Summary Affordable Housing Proof of Evidence

In respect of:

Land to the North of Little Green Lane, Croxley Green, WD3 3SP

Prepared by:

James Bullivent BA (Hons)

On behalf of:

Richborough

LPA Appeal Reference:

26/0012/REF

LPA Planning Application Reference:

24/2073/OUT

PINS Appeal Reference:

6004972

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housing & development consultants

1 Summary and Conclusion

1.1 The Affordable Housing Proof of Evidence (“AHPoE”), prepared by Pioneer Property Services Ltd (“Pioneer”), summarises the outcome of work undertaken on behalf of Richborough (“the Appellant”) in relation to the proposed development of Land to the North of Little Green Lane, Croxley Green, WD3 3SP (the “appeal site”) to:

- assess how other local authorities are using MiP clauses within their S106 legal agreements
- review the incidence of the loss of affordable housing stock from the affordable housing sector as a result of MiP clauses coming into operation
- assess interest and secure feedback from Registered Providers (“RPs”) in respect of the affordable housing on the site, as well as on the Three Rivers District Council (“the council”) requirement for a 5-month Mortgagee in Possession (“MiP”) clause for inclusion within in the Section 106 Agreement (“S106”) (also known as a ‘Mortgagee Exclusion Clause’)

The Use of MiPs Across the Wider Home Counties Region

1.2 Evidence collected by Pioneer and Richborough demonstrates that in 116 out of 119 permissions (c.97%) across the wider home counties region local authorities have agreed to the use of the industry standard MiP wording with a 3-month clause (or 2-months in three cases) in the relevant S106 legal agreements.

1.3 It can also be noted that Town Legal LLP, appointed to lead on the preparation of a standardised S106 template by the Government, published proposals for reform of S106 agreements, in November 2025 which include a model form of agreement which contains a 3-month moratorium period.

Potential for Loss of Affordable Housing

1.4 MiP clauses are fundamental to the funding model for affordable housing delivery. Registered Providers rely on private finance to acquire Section 106 affordable housing, and lenders require security so that, in the unlikely event of RP default, they will be able to recover the value of their loan.

1.5 The industry standard MiP clause published by the National Housing Federation ("NHF") in conjunction with the Property Finance Working Group ("PFWG") (and reflected within the Greater London Authority ("GLA") specific clause) seeks to balance this requirement with the objective of retaining affordable housing within the sector through a three-month moratorium period during which reasonable endeavours must be made by the Mortgagee in Possession to transfer the homes to another Registered Provider or the local planning authority.

1.6 In the experience of Pioneer, who are routinely appointed to facilitate transactions between housebuilders and RPs, a three-month MiP moratorium period is considered by RPs to represent the accepted industry standard. Any departure from this timeframe / the industry standard MiP wording will adversely affect lender confidence and restrict or even remove Registered Provider appetite for S106 affordable housing.

1.7 Pioneer's review of Regulator of Social Housing ("RSH") data demonstrates that the loss of affordable housing from the sector as a consequence of a Registered Provider defaulting on a loan and subsequent triggering of an MiP clause is exceptionally rare. Analysis of RSH data between 2012 and July 2026 found that, although a small number of Registered Providers have experienced significant financial difficulties, the overwhelming majority have been resolved through mergers, acquisitions or restructuring, with affordable housing remaining within the sector.

1.8 The Kinsman Housing example (which incidentally involved a non-industry standard MiP clause held by the High Court to apply to the organisation to whom the de-registered Kinsman's affordable housing stock was sold) is suggested to be the only known example of general needs affordable housing yet being lost to the sector through an MiP clause becoming operational. No such cases are understood to have occurred within the Three Rivers local authority area.

1.9 The loss of 16 affordable housing dwellings following Kinsman's de-registration should be placed in the wider context of a quarter of a century of successful delivery of S106 affordable housing by the sector. Between 2001-01 and 20024-25, a total of 330,036 affordable homes have been delivered and transferred to RPs via S106 arrangements.[1]The well-publicised loss of Kinsman's sixteen affordable homes, when viewed in this context, represents a mere c. 0.005% of affordable housing delivered.

[1] See Appendix 4.3

1.10 As is evidenced by the data published by the RSH in respect of Regulatory Judgements and Enforcement Notices, the process of decline of an RP into financial difficulties starts months if not years before arriving at the stage that enforcement action needs to be taken by the RSH. In practice, actions will be taken by the RSH in respect of failing RPs many months before financial failure occurs. The RSH will be aware of any such issues and will already be working with any such RP to ensure that financial failure is avoided, or that another RP takes transfer of the affordable housing stock (and tenants). Furthermore, the financial status of RPs is publicly available, and information published by the RSH can be reviewed and monitored long before any loan default and MiP activation would potentially come into operation.

1.11 Crucially, the risk of losing affordable housing stock through an MiP clause being triggered is extremely low. Extending the timeframe set for any such clause (beyond 3-months) should be balanced against the fact that the use of the industry standard MiP clause enables Registered Providers to secure the private finance necessary to deliver affordable housing. Imposing a 5-month MiP clause is contrary to established industry practice, risks reducing Registered Provider interest and could prejudice the delivery of affordable housing on the Appeal Site.

Registered Provider Feedback

1.12 Feedback obtained by Pioneer on behalf of the Appellant from RPs both in November 2025 and in May 2026 demonstrates that, not only is securing RP interest in S106 affordable housing in Three Rivers extremely challenging in general in the current market, the Council's 5-month MiP position and associated restrictions are a significant barrier to RP engagement, with a number of organisations declining to offer / express an interest in the affordable housing on the site as a result.

1.13 Even where an offer was received from an RP in November 2025 notwithstanding the 5-month MiP clause, this was still subject to the wording of the clause being agreed and it was made clear that a 3-month MiP would still be preferable given it is the industry standard and the charging implications of a 5-month clause.

1.14 More recently, following being contacted by Pioneer during May 2026, two RPs responded with expressions of interest subject to / dependent upon a 3-month MiP process being agreed (as opposed to a 5-month process such as that sought by the Council). A third RP Development Manager expressing an interest in June 2026 has stated that whilst the 5-month clause would not prevent them offering, it should be avoided. However, it should be noted that just two months earlier, in April 2026, the Land & New Business Director – South for the same RP unequivocally confirmed that a) they <u>would not</u> accept a moratorium period of between 4 and 6 months and that b) they <u>would not</u> be able to offer at a reduced value to reflect a restriction to EUV-SH.

1.15 Similar outcomes have been recorded by other planning applicants seeking to secure RP interest in s106 affordable housing in Three Rivers where this is subject to the 5-month clause (planning application ref: 25/0079/VAR submitted by Burlington Developments, now the subject of a planning appeal reference: 3378268) suggesting that, out of eleven RPs contacted, only one (Chime Housing) said they would accept a 4 to 6 month MiP clause (i.e. an MiP clause of longer than 3 months), although that is caveated on the basis that: it is not ideal, it makes it more difficult to offer on larger schemes and that a 3 month period was acceptable to them.

1.16 It is clear that the potential 5-month MiP clause is having the effect of reducing the pool of RPs willing to acquire the affordable homes on the appeal site. The prospect of a solitary RP being interested in purchasing the affordable homes provides a significant commercial concern for housebuilders considering acquiring the site for residential development. Even larger RPs have finite resources, with development capacity for S106 schemes competing with the lure of land-led grant-funded opportunities. Furthermore, the ability to borrow greater sums against newly delivered stock in neighbouring authorities (i.e. via an MV-ST valuation resulting from a 3-month MiP), is likely to prove a more commercially attractive proposition for many RPs than the application site would offer with a 5-month MiP clause.

Overview

1.17 RPs rely on private finance to deliver affordable housing, particularly for grant-free Section 106 schemes. In order for RPs to secure competitive borrowing rates, lenders require industry-standard MiP clauses that remove affordable housing restrictions were an RP defaults (albeit the lender will still subject to any rights that occupying tenants hold). The incidence of this occurring is exceedingly rare, with no such known recorded case within Three Rivers.

1.18 Without a 3-month industry standard MiP clause, properties are valued at significantly lower social housing values, reducing borrowing capacity and constraining affordable housing delivery / investment by RPs. The nationally recognised NHF industry standard MiP clause includes a 3-month moratorium period, which has long been accepted by lenders.

1.19 Additionally, evidence demonstrates that in 116 out of 119 permissions (c.97%) across the wider home counties region, local authorities have agreed to the use of the industry standard MiP wording with a 3-month clause (or 2-months in three cases) in the relevant S106 legal agreements suggesting there is no extraordinary reason to justify a different approach being taken within Three Rivers.

1.20 Difficulties with securing RP interest in S106 affordable housing are being exacerbated in Three Rivers due to the imposition of a 5-month MiP clause. Feedback obtained by Pioneer on behalf of the Appellant outlines that a 5-month clause will prevent the majority of the RPs who have offered / expressed an interest from going ahead to take the s106 affordable housing and is cited by a number of RPs not expressing an interest as being something they would not support / would prevent them from expressing an interest in an affordable housing opportunity.

1.21 Reducing the moratorium period to the industry-standard 3 months is essential to maximise RP engagement and support the delivery of affordable homes within the Three Rivers local authority area.

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