PROOF OF EVIDENCE OF RICHARD ST JOHN WILLIAMS IN SUPPORT OF AN APPLICATION SUBMITTED TO THREE RIVERS DISTRICT COUNCIL, ON BEHALF OF THE RICHBOROUGH ESTATES PARTNERSHIP LLP, FOR OUTLINE PLANNING PERMISSION FOR THE PROPOSED DEVELOPMENT OF LAND TO THE NORTH OF LITTLE GREEN LANE, CROXLEY GREEN, WD3 3SP

PINS APPEAL REF: 6004972

Background

1 My name is Richard Mark St. John Williams. I am a solicitor of the Senior Courts of England and Wales. I was admitted as a solicitor on 16 July 2001 having passed the Qualified Lawyers' Transfer Test earlier that year.

2 This Proof of Evidence has been prepared and is given in support of an application submitted to Three Rivers District Council (**Council**), on behalf of The Richborough Estates Partnership LLP (**Appellant**), for outline planning permission with the following proposed description of development: "*up to 600 residential dwellings (Use Class C3(a)), construction of a 5-bedroom property for children's social care and supported living (Use Class C3(b)). Two vehicular access points from Little Green Lane and further pedestrian / cycleway accesses. A one form entry primary school (Use Class F1(a)) (plus expansion land for a two-form entry primary school). A mixed-use local centre including provision for NHS health and social care services (Use Class E(e)), community building (Use Class F2), retail and cafe provision (Use Class E(a-c)), car parking and associated infrastructure. A country park, areas for play and recreation, allotments, community orchard and landscaping with associated infrastructure including sustainable urban drainage systems. (Layout, scale, appearance and landscape as reserved matters* (**Proposed Development**). Of the 600 new homes, 50% (i.e. 300 new homes) are intended to be social housing, comprising:

(a) 70% (210 homes) for low-cost rental (within the meaning of s69 of the Housing and Regeneration Act 2008) broken down as follows:

(i) 147 homes for social rent;

(ii) 63 homes for affordable rent; and

(b) 30% (90 homes) for low-cost home ownership (within the meaning of s70 of the Housing and Regeneration Act 2008), with all the low-cost home ownership homes intended to be shared ownership properties.

3 I have been involved in the social and affordable housing sector since September 1998, having worked at Devonshires Solicitors (1998–2005), Cobbetts LLP (2006–2013), DWF LLP (2013–2015), Trowers & Hamlins LLP (2015–2026) and Addleshaw Goddard LLP (2026–present). I have been a partner since approximately 2010. For a brief period in 2002 I was seconded to the Housing Corporation (the then regulator of registered providers of social housing (**RP**s) and predecessor to the Regulator of Social Housing (**RSH**)) as acting Head of Registry and Consents.

4 Each of Devonshires Solicitors, Cobbetts LLP and Trowers & Hamlins LLP were recognised with the legal directories to the UK legal profession as leading firms within the social housing sector for their work with RPs during my time with them, and Devonshires Solicitors and Trowers & Hamlins LLP continue to be recognised as leading firms.

5 My current firm, Addleshaw Goddard LLP, is recognised as the leading law firm advising funders to the social housing sector over that time, having advised on approximately 85% of the £135bn committed finance to the social housing sector, with the firm acting for lenders, investors and/or bookrunners. The firm acts for every active funder to the social housing sector and are the primary law firm to nearly all of them, and the sole law firm to several.

6 I specialise in providing corporate, governance, regulatory and charity law advice to clients operating in the social and affordable housing, social care and charity sectors. These clients can be RPs (both for-profit and non-profit), private sector clients (including developers and

contractors) and local authorities. I have been recognised in guides to the legal profession in the United Kingdom for the last 18 years and am named as a leading lawyer within the social housing sector.

7 The nature of my role involves me providing strategic advice to the boards and executive teams of RPs and, as such, requires me to understand a range of issues relevant to them, including of the regulatory and funding regimes within which they operate.

8 I have been asked to provide this proof of evidence to:

(a) explain the role and objectives of the RSH and the Regulatory Framework within which RPs operate, including the way in which the Regulatory Framework and the housing administration regime protect social housing assets and make the likelihood of a mortgagee exclusion clause ever being invoked very remote;

(b) explain the purpose and significance of section 106 agreements and mortgagee exclusion clauses they contain in the context of the funding and delivery of affordable housing, including the current challenges facing RPs in acquiring affordable housing through the section 106 route;

(c) explain (in relation to mortgagee exclusion clauses):

(i) the adverse consequences for both RPs and their funders of a “moratorium” period in a mortgagee exclusion clause exceeding three months. A moratorium period is a period during which, before selling section 106 properties on the open market, a funder must first try to sell those properties to another RP or the local authority; and

(ii) why in other respects the wording of a mortgagee exclusion clause is of crucial importance when determining the basis upon which housing assets are valued; and

(d) summarise the feedback that the Appellant has received from RPs operating within the Council’s area regarding the appropriate length of the moratorium period, as set out in James Bullivent's Proof of Evidence (in particular sections 3 and 4 thereof) and corroborated by the evidence obtained by Burlington Developments in connection with the planning appeal relating to Land East of Oxhey Lane, Oxhey Lane, Carpenders Park, Hertfordshire (appeal reference: 3378268).

Executive summary

9 The social housing sector has historically been very stable, with only a small number of RPs experiencing serious financial difficulty. This stability is attributable in significant part to the Regulatory Framework operated by the RSH, which possesses a range of tools — both informal and formal — to intervene where a RP encounters governance or financial difficulties. Informal measures include the imposition of regulatory requirements, the agreement of voluntary undertakings and the facilitation of mergers with or acquisitions by other RPs. Formal measures include the housing administration regime introduced by the Housing and Planning Act 2016 (**HPA 2016**), under which the RSH (with the consent of the Secretary of State) may apply to the court for a housing administration order, triggering a pause on enforcement of security by creditors. To date, no housing administration order has been made, and in every case of serious RP financial difficulty known to me, the RP's social housing assets have been preserved within the sector through regulatory intervention without recourse to enforcement of security by mortgagees. I am not aware of any case in which a mortgagee exclusion clause has been

triggered on account of a RP becoming insolvent. The Greater London Authority's (**GLA**) own practice note accompanying its template mortgagee exclusion clause reaches the same conclusion, observing that the risk associated with a RP defaulting on a loan and affordable housing ceasing to be affordable is limited and is outweighed by the benefits of facilitating the delivery of affordable housing.

10 It is anticipated that the Council will seek to argue that the mortgagee exclusion clause — and, in particular, the moratorium period contained within it — is the sole or primary mechanism available to protect the affordable housing units in the event of RP financial distress, and that an extended moratorium period of five months is therefore necessary to ensure that protection is effective. That characterisation is flawed. As set out in detail in this proof of evidence, the mortgagee exclusion clause does not operate in isolation; it is a mechanism of last resort which would only fall to be considered after the exhaustion of multiple prior lines of protection afforded by the Regulatory Framework. Those lines of protection comprise: (i) the RSH's ongoing regulatory oversight, including its extensive reporting requirements (Appendix 3) and the Governance and Financial Viability Standard (Appendices 1 and 2); (ii) the RSH's informal intervention tools, including the power to impose regulatory requirements, to agree voluntary undertakings, and to facilitate mergers with or acquisitions by other RPs; (iii) the statutory moratorium under section 145 of the HRA 2008, which is triggered upon a mortgagee giving notice of its intention to enforce security; and (iv) the housing administration regime under the HPA 2016, pursuant to which a housing administrator may be appointed with the statutory objective of ensuring that the RP's social housing remains in the regulated sector. The Council's focus on the moratorium period within the mortgagee exclusion clause as the determinative safeguard for affordable housing fails to acknowledge this comprehensive hierarchy of protections, each of which is specifically designed to intervene well before any question of enforcement of security by a mortgagee could arise.

11 The terms of any mortgagee exclusion clause contained in a section 106 agreement are of critical importance to the ability of RPs to raise private finance. The social housing sector is heavily debt-financed, with the overwhelming majority of that debt being advanced on a secured basis. The basis upon which a RP's housing stock is valued for security purposes has a very significant impact on the RP's borrowing capacity. A valuation on the Market Value Subject to Tenancies (**MV-STT**) basis produces borrowing values approximately 50–70% higher than a valuation on the Existing Use Value – Social Housing (**EUV-SH**) basis. Whether a property can be valued at MV-STT depends upon the wording of the mortgagee exclusion clause in the relevant section 106 agreement. In particular, where the moratorium period (which is the period specified in the clause during which a lender must first use reasonable endeavours to dispose of the affordable housing units to another RP (or the local authority) before being permitted to sell them on the open market) exceeds three months, lenders' valuers will normally restrict the valuation to EUV-SH, thereby materially reducing the RP's capacity to borrow against those assets. The National Housing Federation's (**NHF**) Property Finance Working Group and the GLA have each published standard mortgagee exclusion clauses which specify a three-month moratorium period, and this period is widely recognised across the RP sector as the established market standard.

12 As described in detail in James Bullivent’s Proof of Evidence (in particular sections 3 and 4 thereof), Pioneer Property Services Ltd was engaged by the Appellant to secure interest and feedback from RPs operating within the Council's area in respect of the affordable housing proposed on the appeal site, including specifically on the Council's requirement for a five-month moratorium period. In November 2025, eighteen RPs were approached; of those that provided substantive responses, only one submitted an offer for the affordable housing, and that offer was expressly subject to the wording of the moratorium clause being discussed and agreed, with the RP confirming that a three-month moratorium period would be preferable given the

industry standard and the adverse charging implications of a five-month clause. A number of declining RPs cited the Council's five-month moratorium period as a contributory factor in their decision not to offer. In May 2026, a further exercise was undertaken with seventeen RPs. Of the three RPs that expressed an interest, two did so subject to a three-month moratorium period being agreed (as opposed to the five-month period sought by the Council), and the third, whilst indicating that a five-month clause would not prevent it from offering, advised that it should be avoided due to the restriction to EUV-SH charging. A number of declining RPs again expressly cited the five-month moratorium period as a barrier to engagement. The feedback received by the Appellant is further corroborated by the evidence obtained by Burlington Developments in connection with the planning appeal relating to Land East of Oxhey Lane, Oxhey Lane, Carpenders Park, Hertfordshire (appeal reference: 3378268), in which the Council similarly sought to impose a five-month moratorium period. Of eleven RPs contacted by Burlington Developments, only one (Chime Housing, responding as Watford Community Housing Trust) indicated that it would accept a moratorium period of between four and six months, and that acceptance was caveated on the basis that it was "not ideal", that the adverse charging implications are amplified as schemes increase in size, and that a three-month period was acceptable to it. The overwhelming weight of the evidence demonstrates that the Council's insistence upon a moratorium period of five months is a significant barrier to RP engagement and would place the delivery of the 300 affordable homes proposed as part of the Proposed Development at material risk.

13 The evidence of established market acceptance of the three-month moratorium period is further corroborated by the publicly accessible tracker maintained by the NHF's PFWG (see Appendix 18), which records local planning authorities across England and Wales that have accepted the standard mortgagee exclusion clause (or the GLA's equivalent template clause) without amendment. As at the date of preparation of this proof of evidence, the tracker records that around 78 local planning authorities have accepted the standard clause, representing approximately 23% of all local planning authorities in England and Wales. However, there are important qualifications to these figures which, in my opinion, mean that the tracker very likely materially understates the true extent of acceptance of the three-month moratorium period. The tracker does not capture retrospective data and accordingly does not record local planning authorities that may have accepted substantially similar provisions prior to the tracker's establishment in about late 2022/early 2023. It records only those local planning authorities which have accepted the model clause in its entirety without any amendment, however minor, and therefore excludes authorities which have accepted the substance of the standard clause — including the three-month moratorium period — but with minor or immaterial drafting variations. The number of local planning authorities is continuing to fall as a result of local government consolidation, and given that the direction of travel has been increasing acceptance by local planning authorities of PFWG's standard mortgagee exclusion clause (or the GLA equivalent) and that the number of such authorities is falling, it is likely that the number of authorities that have accepted the standard clause is already higher than the 23% figure referred to above, and that it will continue to rise. Furthermore, the tracker is dependent upon RPs and their professional advisors voluntarily notifying the PFWG of completed agreements, and there is no obligation upon them to do so. It is therefore probable that the tracker under-represents the true number of local planning authorities which have accepted the three-month moratorium period. This conclusion is reinforced by the evidence set out at Appendix 4 to James Bullivent's Proof of Evidence, which identifies a number of local planning authorities in the South East of England that have accepted a three-month moratorium period in mortgagee exclusion clauses for schemes of over 50 units within the last 24 months, including two — the Royal Borough of Windsor and Maidenhead and the Borough of Broxbourne — which do not appear on the PFWG tracker.

14 The Council's own Affordable Housing Supplementary Planning Document (**SPD**), approved at its Executive Committee in June 2011 expressly recognises the purpose of mortgagee exclusion clauses as being to "*facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment*". The Council's insistence upon a moratorium period of between four and six months is in direct conflict with this stated policy objective. As the RP responses overwhelmingly confirm, a moratorium period in excess of three months operates as a significant impediment to lending to the RP sector, because lenders will not accept such a period as consistent with the security requirements necessary to advance finance on acceptable terms. The practical effect of the Council's extended moratorium requirement is therefore to frustrate the very objective its SPD is designed to achieve.

15 In conclusion, the evidence set out in this proof demonstrates that the three month moratorium period proposed by the Appellant in the section 106 agreement for the Proposed Development is consistent with established market practice, is supported by the standard clauses published by the NHF and the GLA, is corroborated both by the PFWG tracker evidence and by the evidence set out at Appendix 4 to James Bullivent's Proof of Evidence demonstrating broad acceptance of the three-month moratorium period across a wide range of local planning authorities (including in the South East of England), and is endorsed by the overwhelming majority of RPs operating within the Council's area. The Council's insistence upon a moratorium period of four to six months is not supported by any evidence before this inquiry, is contrary to the Council's own stated policy, and would materially impair the ability of RPs to acquire and fund the affordable housing units to be delivered as part of the Proposed Development. The Appellant's proposed approach strikes the appropriate balance between the protection of affordable housing, the interests of RPs and their funders, and the preservation of the capacity of the RP sector to raise the third-party finance necessary to provide additional social housing.

Documents referred to in this proof of evidence

16 The following documents are referred to in this proof of evidence:

(a) Three Rivers District Council's "Affordable Housing Supplementary Planning Document" Approved at Executive Committee June 2011 (see CD7.5) (**Affordable Housing SPD**);

(b) The RSH's Governance and Financial Viability Standard – April 2015 (Appendix 1);

(c) The RSH's Governance and Financial Viability Standard Code of Practice – April 2015 (Appendix 2);

(d) The RSH's guidance on "Information required from registered providers" (latest update 11th March 2026) (Appendix 3);

(e) The RSH's Rent Standard – April 2026 (Appendix 4);

(f) The RSH's guidance note "Our role and approach to regulating landlords" (29th February 2024) (Appendix 5);

(g) The HCA's Regulatory Judgement on Cosmopolitan Housing Group Limited – L4375 (December 2012) (Appendix 6);

(h) The RSH's Regulatory Judgment on South Yorkshire Housing Association Limited (June 2023) (Appendix 7);

(i) The RSH’s Regulatory Judgment on Origin Housing Limited (December 2023) (Appendix 8);

(j) The RSH’s Regulatory Judgment on Heylo Housing Registered Provider Limited (December 2022) (Appendix 9);

(k) The RSH’s Regulatory Notice of Grading Under Review on Heylo Housing Registered Provider Limited (March 2026) (Appendix 10);

(l) A copy of the relevant page from the NHF’s website with covering narrative on the form of the NHF’s Example Standard Mortgagee Protection Clause (Appendix 11);

(m) A copy of the NHF’s Example Standard Mortgagee Protection Clause (Appendix 12);

(n) A copy of the relevant page from the NHF’s website with covering narrative on the form of the GLA’s Example Standard Mortgagee Protection Clause (Appendix 13);

(o) A copy of the GLA’s practice note on mortgage in possession clauses together with form of model wording (Appendix 14);

(p) Savill’s report entitled UK Social Housing – May 2021 (Appendix 15);

(q) Savills report entitled "Valuing a social housing portfolio: is MV-STT uplift what you need? (Appendix 16);

(r) Social Housing – Insight- Special Report dated July 2025 summarising analysis by Faithorn Farrell Timms, JLL and Savills (Appendix 17); and

(s) The NHF’s Private Finance Working Group Tracker (Appendix 18).

The Regulator of Social Housing’s fundamental objectives

17 The RSH's fundamental objectives are set out in the Housing and Regeneration Act 2008 (**HRA 2008**) and comprise an economic regulation objective and a consumer regulation objective. As part of its economic regulation objective, the RSH is required:

(a) to ensure that RPs are financially viable and properly managed, and perform their functions efficiently and economically;

(b) to support the provision of social housing sufficient to meet reasonable demands, including by encouraging and promoting private investment in social housing; and

(c) to ensure that value for money is obtained from public investment in social housing.

18 Reflecting its objectives, the RSH sets Regulatory Standards for RPs under two principal headings: economic standards and consumer standards. The application of each Standard depends upon the type of RP landlord and the particular activities it undertakes. The Standards set out expectations and outcomes that RPs must achieve. For example, the RSH’s Rent Standard (see Appendix 4) governs the setting, increase, and management of rents for properties let by RPs as social housing, with the rent for most social rent properties not exceeding rents prescribed by a set formula, with annual increases generally not exceeding CPI+1%.

19 The RSH operates a "co-regulatory" approach to regulation, under which the boards of RPs are responsible for their organisations and are held to account by the RSH for how they are run and the outcomes that they deliver.

20 The RSH has provided an overview of its role and how it approaches regulating landlords in its guidance note “Our role and approach to regulating landlords” (29th February 2024) (see Appendix 5).

How the Regulator of Social Housing’s Regulatory Framework mitigates financial risk to Registered Providers

21 The social housing sector has historically been very stable, with only a few incidences of RPs suffering financial adversity. This means that the likelihood of a mortgagee exclusion clause in a section 106 agreement ever being invoked is extremely low.

22 Under the RSH's regulatory regime, RPs that own or manage 1,000 or more social housing units are required to provide the RSH with a range of financial and operational information on a routine basis, at quarterly, six-monthly and annual intervals (see Appendix 3). Of particular relevance to this proof of evidence are the following reporting obligations:

(a) RPs are required to submit copies of their annual accounts (including a self-assessment of value for money) and the accompanying audit management letter to the RSH within six months of their financial year end;

(b) RPs are required to submit a Financial Forecast Return, accompanied by their business plan and other supporting documentation, ideally within six weeks of the business plan being approved by their board, but in any event by no later than 30 June each year; and

(c) RPs are required to submit quarterly financial returns within three weeks of each quarter end, which cover crucial financial health indicators including cash balances, undrawn loan facilities, loan covenant compliance and development expenditure.

23 Where the RSH has evidence that information has not been submitted, or is late, incomplete or inaccurate, it may reflect this in its assessment of the RP’s compliance with the regulatory standards and, in particular, may treat it as evidence of a breach of the RSH’s Governance and Financial Viability Standard, which forms part of its Regulatory Framework.

24 In addition to these reporting obligations, the Governance and Financial Viability Standard (the Appendices 2 and 3) imposes substantive requirements on RPs which are designed to ensure the ongoing financial health of the sector and the protection of social housing assets. The Standard requires RPs to ensure effective governance arrangements that deliver their aims and objectives in an effective, transparent and accountable manner, including adherence to all relevant law, compliance with their governing documents and all regulatory requirements, and the maintenance of an effective risk management and internal controls assurance framework. RPs are required to manage their resources effectively to ensure their viability is maintained while ensuring that social housing assets are not put at undue risk. In particular, RPs must adopt and comply with an appropriate code of governance, manage their affairs with an appropriate degree of skill, diligence, effectiveness, prudence and foresight, and maintain an appropriate, robust and prudent business planning, risk and control framework. That framework must ensure, amongst other things, that there is access to sufficient liquidity at all times, that financial forecasts are based on appropriate and reasonable assumptions, that effective systems are in place to monitor and accurately report delivery of the RP's plans, and that the RP monitors, reports on and complies with its funders' covenants. RPs are further required to carry out detailed and robust stress testing against identified risks and combinations of risks across a

range of scenarios, to maintain a thorough, accurate and up-to-date record of their assets and liabilities, and to communicate with the RSH in a timely manner on material issues that relate to non-compliance or potential non-compliance with the standards. RPs must also certify in their annual accounts their compliance with the Standard. The cumulative effect of these reporting obligations and substantive requirements is to create a comprehensive regulatory regime under which the RSH receives regular and detailed financial information from RPs, enabling it to identify early warning signs of financial difficulty and to intervene at an early stage to protect social housing assets and the interests of tenants, well before any question of enforcement of security by a mortgagee could arise.

25 Part of the risk of financial adversity in the sector is mitigated by the variety of tools that the RSH has to oversee and intervene in the operations of RPs that do not meet its Standards. These tools include the power to publish regulatory notices (which are public statements that the Regulatory Standards have been breached), to impose regulatory requirements, and ultimately to compulsorily deregister a RP from the register of social housing providers. The registration requirement ensures that the RP is subject to the Standards issued by the RSH and subject to regulation by the RSH, thereby minimising the risk of loss of social housing assets due to mismanagement, incompetence or dishonest or abusive practices. For these purposes, "social housing" refers to both low-cost rental accommodation and low-cost home ownership accommodation as defined in sections 68 – 70 of the HRA 2008.

The housing administration order framework

26 Pursuant to section 108(2) of the HPA 2016, a person (almost invariably a lender) may not take any steps to enforce the security over a property of a RP unless written notice of its intention to do so has been given to the RSH by or on behalf of the person intending to enforce the security, and either (a) a period of 28 days has elapsed since the notice was given, or (b) the RSH has waived this notice requirement (which requires the consent of the Secretary of State). The giving of such a notice (or waiver of the notice requirement) triggers a "moratorium" under section 145 of the HRA 2008. Note that this moratorium is not the same moratorium that is drafted into mortgagee exclusion clauses, although it operates in a similar way.

27 The purpose of the moratorium is to create a period of time for the RSH to seek to find a solution to a provider's viability problems, in order to protect the social housing assets and the interests of the provider's tenants (and reflects the RSH's economic regulation objective). During the moratorium period, the RSH may appoint an interim manager, make proposals for the transfer of the RP's assets, appoint a manager to implement proposals agreed with creditors, or apply for a housing administration order.

28 During the moratorium, secured creditors cannot take any step to enforce their security (i.e., seek to recover the money that they have loaned by selling the properties they had secured their lending against) unless consent has been obtained from the RSH, the Secretary of State, the housing administrator or the court (as applicable), and any disposal of the RP's land requires the RSH's consent, subject to certain specified exceptions.

29 The initial moratorium period is 28 days, subject to any extension (which requires the consent of the secured creditor). If, during the initial 28-day moratorium period, an application for a housing administration order is made by the Secretary of State or by the RSH (with the consent of the Secretary of State), a further interim moratorium runs until the application is decided by the court. If the court grants a housing administration order, a permanent moratorium then applies for the duration of the housing administration process. The court can grant the order if the RP cannot pay its debts or winding-up is just and equitable in the public interest.

30 If no housing administration order application is made, or if such an application is dismissed, the prohibition on enforcement of security falls away and the secured creditor (subject to separate obligations under any mortgagee exclusion clause) is entitled to appoint a receiver.

31 Presuming that a housing administration order is made, the cumulative moratorium period (comprising the initial 28-day moratorium, any interim moratorium pending determination of the housing administration application, and the housing administration itself) would be likely to last a minimum of approximately 18 months or more.

32 Whilst no housing administration order has been made to date, and accordingly there is no direct precedent as to the procedure that a housing administrator would adopt in practice, it is to be anticipated that a housing administrator would follow a procedure substantially analogous to that adopted by an administrator appointed under Schedule B1 to the Insolvency Act 1986 in a mainstream administration. In my assessment, such a procedure would be likely to involve the following steps: (i) the establishment and maintenance of a comprehensive data room, containing detailed information regarding the RP's assets and liabilities (including, critically, full details of any section 106 obligations, nominations agreements and associated documents applicable to the RP's housing stock); (ii) the solicitation of non-binding offers from as wide a pool of prospective bidders as possible, which may include other RPs, institutional investors and financial institutions; (iii) a detailed review and evaluation by the housing administrator of the non-binding offers received; and (iv) the shortlisting of, and progression of discussions with, those bidders whose proposals are assessed as being most likely to achieve the statutory objectives of the housing administration. Those statutory objectives, as prescribed by sections 97 and 98 of the HPA 2016, are twofold: first, the normal administration objective (namely, rescuing the RP as a going concern, or achieving a better result for the RP's creditors as a whole than would be likely if the RP were wound up without first being subject to housing administration, or realising property in order to make a distribution to one or more secured or preferential creditors); and secondly, the objective of ensuring that the RP's social housing remains in the regulated sector (that is to say, owned and managed by a private registered provider of social housing). Both objectives are statutory objectives which the housing administrator is required to pursue, and the second objective — the preservation of social housing within the regulated sector — provides a further layer of protection for affordable housing assets which has no equivalent in mainstream administration. Furthermore, the housing administrator is an officer of the court and is accordingly required to achieve the statutory objectives of the housing administration as prescribed by the HPA 2016. In discharging that duty, the housing administrator is obliged to achieve those objectives as quickly and as efficiently as is reasonably practicable, thereby ensuring that the process is conducted expeditiously and without unnecessary delay or cost to the detriment of creditors, tenants or the preservation of social housing assets.

33 The procedural steps that a housing administrator would be likely to undertake in discharging its statutory obligations under the HPA 2016 are, in substance, very likely to encompass the same marketing and disposal steps as would be required of a mortgagee or receiver under the model mortgagee exclusion clause published by the NHF and the GLA. However, unlike the model mortgagee exclusion clause, the housing administrator is subject to a statutory duty to achieve those objectives as quickly and as efficiently as is reasonably practicable and is not constrained by a fixed moratorium period. This should provide significant comfort to the Council (and to third parties, including the RSH) that, in the event of a housing administration, the RP's social housing assets will be preserved within the regulated sector — that is to say, owned or managed by a private registered provider of social housing — whether or not such an outcome is achieved within the three-month timeframe specified in the NHF's and GLA's model mortgagee exclusion clause.

34 The housing administration regime has been in place since July 2018. To date, there has not been a single housing administration order made, which reflects the stability of the sector and the effectiveness of the RSH's regulatory tools in resolving RP difficulties before formal insolvency processes become necessary. This effectiveness is demonstrated by a number of cases in which the RSH has intervened in respect of RPs experiencing serious governance or financial difficulties. In each case, the difficulties were resolved without recourse to housing administration or formal insolvency proceedings, and the RP social housing assets were preserved within the social housing sector. The following examples are, in my assessment, the most significant "near-miss" case studies relevant to the issues addressed in this proof of evidence since 2012. Each of the providers referred to below (with the exception of Heylo Housing Registered Provider Limited, which is addressed separately) is a RP owning or managing housing stock in excess of 1,000 homes which exhibited very significant financial difficulties, frequently accompanied by wider governance failings.

35 In December 2012, the Homes & Communities Agency (as predecessor to the RSH) downgraded Cosmopolitan Housing Group Limited to the lowest governance and viability ratings that its Regulatory Standards allow for, reflecting serious problems with its governance, risk management and financial position. These included a failure to recognise and manage operational risks, an overly ambitious approach to development, failures in internal control, inadequate reporting to the board, and a liquidity crisis (see Appendix 6). The RSH agreed a Voluntary Undertaking (which is a commitment from an RP to take the necessary action to resolve regulatory breaches and/or service failures) with the group, which subsequently resolved to seek a suitable partner and was ultimately absorbed into the Sanctuary Housing group. The social housing assets were preserved through this transfer.

36 In December 2021, the RSH downgraded Swan Housing Association's governance and financial viability ratings to "non-compliant", due to a material deterioration in its financial position, ineffective management of its development programme, and increased adverse development costs. Swan Housing Association subsequently became a subsidiary of Sanctuary Housing Association in February 2023, and by December 2023 the RSH had withdrawn the regulatory notice, the issues having been resolved under Sanctuary's oversight.

37 In June 2023, the RSH downgraded South Yorkshire Housing Association Limited's governance and viability ratings to non-compliant, following a self-referral which revealed weaknesses in its internal controls framework, miscalculation of covenant compliance over a number of years, historic and forecast covenant breaches, and exposure to wider loan agreement breaches through cross-default clauses (see Appendix 7). South Yorkshire Housing Association Limited subsequently became a subsidiary of Places for People Group Limited in December 2025, and the regulatory judgement was withdrawn in January 2026.

38 In December 2023, the RSH downgraded Origin Housing Limited's governance and viability ratings to non-compliant, following the identification of material errors in its reporting on interest payable, weaknesses in internal controls relating to budget setting and financial performance reporting, miscalculation of covenant requirements, and a weak financial position with reliance on uncertain cashflows (see Appendix 8). Origin Housing Limited, like South Yorkshire Housing Association, joined the Places for People Group to improve its financial resilience, and the regulatory judgement was withdrawn in June 2024, the issues having been resolved.

39 In December 2022, the RSH published its first assessment of Heylo Housing Registered Provider Limited, a for-profit RP, grading it as non-compliant. The RSH concluded that the arrangements entered into by Heylo Housing Registered Provider Limited had resulted in it being unable to provide assurance that social housing assets were not being put at undue risk, noting in particular that the provider had effectively ceded control of its social housing assets to

connected group companies (see Appendix 9). In March 2026, the RSH placed Heylo Housing Registered Provider Limited's non-compliant gradings under further review, indicating that it was investigating matters which may indicate serious failings in the delivery of the outcomes of the Governance and Financial Viability Standard (see Appendix 10).

40 These examples demonstrate that, where RPs have encountered serious governance or financial difficulties, the RSH has intervened using its regulatory tools and the providers have in each case been rescued through merger with another RP, or subsumption within another RP group, with the social housing assets being preserved. Notably, in none of the cases summarised above (as at the date of preparation of this proof of evidence) was the housing administration regime under the HPA 2016 utilised, although it should be noted that an administrator has been appointed in respect of certain of the investment vehicle entities established in connection with Heylo Housing Registered Provider Limited (but not the RP itself). The Cosmopolitan Housing Group case study predates the introduction of the housing administration order regime, which came into force on 5 July 2018. However, it is significant that, even prior to the introduction of that bespoke regime, there are no known cases of the general insolvency provisions under the Insolvency Act 1986 being employed in connection with English-based RPs. I am not aware of any cases of a mortgagee exclusion clause being triggered on account of a RP becoming insolvent.

41 Mortgagee exclusion clauses are a well-established feature of section 106 agreements which include affordable housing obligations. A mortgagee exclusion clause typically provides that the affordable housing obligations contained in the section 106 agreement shall not be binding upon, nor enforceable against, any mortgagee of a RP, any receiver appointed by such mortgagee, or any person deriving title to the land affected through any such mortgagee or receiver. The effect of such a clause is that, upon an event of default by the RP, the mortgagee (or a receiver appointed by the mortgagee, or any person acquiring title from the mortgagee or receiver) is not bound by the affordable housing obligations in the section 106 agreement and may accordingly dispose of the affordable housing units on the open market free from those restrictions.

42 The precise terms of any mortgagee exclusion clause are a matter for negotiation between the parties to the section 106 agreement. There is an inherent tension between the opposing interests of the RP's lending bank and the local planning authority. The preference of any lending bank would be for an agreement to contain an unqualified exclusion clause, so that the bank can be certain that if the RP defaults, it can recover the money it has lent by selling the secured assets for the best possible value without delay. The preference of any local planning authority would be for an agreement not to have any exclusion clause at all, or to include a contractual moratorium period during which the lender must first use reasonable endeavours to dispose of the affordable housing units to another RP before being permitted to sell them on the open market.

43 In recognition of the importance of mortgagee exclusion clauses to the funding of affordable housing, the National Housing Federation's (**NHF**) Property Finance Working Group (**PFWG**), comprising sector-experienced lawyers and valuers, has developed a standard mortgagee exclusion clause for use in section 106 agreements – see Appendices 12 to 15. The current member organisations of the PFWG are Addleshaw Goddard LLP, Allen Overy Shearman Sterling LLP, Bevan Brittan LLP, Clarke Willmott LLP, Clifford Chance LLP, Devonshires Solicitors LLP, Jones Lang Lasalle, Savills plc, Trowers and Hamlins LLP, and Winckworth Sherwood LLP. The standard clause was agreed by a group of borrowers and funders together with their solicitors and valuers, with the sector-wide approach to a standard clause commencing in 2015 and the clause having been in its current form since 2017. The standard clause is designed to enable RPs to obtain a valuation based on Market Value Subject to

Tenancies (see paragraphs 55 to 57 below) when using social housing assets, including those acquired under section 106 agreements. The PFWG recommends the use of this standard clause as a minimum standard to be adopted in any section 106 agreement or other legal document. In addition, in 2019 the Greater London Authority (**GLA**) issued its own revised template mortgagee exclusion clause, negotiated with the PFWG and supported by the "G15" group of London's largest housing associations, for use in section 106 agreements for development proposals in London. Both template clauses are widely used in the sector and are intended to promote a consistent approach to mortgagee exclusion clauses, thereby facilitating the ability of RPs to raise finance against affordable housing assets.

44 The GLA's practice note accompanying its template mortgagee exclusion clause (Appendix 14) records a number of factors relevant to the assessment of risk associated with such clauses. In particular, the practice note observes that the RSH monitors the financial viability of RPs and has the ability to intervene in the management of a RP in financial distress; that there are few examples of RPs falling into financial difficulties and, where difficulties have arisen, such providers have to date been taken over by another RP; and that there are no known cases of mortgagee exclusion clauses being triggered in relation to assets owned by RPs. The practice note highlights that the model MEC clause is relevant to the level of funding that RPs are able to secure against affordable housing as part of their delivery programmes and concludes that any risk associated with a RP defaulting on a loan and affordable housing ceasing to be affordable is limited and is outweighed by the benefits of the approach adopted in the standard mortgagee exclusion clause in facilitating the delivery of affordable housing (see in particular paragraphs 2, 5 and 6).

45 Paragraph 4.8 of the Affordable Housing SPD addresses "Mortgagee in Possession Clauses" (an alternative name for a mortgagee exclusion clause) and provides as follows (text emboldened and underlined by me):

"Mortgagee in Possession Clauses may be included in a Section 106 Agreement forming part of a planning permission, ***<u>to facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment</u>****. 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 bodies. They would not be allowed on Rural Exception Sites (see Chapter 5). Mortgagee in Possession clauses will only be used in S106s when the affordable housing is transferred to a Registered Provider or other agency."*

46 The following three observations arise from this provision:

(a) First, the approach proposed by the Appellant in the section 106 agreement for the Proposed Development — namely, the inclusion of a mortgagee exclusion clause to protect the interests of lenders to the acquiring RP — is entirely consistent with the approach contemplated by paragraph 4.8 of the Affordable Housing SPD.

(b) Secondly, the Council itself expressly recognises the need for the mortgagee exclusion clause to "facilitate lending from financial institutions to Registered Providers", thereby acknowledging the critical role that such clauses play in enabling RPs to access the private finance necessary to acquire and manage affordable housing.

(c) Thirdly, whilst the section 106 agreement and the mortgagee exclusion clause contained within it are drafted specifically in the context of the planning permission, it is nevertheless necessary to consider how the mortgagee exclusion clause would operate in practice within the RSH's Regulatory Framework described at paragraphs 21 to 40 above. As set out in those paragraphs, the RSH possesses a range of regulatory tools — both informal (such as voluntary undertakings and facilitated mergers) and formal (under the housing administration provisions of the HPA 2016) — which have, in every case to date, resulted in the preservation of social housing assets within the sector without recourse to enforcement of security by mortgagees.

Accordingly, the circumstances in which a mortgagee exclusion clause would need to be invoked in practice are, for the reasons set out at paragraphs 21 to 40 above, extremely remote.

47 Furthermore, it is important to recognise that the mortgagee exclusion clause is not the primary safeguard for the preservation of affordable housing; it is a mechanism of last resort. The multiple lines of protection afforded by the Regulatory Framework — comprising the RSH's ongoing regulatory oversight, its informal intervention tools, the statutory moratorium under section 145 of the HRA 2008, and the housing administration regime under the HPA 2016 — are each specifically designed to protect social housing assets and to intervene at successive stages well before any question of enforcement of security by a mortgagee could arise. The Council's approach of treating the mortgagee exclusion clause, and in particular the length of the moratorium period within it, as the determinative mechanism for the protection of affordable housing therefore fails to have proper regard to the comprehensive regulatory and statutory framework within which the clause operates. The appropriate approach is to assess the mortgagee exclusion clause in its proper context — as one element within a multi-layered system of protections — and to recognise that the three-month moratorium period, as endorsed by the NHF and the GLA, strikes the appropriate balance between the protection of affordable housing and the preservation of the capacity of the RP sector to raise the third-party finance necessary to deliver it.

48 Furthermore, the responses received from RPs as part of the engagement exercises described in James Bullivent’s Proof of Evidence demonstrates that the Council's insistence upon a moratorium period of between four and six months is in direct conflict with its own stated policy at paragraph 4.8 of the Affordable Housing SPD. Paragraph 4.8 expressly recognises that the purpose of the mortgagee exclusion clause is to "*facilitate lending from financial institutions to Registered Providers by protecting the value of the lender's investment*". However, as the RP responses overwhelmingly confirm, a moratorium period in excess of three months operates as a significant impediment to lending to the RP sector, because lenders will not accept such a period as consistent with the security requirements necessary to advance finance on acceptable terms. The practical effect of the Council's extended moratorium requirement is therefore to frustrate the very objective that paragraph 4.8 of the Affordable Housing SPD is designed to achieve: namely, the facilitation of private lending to RPs to enable the acquisition and delivery of affordable housing.

The benefits of the mortgagee exclusion clause

49 The primary aims of the mortgagee exclusion clause are to encourage sufficient commercial lending for a RP to acquire affordable housing under section 106 agreements. To a very considerable extent RPs fund their business plans by acquiring or developing housing, then securing borrowing against that housing, then using that borrowing to acquire and develop further housing.

50 Without the protection afforded by the mortgagee exclusion clause, a lender would need to be satisfied that it would be able effectively to enforce its security in full in the event of any default on the part of the RP. If a lender could not obtain a satisfactory disposal on the open market free from the affordable housing obligations, the risk to its security might well deter mortgagees from lending at all or would introduce a powerful incentive for any mortgagee to structure its security on terms that enabled it to enforce at the earliest point in time. This would be contrary to the overall purpose of the section 106 agreement, which is to facilitate the delivery and long-term provision of affordable housing. The mortgagee exclusion clause therefore serves the dual purpose of protecting the commercial interests of lenders whilst simultaneously facilitating the delivery of affordable housing by ensuring that RPs are able to access the finance necessary to acquire and manage affordable housing units.

The role of private finance in the Registered Provider sector

51 The social housing sector is heavily debt-financed. Over the past three decades, the sector has undergone a fundamental transition from a model primarily funded by public subsidy to one largely driven by private capital. As at today's date, approximately £135 billion of private finance had been committed to the sector. This financing structure is designed to leverage the existing, high-value asset bases of RPs — primarily their housing stock — to generate long-term, stable cash flows.

52 The sector is attractive to investors for several reasons. Social housing offers predictable, long-term cash flows that are well suited to matching liabilities. The sector provides effective risk diversification and has demonstrated better long-term capital growth (approximately 3.4% per annum) than average UK investment real estate (approximately 2.6% per annum). The sector also directly addresses the United Kingdom's housing shortage, making it highly attractive for investors with Environmental, Social and Governance objectives. Furthermore, the financial strength of RPs and the RSH's regulatory environment provides a high degree of comfort to investors.

53 The majority of the sector's borrowings are advanced on a secured basis. The capital weighting, or risk weighting, applied by lenders to social housing loans is a critical factor in this regard, as it determines the amount of regulatory capital a bank is required to hold against its exposure. Loans secured against residential property at up to 80% loan-to-value can be assigned a risk weight of 35%, which is significantly lower than the risk weighting applicable to unsecured or subordinated lending. Accordingly, secured lending is more capital-efficient for banks and enables them to offer more competitive pricing to registered providers. Whilst newer initiatives such as the National Housing Bank loan scheme offer unsecured, subordinated debt that sits at the corporate level (and which may attract higher capital requirements compared to senior secured debt), the overwhelming majority of lending to the sector continues to be advanced on a secured basis. The robust regulatory framework applicable to RPs means that loans to the sector are generally viewed as low risk compared to commercial property loans, which typically attract higher risk weightings. It is in this context that the terms of any mortgagee exclusion clause contained in a section 106 agreement assume particular significance, as the adequacy of such a clause directly affects the basis upon which the secured properties will be valued and, consequently, the quantum of finance that a registered provider is able to raise against those assets.

The importance of the basis of valuation

54 The choice of the basis upon which RP stock is valued has a very significant impact on the borrowing capacity of the sector. Two principal valuation methods are used; these being known as Existing Use Value – Social Housing (**EUV-SH**) and Market Value Subject to Tenancies (**MV-**

STT). EUV-SH is the older valuation method, and values properties on the assumptions that if the property was ever sold, it would remain in the RP sector and therefore remain subject to RSH regulation and obligations to charge regulated levels of rent. MV-STT meanwhile assumes that if the property was ever sold, it would no longer be part of the RP sector, and while existing tenants would continue to occupy the property on their existing terms, any purchaser would have greater flexibility in terms of what it could do with the property.

55 Research published by Savills in May 2021 (Appendix 15) estimated the value of the sector's housing assets if valued on an **EUV-SH** basis at approximately £270 billion. By contrast, Savills estimated the value of the same assets if valued on a Market Value Subject to Tenancies (MV-STT) basis at approximately £500 billion. More recently, in November 2025, Savills (Appendix 16) published further analysis indicating that valuation on an MV-STT basis would be approximately 50–70% of open market values, whilst valuation on an EUV-SH basis would arrive at only 25–30% of open market values. The difference between these two bases of valuation is therefore very significant: a valuation on the MV-STT basis would imply an asset base nearly twice the size of that produced by an EUV-SH valuation, with a correspondingly greater capacity to support additional secured borrowing. In practical terms, significantly more finance can be raised if properties are valued at MV-STT. This underscores the importance of the terms of any mortgagee exclusion clause in a section 106 agreement, since the adequacy of such a clause will determine whether the relevant properties are valued on an MV-STT or EUV-SH basis and, consequently, the amount of finance that a RP is able to raise against those assets.

The valuation of social housing assets and its impact on the ability of RPs to raise funding

56 As part of the process of taking security over social housing assets, legal advisors to lenders will undertake a review of the suite of documents relevant to the properties to be charged by the RP. This due diligence review includes a detailed analysis of any section 106 agreement (and any associated nominations agreement or land transfer document) applicable to the properties in question, with a focus on the terms of any mortgagee exclusion clause they contain. The outcome of this review has a direct bearing on the basis upon which the relevant properties will be valued for security purposes. Lenders' solicitors review the drafting of mortgagee exclusion clauses with considerable care and need to be satisfied that the clause contains criteria which will permit their client to, if ever necessary, sell the assets free from the affordable housing obligations. Where those criteria are not met, the lender's solicitors will discuss the position with the relevant valuers with a view to restricting the valuation basis. It is only in very exceptional circumstances that a valuation based on MV-STT will be permitted where the moratorium timeframe specified in the mortgagee exclusion clause is not limited to three months or less.

57 Where the due diligence review reveals certain deficiencies in the mortgagee exclusion clause (referred to in practice as "red flags"), the relevant property will be valued based on EUV-SH rather than MV-STT. The following are examples of red flags which will ordinarily result in the property being valued based on EUV-SH:

(a) if the mortgagee exclusion clause does not contain any reference to a receiver (or any more general reference to a person being appointed to enforce the security), as the absence of such a reference means that a receiver appointed by the mortgagee would remain bound by the affordable housing obligations;

(b) if the mortgagee exclusion clause refers only to a "mortgagee in possession", as a mortgagee will in practice never go into possession of tenanted properties, since doing so would require the eviction of the tenant in order to obtain a court order for possession;

(c) if the mortgagee exclusion clause does not contain any reference to successors in title of the mortgagee or receiver, unless the clause otherwise makes clear that the affordable housing obligations cease to bind the property upon a disposal by the mortgagee or receiver;

(d) if the mortgagee exclusion clause imposes an obligation to use "best endeavours" to dispose of the affordable housing units to another RP, because in legal language if a party is required to use “best endeavours“ they are required to do almost everything that they possibly can to achieve something. In practice a best endeavours requirement would require a disposal to a RP at any price;

(e) if a document other than the section 106 agreement itself (such as a related transfer agreement or nominations agreement) does not contain any reference to a housing administrator, because section 103 of the Housing and Planning Act 2016 (which allows for sale of land that is subject to planning obligations by a housing administrator) only overrides obligations created under section 106 of the TCPA 1990 and does not extend to obligations contained in other documents;

(f) if the mortgagee exclusion clause refers to the mortgagee selling "free" from the affordable housing obligations but does not also provide that those obligations shall "determine absolutely", as in such circumstances the obligations may continue to bind the property notwithstanding the disposal.

58 In addition, there are certain red flags which do not automatically result in a property being valued based on EUV-SH, but where the valuer retains a discretion to determine the appropriate basis of valuation. One such instance arises where the contractual moratorium period specified in the mortgagee exclusion clause is only marginally more than three months. In such cases, the valuer will assess the adequacy of the timescale having regard to, amongst other things, the geographical location of the property, as certain areas may present greater difficulty in securing a disposal to another RP within the stipulated period. Similarly, where the mortgagee exclusion clause imposes an obligation to use "all reasonable endeavours" or "every reasonable effort" to dispose of the affordable housing units to another RP, the position is regarded as a grey area, and the valuer will exercise judgment as to the appropriate basis of valuation in the circumstances.

The Appellant's engagement with potential Registered Provider purchasers

59 Some RPs are looking to rationalise their housing portfolios by disposing of or swapping stock in outlier areas in order to concentrate their operations in core geographic regions. This is driven by a number of factors, including the RSH's Value for Money Standard (which requires RPs to optimise their resources), the operational inefficiencies and increased costs associated with managing dispersed stock across wide areas, and the strategic imperatives for RPs to build local partnerships, improve tenant engagement and support targeted development in their core areas. According to research published by Savills in 2025 (see Appendix 16), one of the drivers of stock rationalisation activity is a need to consolidate the RP’s geographic footprint. The same research references a swap of stock between The Guinness Partnership and Paradigm (involving over 2,000 social homes), and the trading of more than 1,800 homes with other RPs in a single year by both L&Q and Clarion. In July 2025 joint analysis by Faithorn Farrell Timms, JLL and Savills (see Appendix 17) reported that a total of 37,551 homes with a value of over £3.6bn of both rent and shared ownership tenures were bought and sold in the inter-RP market in the five years from 2020 to 2024.

60 A practical consequence of this trend is that, in any given local authority area, the number of RPs actively developing or acquiring new affordable housing stock is likely to be significantly more limited than the total number of large RPs in the sector. While there are approximately 200 large RP groups that own or manage at least 1,000 social homes, the geographic concentration of the sector means that only a few of those providers will have an operational presence, development pipeline or strategic interest in any particular area. In this context, the Appellant's approach of directly canvassing the views of RPs with housing stock within the Council’s area (as described below) provides a representative and robust sample of the RPs that would realistically be in a position to acquire affordable housing units delivered as part of the Proposed Development.

61 The detailed methodology adopted by the Appellant in identifying and engaging with RPs operating within the Council’s area is set out in James Bullivent’s Proof of Evidence (in particular sections 3 and 4 thereof). In summary, Pioneer Property Services Ltd was engaged by the Appellant to approach RPs with existing affordable housing stock, or seeking to acquire affordable housing stock, in the area. In November 2025, eighteen RPs were contacted; of those that provided substantive responses, only one submitted an offer for the affordable housing, and that offer was expressly subject to the wording of the moratorium clause being discussed and agreed, with the RP confirming that a three-month moratorium period would be preferable given the industry standard and the adverse charging implications of a five-month clause. A number of declining RPs cited the Council's five-month moratorium period as a contributory factor in their decision not to offer on the site. In May 2026, a further exercise was undertaken with seventeen RPs. Of the three RPs that expressed an interest, two did so subject to a three-month moratorium period being agreed (as opposed to the five-month period sought by the Council), and the third, whilst indicating that a five-month clause would not prevent it from offering, advised that it should be avoided due to the restriction to EUV-SH charging. A number of declining RPs again expressly cited the five-month moratorium period as a barrier to their engagement with the opportunity.

62 The feedback obtained by Pioneer Property Services Ltd on behalf of the Appellant is further corroborated by the evidence obtained by Burlington Developments in connection with the planning appeal relating to Land East of Oxhey Lane, Oxhey Lane, Carpenders Park, Hertfordshire (appeal reference: 3378268), where the Council similarly sought to impose a five-month moratorium period. Of eleven RPs contacted by Burlington Developments, only one (Chime Housing, responding as Watford Community Housing Trust) indicated that it would accept a moratorium period of between four and six months, and that acceptance was caveated on the basis that it was "not ideal", that the adverse charging implications are amplified as schemes increase in size, and that a three-month period was acceptable to it. The consistency of the feedback received across both the Appellant's and Burlington Developments' engagement exercises demonstrates that the Council's insistence upon a five-month moratorium period is a significant barrier to RP engagement, with a number of organisations declining to offer or express an interest in affordable housing opportunities within the Council's area as a direct result.

63 The responses received from RPs have direct and material implications for the Appellant's ability to deliver the 300 affordable homes proposed as part of the Proposed Development. The Proposed Development provides for 50% affordable housing (300 homes), comprising 210 homes for rent (of which 147 are for social rent and 63 for affordable rent) and 90 shared ownership homes. In order to deliver these affordable homes, the Appellant will need to secure one or more RPs willing to acquire the affordable housing units. As set out in James Bullivent’s Proof of Evidence, the Council's insistence upon a five-month moratorium period is a significant barrier to RP engagement, with a number of RPs declining to offer or express an interest in the affordable housing on the appeal site as a result. The practical consequence of the Council's

position is that the Appellant's ability to secure RP partners for the affordable housing element of the Proposed Development would be materially impaired, placing the delivery of 300 new affordable homes at risk in circumstances where there is an acknowledged pressing and acute need for housing of all tenures within the district, and would also restrict the future borrowing capacity needed for RPs to deliver affordable housing.

64 The NHF's PFWG maintains a publicly accessible tracker (see Appendix 18) via the NHF's website of local planning authorities across England and Wales which have accepted the standard mortgagee exclusion clause (or, in the case of London boroughs, the GLA's equivalent template clause) in its entirety without amendment in section 106 agreements or deeds of variation. The tracker is compiled based on information voluntarily reported to the PFWG by RPs and their professional advisors. For each local planning authority, the tracker records whether the NHF or GLA standard wording has been agreed since the tracker was created and, where applicable, the date of completion and the identity of the legal advisors involved. There are currently 337 local planning authorities in England. As at the date of preparation of this proof of evidence, the tracker records that around 78 local planning authorities in England and Wales have accepted the PFWG's standard mortgagee exclusion clause (or the GLA equivalent) without amendment in one or more section 106 agreements or deeds of variation, representing approximately 23% of all local planning authorities in England. However, there are a number of important qualifications to these figures which, in my opinion, mean that the tracker materially understates the true extent of acceptance of the three-month moratorium period across the sector. These are:

(a) the tracker does not capture retrospective data (and, accordingly, does not record local planning authorities that may have accepted substantially similar provisions prior to the tracker's establishment in about late 2022/early 2023): local planning authorities which may have accepted mortgagee exclusion clauses containing provisions substantially similar to the current standard clause prior to the establishment of the tracker are not recorded, and accordingly the tracker does not reflect the full historical extent of acceptance of the three-month moratorium period;

(b) the tracker records only those local planning authorities which have accepted the model form of mortgagee exclusion clause in its entirety without any form of amendment, however minor. A local planning authority which has accepted the substance of the standard clause — including, critically, the three-month moratorium period — but with minor or immaterial drafting amendments would not be recorded on the tracker

(c) the number of local planning authorities is continuing to fall as a result of local government reorganisation. Given:

(i) that the direction of travel has been increasing acceptance by local planning authorities of PFWG's standard mortgagee exclusion clause (or the GLA equivalent); and

(ii) that the number of such authorities is falling,

it is likely that the number of authorities that have accepted the standard clause is already higher than the 23% figure quoted above, and that it will continue to rise; and

(d) the tracker is dependent upon RPs and their professional advisors voluntarily notifying the PFWG of completed agreements, and there is no obligation upon them to do so. It is therefore probable that the tracker under-represents the true number of local planning authorities which have accepted the standard clause or provisions to materially the same effect.

65 Notwithstanding these qualifications, the breadth of recorded acceptance across a wide range of local planning authorities — including metropolitan and district councils, county councils and London boroughs — is, in my opinion, evidence that the three-month moratorium period advocated by the PFWG represents the established market standard and is widely recognised by local planning authorities as striking an appropriate balance between the protection of affordable housing, the interests of RPs and their funders, and the preservation of the capacity of the RP sector to raise third-party finance necessary to provide additional social housing.

66 The conclusion that the three-month moratorium period represents the established market standard is further supported by the evidence set out at Appendix 4 to James Bullivent's Proof of Evidence, which contains a list of local planning authorities in the South East of England that have accepted a three-month moratorium period in mortgagee exclusion clauses for schemes of over 50 units within the last 24 months. That evidence demonstrates broad acceptance of the three-month moratorium period across the region in which the Council's administrative area is situated. Notably, the list includes two local planning authorities — the Royal Borough of Windsor and Maidenhead and the Borough of Broxbourne — which have accepted a three-month moratorium period in mortgagee exclusion clauses but which do not appear on the PFWG tracker. This provides further concrete support for the proposition advanced at paragraph 64 above that the PFWG tracker materially understates the true extent of acceptance of the three-month moratorium period, and reinforces the conclusion that the Council's insistence upon a five-month moratorium period is out of step with the approach adopted by local planning authorities across the South East of England.

Affirmation

The evidence which I have prepared and provide for this appeal – PINS Appeal Ref: 6004972 – (in this proof of evidence) is true and I confirm that the opinions expressed are my true and professional opinions.

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

This proof of evidence is dated 21st July 2026