeatedly – most recently in the appeal decision relating to this site:

- In dismissing an appeal made by a Registered Provider (RP) in 2018 (PINS Appeal ref: APP/P1940/Q/17/3181213, LPA: 17/0456/FUL) against a refusal by the Council to vary a MIP clause from 6 months to 3 months the Inspector found: ***'I find the Council's concerns about their responsibility in respect of the obligation and how long it could take to find another provider persuasive. The time period of 3 months does not serve the purpose equally well in terms of allowing sufficient time for the process to take place without lenders selling the properties on the open market, albeit with existing tenancies."***

- At the Sarratt appeal, both parties made detailed submissions on the appropriate length of the MIP clause. The Council set out why a 3-month MIP clause to "complete" the transfer of 44/48 affordable dwellings (not just "secure" the transfer) would be wholly inadequate and would render the clause nugatory. It explained that in the event of a distressed sale, the onus will be on the Council to facilitate the transfer of the affordable dwellings to a new RP and set out the process and reasonable timescales.

4 The Council's evidence to the appeal explained the specific stages and associated reasonable timeframes in detail, concluding that in reality the total likely time required to ensure a policy compliant functional MIP clause would be 5-6 months. The Inspector was aware of the detailed submissions made by Burlington on funding/ saleability/ attractiveness of the affordable dwellings to a RP (and reference to RP attitudes).

5 Having considered the evidence provided by Burlington, he reached a clear conclusion:

> "***The Council has set out detailed reasons why a five month period would be necessary, and why three months would be too short. […]***
> ***I find the Council's detailed submissions on this matter compelling and am satisfied that a five month period would be appropriate in this instance."*** (emphasis added).

Your Letter

6 Your letter states that none of the RPs would progress your scheme without a 3-month MiP. You note issues about fundability. The enclosures do not identify new issues in this regard, but outline various individual RP views.

7 None of the representations appear to be suggesting that no UK lender would lend on the affordable stock at its EUV-SH value (that is, its value as affordable housing in perpetuity). Nor do any of the representations distinguish between the price the RP would pay Burlington if gearing the stock on an EUV-SH basis rather than on the commercially preferred MV-STT basis.

8 I note in this regard that:

- Fairhive Homes response states that "***5 months will not be acceptable for charging at any more than existing use value***" (emphasis added);

- Thrive make the same point (referring to the ambition of securing lending at 'market value');

- MV-STT means, in effect, valuing the stock ***as if it was unrestricted market housing*** (subject to the tenancy in place).

9 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. It seems logical that if a valuer has reached the same conclusion, he or she may be prepared to professionally commit themselves to a MV-STT valuation (which relates, by definition, solely to a distressed sale).

10 If so, it would serve to:

- Bear out the concerns raised by the Council and accepted on appeal regarding the impact of a 3 month period;

- Suggest that borrowing against the affordable stock would be possible, just not at a level which assumes that the MiP clause will be practically ineffective (in the way demonstrated by the Council's

evidence and accepted by the Inspectors).

11 Clarion's response provided with your letter is clear in this sense:

> ***The 5 months is a deal breaker when it comes to achieving MV-STT, providing the remaining of the MIP clause wording is all there then EUV-SH will be achievable, so a business decision on whether we're happy with that would need to be looked into (case by case).*** [emphasis added]

12 To the extent that you consider that no UK lender is prepared to lend to RPs in relation to affordable housing stock at the EUV-SH value of that stock, this would need to be evidenced in detail.

13 To the extent that RPs wish to gear such stock at a higher than EUV-STT value (as indicated by the RP submissions you have enclosed), but cannot do so unless the MIP is sufficiently dysfunctional to allow a valuer to sign that lending off, that is not an appropriate planning basis on which to agree to modify the obligations in the undertaking.

14 In relation to specific matters raised in your letter:

a) This is a point that was raised by Burlington before the Inspector during its appeal. His decision therefore took account of this submission. In any event, If the risk of RP insolvency were non-existent, there would be no need for the cascade provisions at all. Banks will not lend against the affordable dwellings without the comfort of a MIP clause. Clearly therefore they perceive a risk of default. Also the clause is dealing with a scenario where such future predictions have turned out to be wrong, the Registered Provider has become insolvent, no rescue has occurred and the clause has been triggered

b) This point has been addressed above.

c) The Council does not accept that there are any parallels that may be drawn between the South Oxhey regeneration scheme (LPA reference 19/2133/FUL) and Burlington's position. The addendum report that went to the Council's Planning Committee on 20th September 2020 set out the exceptional circumstances behind the approach but in any event neither the issues or the nature of the scheme are considered to be analogous.

d) We note that you have contacted 15 Registered Providers to date: there are as of October 2024, 1595 Registered Providers registered with the Regulator of Social Housing. The Council also notes that there is a current wider crisis in RP uptake of S106 stock driven by other factors [for instance see the attached article ***https://www.savills.co.uk/research_articles/229130/364374-0*** which explains the issues with the type of stock and RP funding.

In conclusion, Burlington made detailed submissions to the Inspector as part of its appeal in respect of the MIP period, including that a 5 month period would affect the saleability of the affordable dwellings. Notwithstanding this and the weight the Inspector attached to the district's pressing affordable housing need, he concluded that a 5 month MIP was necessary to make the development acceptable. Burlington should now focus on negotiating the sale of the site with this development constraint factored in, making any adjustments to the sale price as necessary to unlock it.

Officers do not consider that a meeting would be helpful as the Council's position is clear.

Yours sincerely

Kimberley Rowley
Head of Regulatory Services

Annex 3 – Clyde & Co Letter of 9 January 2025

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London
EC3A 7AR
United Kingdom
Telephone: +44 20 7876 5000
Facsimile: +44 20 7876 5111
DX: 160030 Lime Street 5
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ian.ginbey@clydeco.com
Dir Line: +44 (0) 20 7876 4229

Head of Legal Services
Three Rivers District Council
Three Rivers House
Northway
Rickmansworth
WD3 1RL

Attn Matthew Barnes

Our Ref	Your Ref	Date
IG/10299734		9 January 2025

Dear Head of Legal Services

Land to the Rear of 17-49 Church Lane, Sarratt
Land Adjacent to 97 Church Lane, Sarratt
Deed of Unilateral Undertaking dated 7 December 2023

1 Context

1.1 We act for Burlington Developments London Limited in connection with their proposed residential development ("the Development") of the above sites, for which planning permission ("the Permission") was granted pursuant to an appeal decision ("the Decision")[1] dated 3 May 2024.

1.2 The Permission was granted following completion of a deed of unilateral undertaking ("the Undertaking") on 7 December 2023 pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") in favour of the Council.

1.3 The Undertaking secures a miscellany of mitigation measures in respect of the Development and was the subject of detailed negotiation with the Council.

2 Request to vary the Undertaking

2.1 By this letter, our client formally requests the Council to vary the Undertaking pursuant to section 106A(1)(a) of the Act ("the Request").

2.2 Specifically, the mortgagee protection clause, which can be found at paragraph 8.1 of Schedule 4 to the Undertaking (and related definitions) ("the Clause"), is unworkable in practice and is now jeopardising delivery of the Development (including the provision of much-needed affordable housing).

[1] Appeal reference APP/P1940/W/22/3311477

2.3 For the reasons rehearsed previously with the Council, and as set out in this letter, our client formally requests that the definition of the Moratorium Period in the Undertaking be amended as follows:

'***Moratorium Period means the period of three (3) months starting on the date when written confirmation of default is submitted to the Council pursuant to paragraph 8.1(b) of Schedule 4 unless the Secretary of State concludes in the Decision Letter that the moratorium period should be five (5) months PROVIDED THAT for the avoidance of any doubt, if the Secretary of State does not reach any conclusion about the moratorium period in the Decision Letter, then it shall conclusively be deemed to be three (3) months;'***

2.4 The Request is made following an exchange of correspondence between our client and the Council. Specifically, our client summarised its concerns about the Clause in a letter dated 22 October 2024 ("the Letter") pursuant to which it also requested a meeting with officers of the Council to discuss these concerns. On 5 November 2024, the Council's Head of Regulatory Services replied to our client ("the Council Response"). In so doing, our client's request for a meeting was rejected and our client was invited to re-negotiate a sale of the Development with the Clause factored in.

2.5 Regrettably, the Council Response does not properly respect the practical issues that are in play and are preventing the disposal of the Development and, consequently, the provision of much-needed housing (including affordable housing), as to which please see further below.

3 The Clause

3.1 Our client remains committed to ensure that no less than 52% of the dwellings in the Development comprise affordable housing (within the meaning of the NPPF). This unequivocal commitment is legally secured by obligations set out in Schedule 3 to the Undertaking.

3.2 The provision of affordable homes – alongside market homes – represents a very significant benefit to the local area and formed a key consideration for the Inspector when allowing the appeal and granting the Permission. Indeed, the Inspector found that[2]:

'The proposal [appeal A] ***would make a very positive contribution to all these types of much needed housing within the district. I consider these benefits of market and affordable housing each attract very substantial weight…',***

and reached a similar conclusion in respect of appeal B.

3.3 When carrying out the requisite overall planning balance, the Inspector reached the following important conclusions[3]:

'…The current five year housing supply situation is pressing and acute. The very great need for housing is persistently going unmet. The existing development plan is simply not delivering anywhere near the requisite amount of housing of all types. The Council accepts that the need cannot be met purely within existing settlement boundaries and that significant Green Belt land will need to be built on to meet this unmet need…The overwhelming deficiency in the five year housing supply needs to be addressed as a matter of urgency, rather than waiting for the adoption of a new local plan.

…

[2] Paragraph 81 of the decision letter.
[3] Paragraph 94 ***et seq*** of the decision letter.

..For the avoidance of doubt, I find that the combined benefits of both schemes, clearly outweigh the totality of Green Belt harm and any other harms such that very special circumstances exist.' [our emphasis]

3.4 Accordingly, the Inspector attached very significant weight to the provision of affordable housing and found that very special circumstances existed i.e. any harm to the Green Belt and any other harm arising from the Development were clearly outweighed by other considerations, namely the benefits of the Development. The provision of affordable housing is at the heart of these benefits.

3.5 We do not understand the Council to gainsay this fundamental proposition but please let us know if this is not the Council's position.

3.6 This provision of affordable housing is secured by the Undertaking. As is entirely standard, the Undertaking also includes a mortgagee protection provision in respect of the proposed affordable homes i.e. the Clause. This is set out in the following terms:

'***8 Affordable Housing (excluding First Homes) – Chargees***

8.1 The restrictions contained' in paragraph 1-5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

(a) any power of sale available to any such mortgagee, chargee or receiver arising under their mortgage or charge over any such Affordable Housing Units shall only be exercised in the event of their being a default of any obligation to such mortgagee, chargee or receiver;

(b) confirmation of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;

(c) the mortgagee, chargee or receiver will not exercise its power of sale for the Moratorium Period following the provision of such evidence to allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units within the Moratorium Period PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principal, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and

(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.' [our emphasis]

3.7 In addition, Moratorium Period is defined as follows:

Moratorium Period means the period of three (3) months unless the Secretary of State concludes in the Decision Letter that the moratorium period should be five (5) months PROVIDED THAT for the avoidance of any doubt, if the Secretary of State does not reach any conclusion about the moratorium period in the Decision Letter, then it shall conclusively be deemed to be three (3) months;' [our emphasis]

3.8 The Moratorium Period was defined in this way i.e. to provide an alternative period of three or five months, because this period was a matter of dispute between the Council and our client during the currency of the appeal. Related to this, each of the parties made written submissions to the Inspector in respect of their respective positions. Ultimately, the Inspector found in favour of the Council's position, which is recorded in the following paragraphs of the Decision:

> '***68. There were disagreements about aspects of the UU as follows:… (4) differences regarding the moratorium period in relation to the disposing of the affordable housing units for full market value. For the mortgagee protection clause for chargees of a Registered Provider, the Council argued for a five month moratorium period (prohibiting the power of sale), whereas the Appellant considered it should be three months;…***
>
> ***…***
>
> ***70. In relation to (4), contradictory evidence has been submitted on the matter. I note the Appellant has stated three months represents a standard approach, widely accepted, including by the Greater London Authority. The Council, on the other hand, rejects the assertion that there is a three month 'industry standard'. The Council has set out detailed reasons why a five month period would be necessary, and why three months would be too short. Examples are cited where the longer time period has been conceded without debate. I find the Council's detailed submissions on this matter compelling and am satisfied that the five month period would be appropriate in this instance.'*** [our emphasis]

3.9 Unfortunately, since the Permission was granted our client has been unable to contract with a Registered Provider that is prepared to accept a transfer of the affordable housing units because of the restriction set out in the Clause, evidence of which has previously been shared with the Council.

3.10 Hence, the Request is now submitted to the Council.

3.11 Before reverting in respect of the Council Response, we would emphasise that:

(a) our client's recent (and ongoing) practical difficulty in contracting with a Registered Provider which is prepared to accept the Clause represents a material change in the circumstances that were considered by the Inspector;

(b) it is incumbent, therefore, on the Council properly to consider the Request having regard to (amongst other things) the existing factual matrix; and

(c) any decision that is made by the Council in response to the Request must be reasonable (in the Wednesbury sense) failing which it would be susceptible to a claim for judicial review.

4 Relevant Legal Framework

4.1 We summarise below the relevant legal framework in relation to the Request.

4.2 Section 106A of the Act provides as follows (insofar as is material):

> ***'106A – Modifications and discharge of planning obligations***
>
> ***(1) A planning obligation may not be modified or discharged except –***
>
> ***(a) by agreement between the appropriate authority (see subsection (11)) and the person or persons against whom the obligation is enforceable; or***
>
> ***(b) in accordance with this section and section 106B…***

(2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.

(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [the appropriate authority] ***for the obligation—***

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

(4) In subsection (3) "the relevant period" means—

(a) such period as may be prescribed; or

(b) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.

…

(11) In this section 'the appropriate authority' means –

…

(b) in the case of any other planning obligation, the local planning authority by whom it is enforceable.' [our emphasis]

4.3 Given the date when the Undertaking was completed, it is not open to our client to submit an application pursuant to section 106A(3). However, it is still possible to vary the Undertaking by agreement with the Council pursuant to Section 106A(1)(a) (i.e. by a deed of variation).

4.4 It is well established that a refusal by a local planning authority to consider a variation of a planning obligation within the five year period is susceptible to a claim for judicial review. In R (on the application of Batchelor Enterprises Limited) v North Dorset District Council [2003] EWHC 3006 (Admin) the Court held as follows:

'…

27. It is clear from the terms of section 106A(1)(a) that the local planning authority has a discretion to consider a request of an application that it should agree to a modification of an obligation notwithstanding the fact that the five-year period has not elapsed. It is common ground that there is a distinction to be drawn between an application made within the five-year period under subsection 106A(1)(a) and an application made after the expiration of the five-year period under section 106A(3). In the latter case the local planning authority is bound to determine the application within a prescribed time, and if it fails to do so or if it refuses the application, an appeal may be made on the merits to the Secretary of State who may substitute his view for that of the local planning authority. In the former case, the local planning authority has a discretion.

28. On behalf of the defendant, Mr Harrison rightly conceded that this discretion is not unfettered. It must be exercised to further the aims of the statutory scheme, that is to say for planning purposes, and must not be exercised in the manner that is Wednesbury unreasonable. Thus, for example, it would be unreasonable for a local planning authority to refuse even to consider a request made under section 106A(1)(a) simply because it had been made within the five-year period.

29. It is accepted that the question to be considered by the local planning authority in each case is the same: does the obligation still serve a useful planning purpose? Since the Court in judicial review proceedings may not substitute its own answer to that question for that of the local planning authority, the question in relation to an application for a judicial review in respect of a local authority's decision under section 106A(1)(a) is whether a

reasonable local planning authority could have concluded that the obligation still served a useful planning purpose.

…'

5 **Reply to the Council Response**

5.1 Many of the practical issues associated with the Clause were summarised in the Letter. It is unnecessary for us to repeat this summary, albeit we do emphasise that our client continues to rely upon it in support of the Request.

5.2 In addition, we set out the following points in support of the Request (and by way of a reply to the Council Response).

5.3 First, it is necessary to identify the ***purpose*** of the Clause (per Batchelor). In our view, the Clause forms part of a basket of obligations, the purpose of which is to secure the provision of affordable housing. Without an appropriate mortgagee protection clause, a Registered Provider would not be prepared to acquire the related affordable housing nor would a funder be prepared to finance such an acquisition. In other words, without it, it would not be possible to provide affordable housing. We understand this is common ground but please advise if you disagree and, if so, please provide reasons for doing so.

5.4 In the Council Response, only a generic reference is made to the purpose of a mortgagee in possession clause, pursuant to which it is stated that its purpose is to strike an appropriate balance between the planning purpose of preserving the affordable housing in perpetuity and the commercial need for certainty for a lender. But, such a ***purpose*** would never even arise if the affordable housing cannot be provided. Hence, in our view, the purpose of the Clause is absolutely central to the provision of affordable housing.

5.5 Please confirm you agree this represents the purpose of the Clause. If not, please identify what the Council considers to be the purpose of the Clause.

5.6 Related to the above, no evidence has been produced by the Council, which would gainsay our client's proposition that a variation of the Clause – so as to substitute a three-month moratorium period instead of a five-month period – would serve this purpose ***equally well*** (within the meaning of section 106A). To the contrary, the evidence produced by our client supports a contention that such a variation is necessary to secure a Registered Provider and, therefore, deliver affordable housing as part of the Development, consistent with this purpose.

5.7 Second, the Council purports to rely upon the Affordable Housing Supplementary Planning Document as adopted in June 2011 ("the SPD"). However, importantly, the Council omits to refer to that part of the SPD, which deals with mortgagee possession clauses. This advice can be found at paragraph 4.8 of the SPD, which is cast in the following terms:

'***Mortgagee in Possession Clauses may be included in a Section 106 Agreement forming part of a planning permission, to facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment. In the event of a default by the housing association in repaying their loans and the lender taking possession of the affordable properties, the clause would (subject to those conditions as set out in the Section 106 Agreement) release the lender from the affordable housing occupancy conditions, which could then be sold on the open market. These clauses would only be allowed where the housing provider was a housing association regulated by the Homes and Communities Agency and the Tenant Services Authority, or any successor body. They would not be allowed on Rural Exception Sites (see***

Chapter 5). Mortgagee in Possession Clauses would only be used in S106s when the affordable housing is transferred to a Registered Provider or other agency.' [our emphasis]

5.8 Accordingly, the Council accepts, as a matter of principle, that mortgagee in possession clauses are required to facilitate lending and to protect the value of the lender's investment. Such an approach is entirely consistent with the purpose of the Clause being to ensure the provision of affordable housing (most affordable housing is constructed with the benefit of loan finance). However, the Clause represents the antithesis of such an approach. This is because the practical effect of the Clause is to undervalue the affordable housing element of the Development. Contrary to the SPD, and as demonstrated by the evidence produced by our client, the Clause is ***preventing*** - as opposed to ***facilitating*** – lending from financial institutions to enable the provision of affordable housing as part of the Development. This clear conflict with the SPD is not even acknowledged in the Council Response.

5.9 Third, it is stated in the Council Response that a period of three months '***is too short to realistically allow the stock to be placed into another RP's hands, it fails the basic practical requirement***'. This is unsubstantiated and runs counter to the now well-established position of many local authorities (including the GLA). So far as we are aware, the Council has not produced any evidence at all to support its assertion that a period of three months has prevented existing affordable housing being transferred to another Registered Provider (or the Council). Please provide us with full details of the evidence that is relied upon by the Council in this respect.

5.10 Fourth, other local planning authorities (including the GLA) adopt a pragmatic approach to this issue. We would invite the Council also to do so in response to the Request. In doing so, we rely upon the following reasons, each of which also explains the rationale behind the pragmatic approach that is adopted by other local planning authorities (including the Mayor of London) to the relevant principles that are engaged:

(a) there is a significant need for affordable housing in the Council's administrative area, which is not coming close to being met and, therefore, requires urgent attention (per the Decision);

(b) related to (a) above, it is generally acknowledged that a EUV-STT valuation would help to address this shortfall in affordable housing funding;

(c) Registered Providers are tightly controlled by the Social Housing Regulator, which has the ability to intervene in the event of a Registered Provider experiencing financial distress; and

(d) there are no known cases of a mortgagee in protection clause ever having been triggered in relation to assets owned by a Registered Provider.

5.11 This approach is sensible, pragmatic and proportionate and we would invite the Council to adopt the same approach when determining the Request.

5.12 Fifth, paragraphs 7 and 12 of the Council Response state as follows:

'7 ***None of the representations*** [as referred to in the letter] ***appear to be suggesting that no UK lender would lend on the affordable stock at its EUV-SH value (that is, its value as affordable housing in perpetuity). Nor do any of the representations distinguish between the price the RP would pay Burlington if gearing the stock on an EUV-SH basis rather than on the commercially preferred MV-STT basis.***

...

12 To the extent that you consider that no UK lender is prepared to lend to RPs in relation to affordable housing stock at the EUV-SH value of the stock, this would need to be evidenced in detail.'

5.13 The Council has misunderstood and/or misinterpreted the evidence that it has received from our client, which has demonstrated a broad consensus that funding is not available with the Clause in place. It is not possible for our client to prove a negative and, therefore, in the face of this clear evidence of a broad consensus the onus is on the Council to demonstrate that there is a contrary position. We also assume that the Council does not require our client to obtain evidence from each and every UK lender (of which there are over 10,000). Such an approach would be neither necessary nor proportionate given the existing clear evidence of a broad consensus.

5.14 Quite apart from this, the Council Response misses the point in any event: it is not a question of a ***price*** differential between a EUV-SH and MV-STT valuation. In other words, the length of the moratorium period does not bear directly upon the value that can be paid to our client for the relevant affordable homes but rather it is entirely concerned with the value that can be charged against these homes once they have been built in order to release funds for future investment in new affordable and/or existing affordable stock. This important point is not acknowledged by the Council.

5.15 Sixth, our client has invited the Council to provide it with details of any Registered Provider, which would be able to obtain funding for these affordable housing units with the Clause in place. This request was made in the knowledge that some of the Registered Providers which our client has already approached (and received a negative response from) are identified in the SPD among a list of the Council's recommended Registered Providers (per appendix 4 to the SPD). However, conspicuous by its absence from the Council Response is an identification of any such Registered Provider.

5.16 Accordingly, we repeat our client's request.

5.17 Please provide us with details of a Registered Provider that, so far as the Council is aware, would be prepared to acquire the affordable housing units with the Clause in place.

5.18 Seventh, it is not accepted that the Council has properly evaluated the risk of default under the Clause in any event. It is trite that lenders are generally averse to any risk even if such risk does not necessarily reflect commercial reality. In determining the Request, it is incumbent on the Council properly to quantify the risk of default under the Clause. For the reasons rehearsed previously, when this exercise is carried out the position is palpable: there is no material risk of default.

5.19 It is misconceived to seek to establish any correlation between a lender's refusal to finance the Development with the Clause in place and the risk of a default event arising (per paragraphs 9 and 10 of the Council Response). Similarly, it is wrong for the Council to suggest that borrowing against the affordable housing units would be possible ***just not at a level that assumes that the MIP clause would be practically ineffective***. Quite simply, this is not borne out by the evidence produced by our client.

5.20 Eighth, the Council has accepted previously a three-month period in a mortgagee protection clause. In this respect, the Council Response attempts to distinguish what it considers to be ***exceptional circumstances*** in respect of a regeneration scheme at South Oxhey. However, it remains the case that the Council's position there was (and is) inconsistent with the firm line it is purporting to take in respect of the Development. In particular, it would appear that the Council's overriding concern at South Oxhey was

the risk of the registered provider ***being contractually free to walk away from the currently proposed phase 3 scheme***.

5.21 This is in stark contrast to the Council's position in respect of the Development, pursuant to which it is inviting our client to renegotiate a sale of the Development with the Clause in place. The Council would have been entitled to adopt the same position at South Oxhey but seemingly considered it inappropriate to do so. The inequity in this approach is obvious. Moreover, the related officer's report dated 10 September 2020 into the position at South Oxhey included the following commentary in support of the continued application of a three month period:

'Officers are mindful of the fact that seeking and appointing a new AHP as a result of such disruption would be likely to delay the delivery of this element of the scheme which involves a substantial contribution of affordable housing and open market homes (80 open market and 65 affordable dwellings) in the context of the Council's shortfall in five year housing land supply and pressing need for affordable housing.'

5.22 Precisely the same applies to the Development, which would provide a significant number of affordable housing units against an acute shortfall.

5.23 Please explain why this position is any different to that that was then prevailing in respect of South Oxhey.

5.24 Ninth, the evidence submitted in support of the Request is consistent and overwhelming. The Clause is not fulfilling its purpose: to the contrary, it is operating to prevent the provision of much-needed affordable housing. This purpose – the provision of affordable housing – would be served equally well and, in fact, would be better served by varying the Clause and permitting a three-month (as opposed to a five-month) moratorium period, as set out above (per Batchelor).

5.25 Permitting the Request would, therefore, be entirely consistent with section 106A(1)(a) of the Act and we invite the Council to make such a determination and to confirm that it would be prepared to enter into a deed of variation to this effect. We would also remind the Council that is incumbent upon it to act reasonably when determining the Request, in particular, whether the variation sought by our client would serve the purpose of the Clause equally well (per section 106A, Wednesbury and Batchelor).

5.26 We should be grateful if the Council would determine the Request as soon as possible and, in any event, within 14 days of the date of this letter. Please ensure that the Council's decision is supported by full reasons.

Yours faithfully

Clyde & Co LLP

Clyde & Co LLP

Annex 4 – Council's Letter of 10 March 2025

Three Rivers District Council
Three Rivers House
Northway
Rickmansworth
Herts WD3 1RL
Tel: (01923) 776611
Fax: (01923) 896119

Clyde & Co LLP
FAO Ian Ginbey
By Email

My Ref : MIP response (reference: 25/0079/VAR)
Date : 10 March 2025
Department : Regulatory Services
Tel: 01923 776611

Dear Clyde & Co LLP

Land to the Rear of 17-49 Church Lane, Sarratt
Land Adjacent to 97 Church Lane, Sarratt
Deed of Unilateral Undertaking dated 7 December 2023

We write in response to your letter of 9 January 2025 on behalf of Burlington Developments London Limited requesting a variation to the Undertaking (**Request**). We adopt the defined terms used in the Request unless otherwise stated.

Background

1 Burlington entered into the Undertaking during the appeal process in relation to the Permission. It did so acknowledging that the moratorium period under paragraph 8.1 of Schedule 4 (**MiP Clause**) would be 5 months, where the Inspector concluded that it was necessary.

2 The Request seeks a variation to the definition of Moratorium Period in the Undertaking rather than to the MiP Clause itself. The Request states that the MiP is 'unworkable'.

3 The MiP Clause was, at the invitation of the Inspector, the subject of detailed written submissions from both sides during the appeal process. The Council's representations, which had regard to the specific characteristics of the proposals, were provided to the Burlington as Appellant and PINS on 23 November 2023 (**the Council's MIP Submissions**). You made corresponding written submissions to the Inspector as part of Burlington's wider '**Points of Disagreement**' document dated November 2023.

4 Burlington completed and relied on the Undertaking. The Inspector upheld the Council's position on the MiP Clause in his decision letter.

5 Burlington wrote to the Council directly on 22 October 2024 asking for the Council to agree a variation to the Undertaking 'pursuant to which the 5- month moratorium period is reduced to 3 months' (enclosed, **October Request**). The October Request was accompanied by emails from eight Registered Providers (**RPs**) concerning MiP Clause controls.

6 The Council responded to Burlington on 5 November 2024 (**November Letter**[1]) noting:

(a) The public interest in the effectiveness of the MiP Clause and the Inspector's rationale for finding the Council's submissions "***compelling***" in relation to the inappropriate effect of the duration proposed (and now Requested) at paragraphs 2-5 of his decision letter;

[1] In response to Burlington's letter of 22 October 2024

(b) That the representations from RPs that Burlington chose to provide with the October Request:

(i) Did not say that no lender would lend on the affordable stock at its EUV-SH value (that is, its value as affordable housing in perpetuity);

(ii) Did not distinguish between the price the RP would pay Burlington if gearing the stock on an EUV-SH basis rather than on the ***commercially preferred*** 'MV-STT' basis [2];

(iii) Appear instead to be concerned with the ability to use the affordable stock as security for lending ***at MV-STT***;

(iv) Include the statement that the only 'deal-breaker' was ***in achieving MV-STT***:

> "***EUV-SH will be achievable, so a business decision on whether we're happy with that would need to be looked into (case by case)***"[3]

(c) That the modification requested was not appropriate, with detailed reasons[4].

7 The Council Response also drew out the following crucial points from the new material provided by your client:

(a) The absence of any explanation of why a professional valuer would be able to commit to a MV-STT valuation only with the MIP Clause modified in the way now Requested (**the Valuation Issue**);

(b) The counterpoint explanation noted at paragraph 10 of the November Letter (**the Obvious Inference**);

(c) A request that – if your client considers that no lender is prepared to lend to RPs in relation to affordable housing stock at the EUV-SH value of that stock - this should be evidenced in detail (**the Suggested Evidence**);

(d) To the extent that RPs wish to gear such stock at a higher than EUV-SH value (as indicated by the RP submissions provided), but cannot do so unless the MiP Clause is sufficiently dysfunctional to allow a valuer to sign that lending off[5], that is not an appropriate planning basis on which to agree to modify the obligations in the undertaking (**The Fundamental Issue**).

8 We reproduce these points here because they remain critical substantive issues on which no proper explanation has been advanced by your client. That is despite it now requesting changes that were explicitly found by the Inspector - following detailed submissions - to be contrary to the public interest.

9 You suggest that the Council Response was 'generic' and failed to engage with the issues. That is not a proper characterisation of the response and the effort made to engage with the material provided. We refer to paragraphs 6-11 in particular, which dealt in detail with the material provided in this sense, drawing out the points noted above. That was consistent with the Council's detailed and considered treatment of this issue in its written representations to the appeal process having

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[2] In effect valuing the homes as if they were ***unrestricted market housing*** (subject to the tenancy in place).
[3] Paragraph 11 of the November Letter (referring to the evidence of Clarion's position provided by your client)
[4] Noting that this was despite the fact that the relevant issues had been fully ventilated in the then-recent appeal proceedings (and mindful of the additional enclosures Burlington provided).
[5] Having regard to the point made at paragraph 10 of the November Letter

regard to the specifics of the scheme, notwithstanding the generalised way in which Burlington's case was put on this point.

Substantive Issues

10 The Request states that:

(a) the MiP Clause is unworkable in practice and that the Decision is jeopardising delivery of the scheme;

(b) the Council Response does not properly respect the practical issues that are in play.

11 You refer to judicial review. We note that:

(a) You do not say that any of the following are irrational (or otherwise unlawful):

(i) The basis on which the Inspector considered the relevant purpose, the public interest in it and the compelling nature of the Council's evidence on the practical issues associated with the unworkability of the 3-month period in the circumstances of the scheme explained in the Council's evidence;

(ii) The points made in the Council Response;

(b) The Request is in substance the same as the October Request, which was addressed by the Council Response. To the extent that you consider that the Request raises new substantive issues such that a further decision is needed on it, you should explain this in detail. To the extent that you seek to characterise this as a rolling decision, you should explain why by reference to the relevant authorities.

12 We address the substantive points below in the order that they logically arise.

	Burlington Position / Issue Raised	**Council Response**
4.4	Purpose of the MiP Clause/ Moratorium Period	The purpose was clearly set out in the November Letter (see 6(a) above). The Inspector's conclusion on the compelling nature of the Council's submissions on the importance of this purpose is as you note in the Request. That purpose – and the public interest in it – has not changed. We note that you do not suggest otherwise. The Council's position – relied on by the Inspector as compelling and not challenged by your client as unlawful – is as set out in its MiP Submissions. In short form[6]: ***Its purpose is 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.*** (**Summary Purpose**)

[6] Noting as above that this is a point that is dealt with in greater length in the Council Response and its MIP Submissions submitted at the Inspectors invitation at the Appeal

	Burlington Position / Issue Raised	Council Response
5.3	Without an appropriate mortgagee protection clause, ***a Registered Provider would not be prepared to acquire the related affordable housing nor would a funder be prepared to finance such an acquisition. In other words, without it, it would not be possible to provide affordable housing.*** We understand this is common ground but please advise if you disagree and, if so, please provide reasons for doing so.	It follows that the Council agrees that if an MiP Clause genuinely made it impossible to provide affordable housing at all it having regard to the specific scheme would not fulfil the Summary Purpose.
5.4	The Council Response provides only a generic reference to the purpose of a mortgagee in possession clause.	This is not accepted and is an odd assertion given that the Council: made detailed written submissions in the Council's MIP Submissions on this point as part of the appeal given your client's position; referred to those submissions in detail in the Council Response (paragraphs 1-4) The Inspector made clear that he had adopted the Council's characterisation of the MiP Clause in the DL, following its 'detailed submissions' on specific practical issues: ***"13 The Council has set out detailed reasons why a five month period would be necessary, and why three months would be too short. Examples are cited where the longer time period has been conceded without debate. I find the Council's detailed submissions on this matter compelling and am satisfied that a five month period would be appropriate in this instance."*** (emphasis added) The Request seeks to condense the purpose and balance of factors into a single paragraph but does not in fact state what the purpose of the MiP Clause is (merely that it is part of a basket of obligations etc). We invite you to consider whether paragraph 5.3 of the Request can properly be read as a statement of purpose as relied on. The second and third sentences of paragraph 5.4 do not state a purpose, but state the significance of impossibility and the importance of the purpose, respectively. If your client considers that the Inspector was wrong to rely on the purpose put forward by the Council in its detailed submissions, it should say so. We do not consider that there is any proper basis for this, however.
5.5		It is therefore not possible for the Council to simply agree with 5.5 as 'representing the purpose of the Clause'. This is an issue of coherence in the relevant paragraphs of the Request. It does not, however, affect the position noted above regarding the Summary Purpose (and the

	Burlington Position / Issue Raised	Council Response
		acknowledgement that if an MiP Clause genuinely made it genuinely impossible to provide affordable housing at all in a specific case it would not fulfil the Summary Purpose).
5.1	The MiP Clause is unworkable in practice and is jeopardising delivery of the scheme. Burlington relies on the October Letter	You do not address any of the critical substantive issues noted at paragraph 6(b) above.
3.9	Burlington has been unable to contract with a Registered Provider that is prepared to accept a transfer of the affordable housing units because of the restriction set out in the Clause, evidence of which has previously been shared with the Council.	You do not provide any evidence of this (and - as noted at 6(b)(iv) above - some of the material provided by your client with the October Request suggests that the issue is ***at what value*** RP's can attract lending, rather than whether it can be attracted at all). The Council Response was informed by the Council's experience that an MIP clause longer than 3 months has not affected practical delivery of on-site affordable housing. Officers are not aware of any major residential planning permission in the District with a 3+ month MIP clause that has lapsed in recent years. At the time of the appeal (in November 2023), the Council referred to a then-recent appeal in respect of the Killingdown Farm appeal, relating to the grant of permission for 160-home scheme (including 72 affordable homes) subject to a 5-month MIP clause. Burlington submitted: ***"we have since approached the developer in that case….importantly, they are now encountering significant difficulties in securing a Registered Provider for the site as a consequence of this provision***" (emphasis added). These concerns have not been borne out by events. An RP [7]has since purchased the affordable housing land, taken possession and entered into a Nominations Agreement with the Council (in October 2024). The affordable properties were first advertised as available on the Council's Housing Register on 29 November 2024. Several other schemes are also under construction locally that are subject to a 3+month MIP clause[8]. The evidence provided in the October Request itself did not support (and tended to either contradict or cast doubt on) the same proposition that you continue to rely on – of impossibility/ unworkability ***per se -*** for the reasons given at 6(b) above. We invite you to provide evidence of engagement with RPs to acquire the affordable homes on a EUV-SH basis.

[7] Clarion Housing Association

[8] e.g. 40-92 Grove Court (ref 20/0467/FUL) for 42 affordable homes; Land To South Of Foxgrove Path/Heysham Drive (ref 23/0701/OUT) for 53 affordable homes

	Burlington Position / Issue Raised	Council Response
		If your client wishes to rely on the proposition that no RP would acquire affordable homes on an EUV-SH basis, it should evidence this.
5.6 5.13	You say that: (1) The Council has not produced any evidence which would gainsay Burlington's proposition that the Request would serve the purpose ***equally well*** (within the meaning of section 106A). (2) To the contrary, the evidence produced by our client supports a contention that such a variation is necessary to secure a Registered Provider and, therefore, deliver affordable housing as part of the Development, consistent with this purpose. The Council has misunderstood the evidence provided. Burlington cannot prove the negative. There is evidence of a 'broad consensus'.	In relation to (1): The Request is not made under section 106A(3), for the purposes of s.106A(6). The relevant test in this case is as set out in ***Batchelor*** (paragraphs 27-29[9]) - does the obligation still serve a useful planning purpose? The purpose (for the sake of brevity here, the Summary Purpose) is still clearly the relevant purpose. In the alternative, and without prejudice to the point noted immediately above, the Council is properly entitled to conclude that the purpose would not be served equally well where (a) all the 'compelling' practical issues it raised in detailed evidence in the appeal proceedings having regard to the circumstances of this scheme are brought into play by a 3-month period (b) neither the Valuation Issue nor the Obvious Inference have been addressed by any form of explanation or evidence. (2) is no more than a bald assertion. For the reasons explained above, and in the Council Response, it is both unevidenced and undermined by the evidence that Burlington chose to provide with the October Request[10]. The Council Response fairly and clearly identified and explained the Valuation Issue, the Obvious Inference, the Suggested Evidence and the Fundamental Issue. For the reasons set out in detail above (and in the sections of the Council Response noted), this attempt to place an evidential onus on the local authority is misplaced. The Council has asked Burlington to address the Obvious Inference, provide evidence to counter the position in the evidence you provided on their behalf (i.e. that EUV-SH lending is impossible) or actually address the Fundamental Issue. It has not done so.
5.7, 5.8	Text from the SPD is underlined	The issue of principle here is covered above– if a MiP Clause prevented lending for affordable housing purposes in a specific case, the MiP Clause would not be fulfilling the Summary Purpose in that case. You appear to suggest that the words in the SPD should (as a matter of construction) be read as if they included the following underlined words:

[9] quoted directly in the Request at paragraph 4.4 on page 5 as the relevant test

[10] As noted above, for example, Clarion is perfectly open that a deal based on a EUV-SH basis is far from impossible/ unfeasible it is just considered 'on a case by case basis' and presumably will be reflected in how much money they are prepared to pay to the developer (which is in turn an issue of commercial acceptability not impossibility)

	Burlington Position / Issue Raised	Council Response
		'***Mortgagee in Possession Clauses may be included in a Section 106 Agreement forming part of a planning permission, to facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment*** which it should be able to gear at MV-STT rather than just EUV-SH.' Without the additional words, the italicised words simply reflect the Summary Purpose. Paragraph 5.8 of the Request simply represents the Fundamental Issue arising again (as noted above and in the Council Response) without being addressed.
	The practical effect of the MIP Clause is to undervalue the affordable housing element of the Development (and so is contrary to the SPD text in italics)	The fact that this MiP Clause results in a valuer valuing this affordable housing at EUV-SH cannot properly be said to thwart the fundamental purpose of the MiP Clause. There is no 'undervalue' as against the asset's value as affordable housing. Your client has not provided the explanation and evidence already requested to address the points in the paragraph immediately above. Nor is any Suggested Evidence provided – i.e. that valuing an affordable home as an affordable home (EUV-SH) makes it impossible for an RP to use that home as security for a loan.
5.9	The practical effects of the 3 month period is unsubstantiated	The Council's Response noted[11] that the Council's MiP Submissions included a detailed practical justification for the 5-month MIP period in this case. It explained the specific stages and associated reasonable timeframes in detail, concluding that in reality the total likely time required to ensure a policy compliant functional MIP clause in this case would be unlikely to be less than 5 months. The Appellant did not challenge these submissions. Its "Points of Disagreement" simply noted that an MIP clause involved a balancing exercise: "***A 3 month moratorium period is regarded as an industry standard and strikes an appropriate balance in identifying a period after which a lender is entitled to recover their debt***." The Inspector was aware of Burlington's submissions on funding/ saleability/ attractiveness of the affordable dwellings to a RP (and reference to RP attitudes). Having considered the parties submissions, The Inspector reached a clear conclusion: "The Council has set out detailed reasons why a five month period would be necessary, and why three months would be too short. […] I find the Council's detailed submissions on this matter compelling and am satisfied that a five month period would be appropriate in this instance." (emphasis added). Following issue of the Decision Letter on 24 May 2024, no challenge was lodged in respect of that decision and the

[11] At paragraphs 4-5

	Burlington Position / Issue Raised	Council Response
		reasoning which informed it. Furthermore, the Council's explanation fully accords with the wording of the MiP Clause itself which makes specific reference to the purpose of the time period to: "***allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units (to a new RP) within the Moratorium Period".*** Nor is this the first time that these issues have been considered: in dismissing an appeal made by a Registered Provider (RP) in 2018 (PINS Appeal ref: APP/P1940/Q/17/3181213, LPA: 17/0456/FUL) against a refusal by the Council to vary a MIP clause from 6 months to 3 months the Inspector found the Council's concerns about the following "persuasive": "***allowing sufficient time for the process to take place without lenders selling the properties on the open market, albeit with existing tenancies"*** and ***"their responsibility in respect of the obligation and how long it could take to find another provider".*** (emphasis added)
5.10	Fourth, other local planning authorities (including the GLA) adopt a pragmatic approach to this issue. We would invite the Council also to do so in response to the Request. In doing so, we rely upon the following reasons, each of which also explains the rationale behind the pragmatic approach that is adopted by other local planning authorities (including the Mayor of London) to the relevant principles that are engaged: (a) there is a significant need for affordable housing in the Council's administrative area, which is not coming close to being met and, therefore, requires urgent attention (per the Decision); (b) related to (a) above, it is generally acknowledged that a EUV-STT valuation would help to address this shortfall in affordable housing funding;	(a) The housing need position is understood. (b) This proposition is not evidenced. It is not clear how a "OMV-STT (it is assumed your reference to "EUV-STT" is a typographical error) valuation would "***help to address this shortfall in affordable housing funding***. An uplift in lending that an OMV-STT valuation would deliver may well be commercially desirable but as noted above, in the Council's Response and in appeal submissions, it is not clear how this would prevent any lending against the affordable homes at all. We do not understand there to be any mechanism in this case securing that additional lending above EUV-SH (reflecting a OMV-STT valuation) would be ring-fenced/ secured to deliver additional affordable housing in the District which would otherwise not come forward, such that it could be treated as material. That has never been proposed in this case

	Burlington Position / Issue Raised	Council Response
	(c) Registered Providers are tightly controlled by the Social Housing Regulator, which has the ability to intervene in the event of a Registered Provider experiencing financial distress; and (d) There are no known cases of a mortgagee in protection clause ever having been triggered in relation to assets owned by a Registered Provider.	and so the Council rejects the suggestion that a 3 month MIP would deliver a material planning benefit (to be balanced against the acknowledged compelling/ persuasive disbenefits). (c) The Council is not aware of a material change in this or (d) since these submissions were made to the Planning Inspector in the Points of Disagreement in support of its contention that the Section 106 MIP moratorium period should be 3 months. (d) The Council continues to consider that approaching this issue on the basis that there is no risk of RP default would be inappropriately incautious, given both the context and the impact on affordable housing stock (in line with its MiP Submissions). The Council has explained why a 3-month period would be highly likely to result in the loss of the affordable housing, because 3 months is clearly an unfeasibly short period in which to complete the transfer of the affected affordable dwellings. To the extent that you say that the financial stability of the RP sector has materially improved since the Inspector considered your client's submissions, you should explain this. Similarly, to the extent that you consider that it is irrational for the Council to consider that there is in principle a risk of RP events of default.
5.14	The length of the moratorium period does not bear directly upon the value that can be paid to our client for the relevant affordable homes but rather it is entirely concerned with the value that can be charged against these homes once they have been built in order to release funds for future investment in new affordable and/or existing affordable stock. This important point is not acknowledged by the Council.	You confirm that the valuation basis has no impact on the price an RP will pay to the developer. We assume a RICS Valuer would certify the same to the Council. Either way, this does not: (1) Explain the Valuation Issue (and therefore address the Obvious Inference) (2) Evidence Burlington's core proposition – i.e. that it is impossible/unworkable to receive any lending on an affordable home where that home is valued on an EUV-SH basis.
5.17	You ask for details of RPs	The Council is not required, in considering the Request, to play the role of agent for Burlington. It is required to consider the question of the relevant purpose and whether the modification is necessary for the MiP Clause to continue to serve it. Nonetheless, given the point you make, it would be helpful if you could identify: (1) Which RPs Burlington has approached to date (to the extent that there are any not listed in the October

	Burlington Position / Issue Raised	Council Response
		Request) by reference to the 15 identified in the Council's Response (2) Those RPs that have said it is impossible to attract lending on an EUV-SH basis.
5.20	The Council has accepted previously a three-month period in a mortgagee protection clause. In this respect, the Council Response attempts to distinguish what it considers to be exceptional circumstances in respect of a regeneration scheme at South Oxhey. However, it remains the case that the Council's position there was (and is) inconsistent with the firm line it is purporting to take in respect of the Development. In particular, it would appear that the Council's overriding concern at South Oxhey was the risk of the registered provider being contractually free to walk away from the currently proposed phase 3 scheme.	The context to the South Oxhey regeneration scheme and the circumstances behind the Council's decision to agree a relaxation of the MIP moratorium period from 5 months to 3 in that case was markedly different from the current case. The Council's decision in 2019 reflected the factors noted in detail in the Committee Report but in any event the Council's approach to this matter now reflects the factors noted previously in evidence/ correspondence and in this letter.

It is appropriate for the reasons above for the Council to refuse to agree to modify the Undertaking as requested.

Yours sincerely

K. Rowley

Kimberley Rowley
Head of Regulatory Services

Annex 5 – RP Emails (Enclosed with Burlington 22 October 2024 Letter)

Nathan Stevenson

From: Andy Pennell [redacted]
Sent: 21 October 2024 11:14
To: Neil Farnsworth; Charles Raikes
Cc: Claire Studdart
Subject: FW: MIP Clause in UU in Three Rivers District Council area

Andy Pennell
Affordable Housing Director

[redacted] [redacted]

CALA Group Ltd
Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

From: Tom Hichisson [redacted]
Sent: Thursday, September 5, 2024 9:41 AM
To: Andy Pennell [redacted]
Cc: Charles Raikes [redacted]; Claire Studdart [redacted]; Neil Farnsworth [redacted]; James Gray [redacted]
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Morning Andy, glad you had a good break – great timing, looks like summer's finished!

Standard approach – no, 3 months required.

Noting the exception beneath, our Treasury team have very helpfully cleared this up for me and I provide their response beneath.

Worth noting that EUV-SH is Clarion's minimum charging requirement but we're always tasked with seeking ability to charge to full market value (MV-STT) – this does give rise to exceptions clearly.

Treasury response:

The 5 months is a deal breaker when it comes to achieving MV-STT, providing the remaining of the MIP clause wording is all there then EUV-SH will be achievable, so a business decision on whether we're happy with that would need to be looked into (case by case).

I note Claires comments below on Hillside Grange, Croxley. I'm not familiar with this scheme yet as it appears its not yet handed over according to the PHS but the reference to Shared Ownership made me think that maybe all 'Affordable' we

took from the site were SO which can only achieve EUV-SH anyway, so maybe it was reviewed and agreed at the time because the restriction to EUV-SH would have been there anyway to leave the wording as is? Equally, if there were only a small number of rented AH we took from the site then I feel the business would have made a similar decision as a DofV can take a lot of effort and money to get resolved and if the number of rented was small it wouldn't have been worth it.

Hope this helps you as much as it has me.

TRDC sits in our east and central team (Dan Read), but I'm sure we'd welcome the opportunity to review details for portfolio approach on both.

Let us know when you have some info.

Cheers,

Tom.

Tom Hichisson
Senior Partnerships Manager - South
Latimer by Clarion Housing Group
5th Floor, Greater London House, Hampstead Road, London, NW1 7QX
[redacted]
W: www.clarionhg.com

From: Andy Pennell [redacted]
Sent: Wednesday, September 4, 2024 5:29 PM
To: Tom Hichisson [redacted]
Cc: Charles Raikes [redacted]; Claire Studdart [redacted]; Neil Farnsworth [redacted]
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Claire's on the road mate, but thanks. Yes I got some gardening done, weather was fantastic!

We have told Three Rivers to get this changed based on the fact that zero RPs (so far, not including you obvs) have declined this clause. Trouble is even if you say yes to 5 months, this particular site only has 18 x AH for an RP (plus 6 x FH) so you aren't going to want that anyway.

Having said that we also have another site that Claire touched on in three Rivers with 44 x AH (plus 5 x FH) at a slightly different stage which we may be able to conjoin to make 62. This site in Sarratt already has a s106 which you might find useful – attached. (para 8 on p33). The "Moratorium Period" referred to in para 8.1 (c) was defined in the inspectors report as 5 months (because the Council demanded it and no-one stood up and pointed out it was contentious).

Appreciate your help. Thanks.

Andy Pennell

Affordable Housing Director

[redacted]

From: Tom Hichisson [redacted]
Sent: Wednesday, September 4, 2024 5:11 PM
To: Claire Studdart [redacted]
Cc: Andy Pennell [redacted]
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire

I'm really well thanks, hope the same for you? (Andy, hope you had a good break by the way)

Thanks for your email – I'd love to report with confidence that as we have agreed this position on another project which is currently selling, we're okay with it as a rule, however things change so quickly this end so I'm going to do a bit of digging to make sure I haven't missed any emerging redlines.

I can't see the issue and strongly suspect this wouldn't be an issue but keen to check in on any Treasury/charging implications.

Be good to catch up so once I have the detail I'll give you a call.

Kind regards,

Tom.

Tom Hichisson
Senior Partnerships Manager - South
Latimer by Clarion Housing Group
5th Floor, Greater London House, Hampstead Road, London, NW1 7QX
[redacted]
W: www.clarionhg.com

LATIMER
by Clarion Housing Group

From: Claire Studdart [redacted]
Sent: Tuesday, September 3, 2024 8:41 PM
To: Tom Hichisson [redacted]
Cc: Andy Pennell [redacted]
Subject: MIP Clause in UU in Three Rivers District Council area

Hi Tom,

Hope you are well.

Apologies for the late email and just to confirm I'm not expecting a response until tomorrow!

I'm writing to ask for your input in relation to s106 schemes in the Three Rivers District Council area. Cala are currently pursuing 2 sites in the area, one is at Maple Cross and another is known as Church Lane, Sarratts.

For the first time we are working with a s106 which has an MiP clause whereby in the event of a default, lenders would have to try and sell the AH units to another RP for a period of 5 months (as opposed to the usual 3 months) before they could dispose of the homes free from the s106 obligations.

Most RPs we partner with cannot work with this MiP clause but I see Latimer have Shared Ownership homes for sale at Millside Grange in Croxley which is a Hill site. The planning application (20/1881/FUL) was won at Appeal and the UU included a 5 month MiP clause.

So finally, my question is……..are Clarion willing to buy affordable homes where the s106 has a 5-month MiP clause?

Happy to chat over the phone if easier, just give me a bell on my mobile tomorrow.

Many thanks
Claire

Claire Studdart
Affordable Housing Manager

[redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

ANNEX 5(B)

Nathan Stevenson

From: Jon Hobbs [redacted]
Sent: 03 September 2024 17:19
To: Claire Studdart; Stephen Hodsden
Cc: Andy Pennell
Subject: RE: Three Rivers DC area - MiP Clause

Hi Claire

RE: **Three Rivers DC area - MiP Clause**

Thank you for the below. the 3 rivers area is within our operating radius but is not a core expansion area so it is difficult to confirm whether we would be interested in sites there (I suspect not).

On the MIP question. I am informed that no period beyond 3 months is acceptable to lenders and we are having to vary some older ones in MK that specify a four month period. Thus 5 months will not be acceptable for charging at any more than existing use value. Lenders also prefer the NHF standard wording which this I not.

Regards

Jon Hobbs BSc MRICS FCIOB
Head of New Business
Fairhive Homes Limited
Fairfax House
69 Buckingham Street
Aylesbury HP20 2NJ

[redacted]

Fairhive

From: Claire Studdart [redacted]
Sent: 03 September 2024 16:50
To: Stephen Hodsden [redacted]; Jon Hobbs [redacted]
Cc: Andy Pennell [redacted]
Subject: Three Rivers DC area - MiP Clause

Hi Stephen and Jon,

Hope you are both well.

Just a quick email to see if Fairhive operate in the Three Rivers Council area? If so, please could I ask you for your feedback on the query below?

We have 2 sites coming forward in this area. One is at Maple Cross on Denham Way and the second is a site called Sarratts.

We are close to agreeing the s106 for Maple Cross but a query has been raised in relation to MiP clauses. An appeal has recently been won on the site known as 'Sarratts' and the MiP clause from the signed UU (below) refers to a 'Moratorium Period' which is set at 5 months (as opposed to 3). Would this 5-month period prevent Fairhive from buying affordable homes on these developments?

8 **Affordable Housing (excluding First Homes) – Chargees**

8.1 The restrictions contained in paragraphs 1–5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

(a) any power of sale available to any such mortgagee, chargee or receiver arising under their mortgage or charge over any such Affordable Housing Unit shall only be exercised in the event of there being a default of any obligation to such mortgagee, chargee or receiver;

(b) confirmation of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;

(c) the mortgagee, chargee or receiver will not exercise its power of sale for the Moratorium Period following the provision of such evidence to allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units within the Moratorium Period PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principal, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and

(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.

8.2 The restrictions contained in paragraphs 1-5 of this Schedule shall also not be binding upon any person who acquires a statutory right to buy and shall cease to apply to any Affordable Housing Unit where a Registered Provider disposes of one hundred percent (100%) of the equity in that Affordable Housing Unit pursuant to such an exercised statutory right.

If you have any questions, please just ask.

Thanks
Claire

Claire Studdart
Affordable Housing Manager

[redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

ANNEX 5(C)

Nathan Stevenson

From: Sam Galvin - Head of Land [redacted]
Sent: 04 September 2024 09:11
To: Claire Studdart
Cc: Andy Pennell
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire

The scheme was a Section 106, Leavesden Park which was handed over in 2014-2015. I didn't project manage the scheme but Hightown was trying to negotiate the DoV with Three Rivers to get it charged at more than EUV. The Planning Appeal was in 2018, and the Inspector agreed with the Council's argument that if the Clauses released the Mortgagee from the Affordable Housing obligations, then the homes could potentially be "lost" as social housing. They had not taken on board any of the points we made about this being a situation that had never occurred and was purely so we could continue to provide further affordable housing in the District or elsewhere, and that the three months period we were proposing was an Industry accepted standard. We had a few other schemes in Three Rivers at the time, so the hope was that if we could agree this one at Leavesden Park, the others could follow with the same amendment.

In the end we had to accept that the Council would never agree to modify the Clause and have selected our schemes accordingly with this knowledge. So far as I am aware, all our Three Rivers schemes are charged at EUV.

Thanks

Sam Galvin
Head of Land
[redacted]

From: Claire Studdart [redacted]
Sent: Tuesday, September 3, 2024 4:39 PM
To: Sam Galvin - Head of Land [redacted]
Cc: Andy Pennell [redacted]
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Sam,

That's useful feedback and thank you for coming back so quickly, much appreciated.

When you say you have tried and battled this with TRDC, was it on one of your own land-led sites or a s106 opportunity?

Thanks
Claire

Claire Studdart
Affordable Housing Manager

[redacted] [redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

Proud to support SAMARITANS

From: Sam Galvin - Head of Land [redacted]
Sent: Tuesday, September 3, 2024 4:33 PM
To: Claire Studdart [redacted]
Cc: Andy Pennell [redacted]
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire

That's correct as we won't be able to charge the units at market value.

We have tried to battle with TRDC before on this and lost – so unfortunately it is unlikely they'd agree to a DoV to change it.

Thanks

Sam Galvin
Head of Land
[redacted]

From: Claire Studdart [redacted]
Sent: 03 September 2024 16:12
To: Sam Galvin - Head of Land [redacted]
Cc: Andy Pennell [redacted]
Subject: MIP Clause in UU in Three Rivers District Council area

Hi Sam,

Hope you are having a good day.

Please can I ask you to cast your mind back to early July when Andy was discussing one of our sites with you called Sarratts in the Three Rivers District Council area.

I apologise for going over old ground on this as I know you have already set out Hightowns position, but please can you re-review the MiP clause from the signed UU (below) and 100% confirm that as the 'Moratorium Period' is set at 5 months (as opposed to 3 months), you categorically cannot consider buying affordable homes on this development?

If you have any questions, please just ask.

Thanks
Claire

8 **Affordable Housing (excluding First Homes) – Chargees**

8.1 The restrictions contained in paragraphs 1–5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

(a) any power of sale available to any such mortgagee, chargee or receiver arising under their mortgage or charge over any such Affordable Housing Unit shall only be exercised in the event of there being a default of any obligation to such mortgagee, chargee or receiver;

(b) confirmation of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;

(c) the mortgagee, chargee or receiver will not exercise its power of sale for the Moratorium Period following the provision of such evidence to allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units within the Moratorium Period PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principal, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and

(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.

8.2 The restrictions contained in paragraphs 1-5 of this Schedule shall also not be binding upon any person who acquires a statutory right to buy and shall cease to apply to any Affordable Housing Unit where a Registered Provider disposes of one hundred percent (100%) of the equity in that Affordable Housing Unit pursuant to such an exercised statutory right.

Claire Studdart
Affordable Housing Manager

[redacted] [redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

ANNEX 5(D)

Nathan Stevenson

From: Rhianna Williams [redacted]
Sent: 04 September 2024 10:35
To: Claire Studdart
Cc: Andy Pennell
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire,

I have spoken with our legal team and they have advised we would not accept 5 months. Our Lenders would push back and request a variation from the LA in order to proceed.

Kind regards,
Rhianna

Rhianna Williams
Development and Delivery Manager

Home Group
Uncommon Liverpool Street
34-37 Liverpool Street
London
EC2M 7PP

[redacted]

www.homegroup.org.uk

@HomeGroup
Home Group
@CareersAtHomeGroup
@HomeGroupHousing
@Home_Group_
@HomeGroupCareers

From: Claire Studdart [redacted]
Sent: Tuesday, September 3, 2024 3:59 PM
To: Rhianna Williams [redacted]
Cc: Andy Pennell [redacted]
Subject: MIP Clause in UU in Three Rivers District Council area

Hi Rhianna,

Hope you are having a good day.

Please can I ask you to cast your mind back to early July when Andy was discussing one of our sites with you called Sarratts in the Three Rivers District Council area.

I apologise for going over old ground on this as I know you have already set out Homegroups position, but please can you re-review the MiP clause from the signed UU (below) and 100% confirm that if the 'Moratorium Period' is set at 5 months (as opposed to 3), you categorically cannot consider buying affordable homes on this development?

If you have any questions, please just ask.

Thanks
Claire

8 **Affordable Housing (excluding First Homes) – Chargees**

8.1 The restrictions contained in paragraphs 1–5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

(a) any power of sale available to any such mortgagee, chargee or receiver arising under their mortgage or charge over any such Affordable Housing Unit shall only be exercised in the event of there being a default of any obligation to such mortgagee, chargee or receiver;

(b) confirmation of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;

(c) the mortgagee, chargee or receiver will not exercise its power of sale for the Moratorium Period following the provision of such evidence to allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units within the Moratorium Period PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principal, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and

(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.

8.2 The restrictions contained in paragraphs 1-5 of this Schedule shall also not be binding upon any person who acquires a statutory right to buy and shall cease to apply to any Affordable Housing Unit where a Registered Provider disposes of one hundred percent (100%) of the equity in that Affordable Housing Unit pursuant to such an exercised statutory right.

Claire Studdart
Affordable Housing Manager

[redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

ANNEX 5(E)

Nathan Stevenson

From: Karen Hillhouse [redacted]
Sent: 03 September 2024 18:10
To: Claire Studdart
Cc: Andy Pennell; Becky King
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire,

Quick response before I go on leave for a couple of days.

Paradigm will require 3 months.

Regards
Karen

From: Claire Studdart [redacted]
Sent: Tuesday, September 3, 2024 4:09 PM
To: Karen Hillhouse [redacted]
Cc: Andy Pennell [redacted]
Subject: MIP Clause in UU in Three Rivers District Council area

Hi Karen,

Hope you are having a good day.

Please can I ask you to cast your mind back to early July when Andy was discussing one of our sites with you called Sarratts in the Three Rivers District Council area. At the time you declined to make an offer due to staircasing and lettings restrictions.

Putting these reasons aside there is another fundamental point in the UU I would be grateful for your input on. The MiP clause from the signed UU (below) refers to a 'Moratorium Period' which is set at 5 months (as opposed to 3). Would this 5 month period prevent Paradigm from buying affordable homes on this development?

If you have any questions, please just ask.

Thanks
Claire

8 **Affordable Housing (excluding First Homes) – Chargees**

8.1 The restrictions contained in paragraphs 1–5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

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(b) confirmation of such default is provided to the Council as soon as reasonably practicable after any notice is served on the Registered Provider;

(c) the mortgagee, chargee or receiver will not exercise its power of sale for the Moratorium Period following the provision of such evidence to allow the Council or a Registered Provider an opportunity to attempt to complete a transfer of the Affordable Housing Units within the Moratorium Period PROVIDED THAT the consideration of any such transfer will discharge all liabilities and indebtedness including without limitation all amounts of principal, interest, costs, breakage costs, default interest and enforcement costs owed to and/or incurred by the mortgagee, chargee or receiver (as appropriate); and

(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.

8.2 The restrictions contained in paragraphs 1-5 of this Schedule shall also not be binding upon any person who acquires a statutory right to buy and shall cease to apply to any Affordable Housing Unit where a Registered Provider disposes of one hundred percent (100%) of the equity in that Affordable Housing Unit pursuant to such an exercised statutory right.

Claire Studdart
Affordable Housing Manager

[redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

ANNEX 5(F)

Nathan Stevenson

From: [redacted]
Sent: 01 November 2024 12:53
To: Nathan Stevenson
Cc: [redacted]
Subject: RE: SNG Indicative Offer: Land At Rear Of 17 - 49 Church Lane Sarratt Road Hertfordshire (Site A & B)

Importance: High

Good afternoon Nathan,
I hope you're well.

It was good to speak with you this morning regarding the site rear of 17-49 Church Lane, Sarratt Road and acquisition of the affordable units.

As discussed, SNG is interested in the scheme and acquiring the affordable units proposed. Our Sales team view the site favourably and particularly welcome the provision of houses and family-sized units across the estate, which is also favourable to our Housing Management team and Local Authorities in meeting their housing needs.

Unfortunately however, the current MIP clause would mean not meeting our governance or GLA requirements. The moratorium period of 5 months would render the mortgagee exclusion clause defective and restrict values to EUV-SH. We recommend that either the GLA or NHF MEC clause is used with x3 months being the maximum moratorium period acceptable in the sector. Anything longer will restrict values to EUV-SH and as such SNG would not be prepared to make an unconditional affordable housing offer on this basis.

Should this be changed, we would be prepared to look at the site again.

Many thanks and kind regards

[redacted]

[redacted]
Project Officer (Partnerships)

SNG Sovereign Network Group

Phone 0204 512 5331
Mobile 07584 144142
The Hive, 22 Wembley Park Boulevard, London HA9 0HP
www.sng.org.uk

Sovereign and Network Homes merged to become SNG (Sovereign Network Group) in 2023.

From: Nathan Stevenson <nstevenson@burlington-uk.com>
Sent: Monday, October 28, 2024 8:43 AM
To: [redacted]
Cc: [redacted]
Subject: RE: SNG Indicative Offer: Land At Rear Of 17 - 49 Church Lane Sarratt Road Hertfordshire (Site A & B)

Good Morni[redacted]

ANNEX 5(G)

Nathan Stevenson

From: Rose-Marie St. Mart [redacted]
Sent: 04 September 2024 09:37
To: Claire Studdart
Cc: newbusiness; Andy Pennell
Subject: MIP Clause in UU in Three Rivers District Council area

Dear Claire,

I have been provided your details by Darren.

Unfortunately, the standard MIP clause in the Three Rivers S106 is not acceptable to us due to posing a problem for our lenders in addition to the 5 month moratorium period.

We have held off making offers in the area until the LA is willing to revise their standard wording. If you think you can persuade them that would be really helpful.

Thanks.

Regards,

Rose-Marie St. Mart
Head Investment & Partnership Analyst - Development
[redacted]

[redacted]
(Please note my working days are Tuesday, Wednesday and Thursday am)

Customer Service Centre: 0800 917 6077

ANNEX 5(H)

Nathan Stevenson

From: Dan Taylor [redacted]
Sent: 03 September 2024 19:44
To: Claire Studdart
Cc: Andy Pennell
Subject: RE: MIP Clause in UU in Three Rivers District Council area

Hi Claire,

I think it probably would to be honest. It is all to do with lenders not allowing us to borrow against proper ties as they are only valued at existing use value. Typically any alterations from the agreed MIP standard wording is always a bit contentious unfortunately, with Three Rivers being very difficult.

Without getting advice from a solicitor it is difficult to advise, but I think this would be a big problem to be honest.

Hope that helps.

Best regards,

Dan Taylor
Partnerships and New Business Team Manager

[redacted]
W www.wcht.org.uk

watford community housing

59 Clarendon Road, Watford, WD17 1LA

From: Claire Studdart [redacted]
Sent: Tuesday, September 3, 2024 4:23 PM
To: Dan Taylor [redacted]
Cc: Andy Pennell [redacted]
Subject: MIP Clause in UU in Three Rivers District Council area

Hi Dan,

Hope you are having a good day.

Please can I ask you to cast your mind back to late June when Andy was discussing one of our sites with you called Sarratts in the Three Rivers District Council area and you kindly made us an offer.

There is a fundamental point in the UU I would be grateful for your input on. The MiP clause from the signed UU (below) refers to a 'Moratorium Period' which is set at 5 months (as opposed to 3). Would this 5-month period prevent WCHT from buying affordable homes on this development?

If you have any questions, please just ask.

Thanks
Claire

8 **Affordable Housing (excluding First Homes) – Chargees**

8.1 The restrictions contained in paragraphs 1–5 of this Schedule shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (or a receiver (including an administrative receiver) appointed thereby) of a Registered Provider to which the Affordable Housing Units have been Transferred or on any person deriving title from such mortgagee, chargee or receiver PROVIDED THAT (in the case of a disposal by a mortgagee, chargee or receiver) the following conditions have been satisfied:

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(d) if the mortgagee, chargee or receiver is unable (despite using Reasonable Endeavours) to dispose of any of the Affordable Housing Units within the Moratorium Period then the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free of the provisions of paragraphs 1-5 of this Schedule for the full market value of those Affordable Housing Units.

8.2 The restrictions contained in paragraphs 1-5 of this Schedule shall also not be binding upon any person who acquires a statutory right to buy and shall cease to apply to any Affordable Housing Unit where a Registered Provider disposes of one hundred percent (100%) of the equity in that Affordable Housing Unit pursuant to such an exercised statutory right.

Claire Studdart
Affordable Housing Manager

[redacted]

Cala Group, Riverside House, Holtspur Lane, Wooburn Green, Buckinghamshire, HP10 0TJ

Land East of Oxhey Lane, Carpenders Park Call In (APP/P1940/V/26/3378268)

Annex 6 – The Council's Timeframe Submissions (Church Lane Decision)

(excerpt)

Why is 5 months necessary, why would 3 months render the MIP clause nugatory?

In the event of a distressed sale, the onus will be on the Council to facilitate the transfer of the affordable dwellings to a new RP. The process the Council would be required to undertake would be as follows:

1) Market the 44/48 dwellings. This would first require preparation of Particulars of Sale, detailing each dwelling- its size, type, rental figure, tenancy agreement details and where a dwelling was shared ownership dwelling, the equity in the dwelling owned by each occupant, the details of the shared ownership lease. All tender documents would also need to be prepared. **It is estimated that would take at least one month to undertake.**

2) RPs submit new bids. Following the initial marketing of the properties, the Council would need to give a reasonable period of time for interested parties to put their detailed bids together. Before doing so it would expected that on a scheme of this size, bidders may need to ensure that in principle funding would be available, were its bid to be successful. On a scheme of this size, **it is likely that the Council would need to give potential bidders 6 – 8 weeks to put together and submit their bids.**

3) Evaluating bids and recommending preferred bidder. Time would need to be allowed for the Council to receive, consider and evaluate (the input of external advisers- surveyors/valuers would be necessary due to the lack of in-house resources) all bids of which there could be many. **That process would be likely to take 3-4 weeks** (and assumes that officers had during the above process managed to obtain delegated authority to make the necessary recommendation to the lender without recourse to a committee which could not be guaranteed)

4) Contract stage. Deal with the contract stage including answering/facilitating all due diligence enquiries i.e. responding to all pre contract enquiries (including highways, drainage, environmental issues), deducing title and answering all requisitions on title, deal with all enquiries from third parties eg. the buyers lender(s). **4- 6 weeks**

5) Post contract stage. Exchange contracts and deal with all post exchange matters including drafting and agreeing all documentation and dealing with completion. Time required: **2-3 weeks.**

LIKELY TIME REQUIRED: 19 -23 weeks (5-6 months)

It is clear that 3 months would on any view be too short a period to secure the continuing future of the dwellings as affordable housing in the event of a distressed sale.

Annex 7- South Oxhey Regeneration Committee Report

PLANNING COMMITTEE – 10 SEPTEMBER 2020

19/2133/FUL - Demolition of existing buildings and provision of 345 residential units (Use Class C3) in 2 buildings ranging from 3-7 storeys including a 1 and 2 storey podium; 621sqm of flexible commercial floor space (Use Class A1-A5, B1, D1/D2); 1,754sqm retail floorspace (Use Class A1) podium and surface level car and cycle parking; landscaping; and associated works at LAND AT SOUTH OXHEY, SOUTH OXHEY CENTRAL, HERTFORDSHIRE (DCES)

ADDENDUM REPORT

Parish: Watford Rural
Ward: South Oxhey
Expiry of Statutory Period: 25.09.2020 (Agreed extension)
Case Officer: Claire Westwood

Recommendation: Approval subject to the Conditions and Informatives as set out in Appendix A, with conditions C3 (Affordable Housing) and C38 (Bats) and Informative 9 (Affordable Housing – Definitions) amended as set out below and subject to the completion of a S106 Agreement.

Reason for consideration by the Committee: Council interest in the land.

1 Background

1.1 A preliminary report was brought to the Planning Committee on 23 January 2020 where the application was discussed and clarification was sought on a number of aspects.

1.2 The report and analysis was updated and a full report was returned to the Planning Committee on 19 March 2020 where Members resolved to grant planning permission subject to conditions and the completion of a S106 Agreement.

1.3 A copy of the officer's report to the 19 March 2020 Planning Committee is attached as **Appendix A**.

1.4 At the 19 March 2020 Planning Committee meeting officers reported a verbal update to the wording of condition C38 (Bats) which was agreed by Members as part of the resolution to grant.

1.5 Condition 38 (Bats) as approved reads:

A dusk presence/absence bat survey of the low-risk roost features identified in Table 1 of the Bat report should be undertaken prior to demolition should this take place between the months of April to September inclusive. The survey must be undertaken by suitably qualified ecologists, in accordance with Bat Conservation Trust's Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd Edition) recommendations for structures with low risk of supporting roosting bats; advice provided in the survey must be followed.

Reason: To maintain wildlife habitat and to meet the requirements of Policies CP1, CP9 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

1.6 Since the 19 March 2020 Planning Committee meeting, discussions have been ongoing to secure the completion of the S106 Agreement. It has come to light during these discussions that the appointed Affordable Housing Provider for phases 1, 2 and 3 of the scheme Homegroup Limited is unwilling to purchase the affordable dwellings which will be secured as part of the grant of this planning permission without an alteration to the mortgagee in possession element of the affordable housing condition whereby the moratorium period is reduced from 5 months to 3. For the reasons set out below, without this amendment officers

are satisfied that there is a real risk that the planning permission will not be implemented, resulting in a reversion to the original 2016 planning permission and the consequent loss of the provision of an additional 145 dwellings of which 65 will be provided as affordable housing.

1.7 This addendum report deals only with the proposed amendment to Condition C3 (Affordable Housing). All other aspects of the development are as previously considered and approved by Members on 19 March 2020.

2 Analysis

2.1 Affordable Housing Policy

2.1.1 The original 2016 permission was subject to an affordable housing condition which contained a "Mortgagee in Possession" (MIP) clause. Under this, a lender to the Affordable Housing Provider (AHP) would in the event of a default on the mortgage over the affordable dwellings and a decision by the bank to step in and sell the properties to realise its security, have 3 months to try to sell the affordable housing (AH) as affordable housing to a new AHP. If a sale cannot be concluded in that period, the AHP is able to dispose of the AH on the open market, free of any obligation they remain as affordable housing.

2.1.2 In recent years, the Council's approach to these risks has become more sophisticated, given that 3 months is very likely in practice to be inadequate to deal with the re-sale of the affordable housing in the event of a default. This gives rise to the risk that in the event of AHP default and step in by the lender, the AH stock would be lost simply because the period was too short. The inadequacy of the 3 month period in this sense appears to be recognised more widely, because RICS registered valuers are willing to increase the value of the affordable units for the purposes of lending against them to a full market value (subject to tenancy) where the 3 month period is used (i.e. treating them as being free of any affordable housing restrictions in the event of a step in by the lender without having to await the outcome of the process during the 3 month period).

2.1.3 The current MIP clause as set out in condition C3 ensures that should the AHP get into financial difficulties, the Council would be provided with a 5 month period to find and arrange the transfer of the affected affordable dwellings to a new Affordable Housing Provider. In this scheme, there are 65 affordable dwellings that would be affected in that scenario.

2.1.4 The 5-month period is considered necessary in the event of default, to provide a reasonable period of time for the Council to arrange and secure the transfer of the dwellings, and is proportionate to the overall importance of preserving the AH stock where reasonably possible, thus giving effect to national planning policy on the use of planning conditions

2.1.5 At the time of the drafting of the Committee Report it would appear that Homegroup were unaware of the change to the MIP clause from that as contained in the 2016 planning permission and assumed that the 3 month MIP clause used in 2016 would be repeated. Homegroup seek the application of the 3 month period.

2.1.6 This short period would mean that in the event of a mortgage default there would be a real risk that the dwellings would be lost as affordable housing. This would be contrary to national planning policy.

2.1.7 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the Council determines applications in accordance with the adopted development plan unless material considerations indicate otherwise. The Annexe to the NPPF which advises that affordable housing should (subject to certain enshrined rights) be provided in perpetuity is a material consideration. The use of MIP clauses is an exception which is commonly adopted. The Council's approach to the detail of these provisions has evolved since 2016 given the balance between the risk and other factors noted above. However officers consider that

there are exceptional factors in this case which justify the continued application of the 3 month period in this case:

- The scheme is a multi-phase long term project where the 3 month period was used at the outset. The applicant Countryside Properties UK Limited and Homegroup are established development partners in respect of the whole of the South Oxhey regeneration scheme, having entered into a Development Agreement to purchase and develop the site in 2015. Homegroup is the AHP who will own and manage all of the affordable dwellings on the Site: both those 96 dwellings provided as part of phases 1 and 2 and the additional 65 dwellings to be provided as part of the proposed planning application. Additionally it is a development partner in respect of the open market housing to be provided pursuant to the current planning application.

- Homegroup have indicated that the price agreed to be paid for the affordable housing (which was renegotiated and agreed in [early] 2020) was based on an assumption that the MIP clause which would be imposed as part of the grant of this planning permission, would reflect the 3 month 2016 MIP clause. If the 5 month MIP clause were to be imposed, Homegroup would be contractually free to walk away from the currently proposed phase 3 scheme.

Officers are mindful of the fact that seeking and appointing a new AHP as a result of such disruption would be likely to delay the delivery of this element of the scheme which involves a substantial contribution of affordable housing and new market homes (80 open market and 65 affordable dwellings) in the context of the Council's shortfall in 5 year housing land supply and pressing need for affordable housing.

Countryside have also raised concerns with regard to the potential detrimental effect on the consistency and quality of management of the development were a new Affordable Housing Provider to be found willing to purchase the affordable housing. They explain that the project objective of Countryside and Homegroup's joint submission to the Council was to provide a consistent joined up housing and neighbourhood management solution with a single Affordable Housing Provider owning and managing all of the affordable housing to be provided on the Site.

2.1.8 On balance, officers therefore consider that the most appropriate balance of risk and benefit in this case lies in continuity with the arrangements imposed on the wider scheme in 2016.

2.1.9 Whilst the 3 month MIP clause is accepted, other amendments to the condition such as the inclusion of 'and costs and expenses' at D (i) are not agreed. Such costs and expenses, the amounts of which are unknown and uncapped, could in the event of a default be significant and would further undermine the efficacy of the MIP Clause. The Law Society's model S106 which was prepared in conjunction with the Council of Mortgage Lenders and which contains standard MIP clauses does not permit the passing on of such costs and expenses to a new AHP in the event of a distressed sale In essence, it would not be appropriate to expect any new Affordable Housing Provider to pay these additional costs.

3 Recommendation

3.1 That PLANNING PERMISSION BE GRANTED subject to the Conditions and Informatives as set out in Appendix A, with Conditions C3 (Affordable Housing) and C38 (Bats) and Informative 9 (Affordable Housing – Definitions) amended as set out below and subject to the completion of a S106 Agreement.

C3 Affordable Housing

No development shall take place until a scheme for the provision of sixty five dwellings to be constructed on the site pursuant to the planning permission as Affordable

Housing has been submitted to and approved in writing by the Local Planning Authority. The Affordable Housing shall be provided in accordance with the approved scheme. The scheme shall include:

i. The nine x one-bed two person units, five x two-bed three person units, fourteen x two-bed four person units and five x three-bed five person units identified in the table below which shall be constructed on the site and provided as Affordable Rented Dwellings.

ii. The twenty one x one-bed two person units, six x two-bed three person units and five x two-bed four person units identified in the tables below which shall be constructed on the site and provided as Shared Ownership Dwellings.

Block K (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01 and SOX-BPTW-02-05-DR-A-1065 C01)

	1B2P	2B3P	2B4P	3B5P
Affordable Rent	K2.05, K2.06, K2.07, K3.05, K3.07, K4.05, K4.07, K5.05, K5.07,	K0.01, K0.02, K3.06, K4.06, K5.06,	K1.01, K1.02, K2.01, K2.02, K2.04, K3.01, K3.02, K3.04, K4.01, K4.02, K4.04, K5.01, K5.02, K5.04,	K1.03, K2.03, K3.03, K4.03, K5.03,

Block L (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01 and SOX-BPTW-02-05-DR-A-1065 C01)

	1B2P	2B3P	2B4P	3B5P
Shared Ownership	L1.01, L1.02, L1.04, L2.01, L2.02, L2.03, L2.04, L2.06, L3.01, L3.02, L3.04, L3.06, L4.01, L4.02 L4.04, L4.06, L5.01, L5.02, L5.04, L5.06,	L0.01 L3.03, L4.03, L5.03,	L1.03, L2.05, L3.05, L4.05, L5.05,	

Block U (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-

01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01, SOX-BPTW-02-05-DR-A-1065 C01 and SOX-BPTW-02-06-DR-A-1066 C01)

	1B2P	2B3P	2B4P	3B5P
Shared Ownership	U3.07	U3.08, U3.13		

iii. the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing;
iv. the arrangements for the transfer of the Affordable Housing to an Affordable Housing Provider or the arrangements for the management of the Affordable Housing if those dwellings are not to be transferred to a Affordable Housing Provider;
v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing; and
vi. the occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced.
vii. the timing of the completion of a Nominations Agreement to be entered into formalising the details to be agreed in respect of paragraphs (iv) and (v) above (in any event that Nominations Agreement to be completed prior to first Occupation of the Affordable Housing).
viii. where public subsidy or grant monies are used, the arrangements for the use of any Net Proceeds following the sale of an interest in any of the Affordable Housing (in accordance where applicable with Homes England guidance).

The Affordable Housing shall be provided in accordance with the approved scheme. The dwellings constructed shall not be used for any other purpose than as Affordable Housing in accordance with that approved scheme, subject to:

(A) any rights to acquire pursuant to the Housing Act 1996 or any equivalent statutory provision for the time being in force;
(B) any right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force;
(C) where a tenant of a Shared Ownership Dwelling granted a Shared Ownership Lease has purchased the remaining shares so that the tenant owns the entire Shared Ownership Dwelling).
(D) the restriction upon the use and disposal of the Affordable Housing shall cease to apply to the whole or any part of an Affordable Dwelling (hereafter referred to as the 'Affected Affordable Dwelling') where that whole or part is transferred or leased, pursuant to an event of default by any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee, or by any receiver or manager (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 Affected Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee PROVIDED THAT:
  (i) such mortgagee or chargee or Receive shall first give written notice to the Council of its intention to dispose of the Affected Affordable Dwelling 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 Affected Affordable Dwelling to another registered provided 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 and interest; and
  (ii) if such disposal has not been completed within the three month period, the

mortgagee, chargee or Receiver shall be entitled to dispose of the Affected Affordable Dwelling free from the Affordable Housing provisions which provisions shall determine absolutely.

Reason: This is a pre commencement condition to meet local housing need within the Three Rivers district and to comply with Policies CP1, CP2, CP3 and CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing SPD (approved July 2011).

C38 Bats

Demolition should take place outside the active bat season. If demolition takes place in May 2020 as planned or between the months of April to September inclusive, the destruction of the potential roost features identified in Table 1 of the Bat report should proceed only under the supervision of a suitably qualified, experienced ecologist. Should evidence of bats be found, work must cease immediately.

Reason: To maintain wildlife habitat and to meet the requirements of Policies CP1, CP9 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

I9 Affordable Housing – Definitions:

The following terms (and those related to them) referred to at Condition C3 shall be defined as set out below:

Affordable Housing means Affordable Rented Dwellings and Shared Ownership Dwellings meeting Scheme Design and Quality Standards at costs below those associated with open market housing and which is available to, affordable by and occupied only by those in Housing Need.

Affordable Rented Dwellings means a dwelling provided through an Affordable Housing Provider let to households who are in Housing Need subject to rent controls that require a rent that does not exceed the South West Herts Local Housing Allowance (including any Reasonable Service Charge).

Affordable Housing Provider means a registered provider registered with the Homes England (HE) or other body registered with the HE under the relevant Housing Act or other body approved by the HE to receive social housing Grant such Affordable Housing Provider in any event to be approved by the Council.

Choice Based Lettings Scheme means the system which is used by TRDC which enables properties to be let to applicants.

Housing Allocations Policy is the Council's policy which determines the Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 167 of the Housing Act 1996.

Dwelling means a residential unit comprised in the development.

Homes England (HE) means the agency of that name established by the Government (pursuant to the Housing and Regeneration Act 2008) which exercises the function of the former Housing Corporation in relation to financial assistance for new affordable homes (or any successor body).

Housing Need means persons who are assessed by the Council as being unable to resolve their housing needs in the private sector market because of the relationship between housing costs and incomes in accordance with the Choice Based Lettings Scheme.

Market Housing means those dwellings constructed on the site pursuant to the planning permission which shall not be Provided as Affordable Housing.

Net Proceeds means any receipts or consideration received by a Affordable Housing Provider from the sale of an interest in any of the Affordable Housing following its initial occupation after deduction of the Affordable Housing Provider's reasonable evidenced costs of acquisition, construction and sale of the relevant affordable dwelling and the deduction of any Grant repayable.

Nominations Agreement means a contract to be entered into between the Council and the owner of the Affordable Housing whereby the Council shall have 100% nomination rights in respect of the Affordable Housing on first Occupation and 75% thereafter on re-lets to enable the Council to nominate occupiers. It shall also secure the prioritisation of Shared Ownership Dwellings to persons who are TRDC residents (have resided in the District for 5 years) or who have a local connection (as per the TRDC Housing Allocations Policy).

Open Market Value means the value confirmed by a certificate (from a professionally qualified valuer and produced in accordance, where applicable, with the Homes and Communities Agency Capital Funding Guide or successor requirements) that the relevant interest in the dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser

Provided means practically completed, ready for first occupation, fully serviced and subject to a contract with an Affordable Housing Provider for the acquisition of the freehold or no less than a 125 year leasehold interest.

Reasonable Service Charge means a sum that covers the contribution requested from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with and which directly benefit the relevant Affordable Housing, such sum to be set at a fair and reasonable proportion of the costs relating to the services provided.

Scheme Design and Quality Standards means standards in relation to the internal environment sustainability and external environment of Affordable Housing as set out in the Housing Corporation's document entitled 'Design & Quality Standards 2007' or such other replacement design standards as may be issued from time to time.

Shared Ownership Dwellings means Affordable Housing owned and managed by an Affordable Housing Provider sold subject to a Shared Ownership Lease
Shared Ownership Lease means a lease substantially in the form approved or published by the HCA whereby:
(a) the initial share sold to the leaseholder
i) is a minimum of 25% (twenty five per cent) and a maximum of 75% (seventy five per cent) of the total equity in the unit; and
ii) is sold for a premium equal to the corresponding percentage of the Open Market Value of the property; and
b) the annual rent:
i) does not initially exceed 2.75% (two point seven five per cent) of the full Open Market Value (assessed in accordance with the HCA's Capital Funding Guide) of the

Registered Providers retained share of the equity in the relevant Shared Ownership Dwelling
ii) is not at a level which is in conflict with any applicable Homes and Communities Agency successor restrictions relating to charges payable by the tenant; and
c) the tenant:
i) pays no more than a Reasonable Service Charge (where applicable) and
ii) may in successive tranches purchase the remainder of the equity in the dwelling