
**LAND TO NORTH OF LITTLE GREEN LANE, CROXLEY GREEN,
WD3 3SP**

PINS APPEAL REFERENCE: 6004972

LPA APPEAL REFERENCE: 26/0012/REF

LPA PLANNING APPLICATION REFERENCE: 24/2073/OUT

**PROOF OF EVIDENCE OF JOHN GORDON BAIRD ON BEHALF OF
THE APPELLANT**

1. **Background and experience**

- 1.1 My name is John Gordon Baird. I am a solicitor of the Senior Courts of England and Wales, having been admitted to the roll of solicitors in July 2001 following completion of the Qualified Lawyers' Transfer Test.
- 1.2 I am the Head of Planning at Osborne Clarke LLP where I have been a partner since 2003. Before I joined Osborne Clarke, I worked as a planning solicitor at the London Borough of Greenwich for one year and, following that, at Richards Butler (now Reed Smith) for three and half years.
- 1.3 I hold an LLB and a BA (History) from the University of Otago, New Zealand. I was admitted as a barrister and solicitor in New Zealand in 1995.
- 1.4 I advise developers, landowners, strategic land promoters, and lenders on all aspects of planning law and have particular experience in advising on the negotiation of section 106 agreements. In addition to the Appellant, some of the clients I regularly advise on the negotiation of section 106 agreements include Barratt Redrow, Bloor Homes, Taylor Wimpey, Welbeck Strategic Land, Crest Nicholson, M&G, Vistry, Gleeson Land and Alfred Homes.
- 1.5 In my experience advising on section 106 agreements, I have regularly advised clients in particular on mortgagee in possession clauses in the context of affordable housing obligations and have negotiated this point with many local planning authorities over the course of my career.
- 1.6 I have prepared this Proof of Evidence in support of The Richborough Estates Partnership LLP's (the "**Appellant**") application to Three Rivers District Council (the "**Council**") 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)" (the "Application"). The Application is being determined on appeal to the Planning Inspectorate under PINS reference 6004972 (the "**Appeal**").

1.7 I confirm that all factual evidence I provide in this Proof of Evidence is based on my own professional experience, as described above.

2. **Scope and purpose of this evidence**

2.1 The evidence I provide in this proof is factual in nature and is confined to matters within my direct professional experience as a planning solicitor. I do not purport to give expert opinion evidence on registered provider financing or property valuation.

2.2 The single issue I address in this proof is the standard length of the moratorium period within a section 106 mortgagee in possession clause (the "**Moratorium Period**") which I observe in my professional practice. There is no dispute in the Appeal as to whether or not a mortgagee in possession clause should be included in the section 106 agreement. The only issue in dispute in relation to this clause is the length of the Moratorium Period.

2.3 It is the Appellant's position that the Moratorium Period should be three months, whereas the Council contends that the Moratorium Period should be five months.

2.4 In addressing this issue, I explain: (i) the purpose of a mortgagee in possession clause and a Moratorium Period as I have encountered them in my practice; (ii) the length of Moratorium Periods I have observed to be standard across the industry; and (iii) whether a Moratorium Period exceeding three months is consistent with my experience of accepted industry practice.

3. **Purpose of a mortgagee in possession clause and a Moratorium Period**

- 3.1 Section 106 agreements routinely include provisions relating to the delivery of affordable housing and its retention as such. As section 106 agreements impose obligations which bind successors in title, they are the vehicle with which the restrictions on how affordable housing units may be dealt with are passed onto registered providers, mortgagees, individual homeowners and any other party who may acquire an interest in an affordable housing unit. These restrictions are vital in ensuring that affordable housing units continue to serve the policy purpose for which they were constructed so far as possible.
- 3.2 A mortgagee in possession clause provides for limited circumstances in which a mortgagee may circumvent these restrictions and governs how this circumvention may apply.
- 3.3 Where the affordable housing units delivered on a site are to be transferred to and managed by a registered provider of social housing (an “**RP**”), it is typical for the RP to fund its acquisition of the affordable housing units with debt secured by a mortgage over the acquired units granted to the lender. To enable the lender to realise its security in the event that the RP defaults on its debt, the lender requires the right to take possession of the relevant affordable housing unit and dispose of it on the open market. This is the key exclusion from the requirement to retain affordable housing units as affordable housing which is permitted to mortgagees by a mortgagee in possession clause.
- 3.4 In order to ensure that efforts are first made to retain affordable housing as affordable housing, this key exclusion is moderated by a Moratorium Period, within which the mortgagee (or their receiver) is required to attempt to dispose of the relevant units to another RP or to the Council on terms which preserve their status as affordable housing. In the event that it is not possible for the mortgagee (or their receiver) to achieve this within the Moratorium Period agreed in the section 106 agreement, following the expiry of the Moratorium Period, the mortgagee is permitted to sell the units on the open market free of the affordable housing restrictions.
- 3.5 In summary, the purpose of a mortgagee in possession clause and a Moratorium Period is to address the competing interests of enticing lenders to finance RP acquisitions, by providing

them with a clear method of enforcing their security in the event of the RP's default, and the policy objective of retaining affordable housing stock.

4. The standard length of a Moratorium Period – three months

4.1 In my experience, a Moratorium Period of three months is completely standard. In my own practice, I have never encountered a local planning authority insisting on a Moratorium Period in excess of three months.

4.2 In my career, it has been the consistent and uncontroversial expectation of all parties to a section 106 agreement that a three-month Moratorium Period is suitable. Although I do not purport to have expertise in the details of RP financing, it has been my understanding that the Moratorium Period has not until now been a source of controversy on the agreements I have advised on because a three-month period strikes the appropriate balance between the parties' competing interests.

4.3 To aid the Inspector's understanding, I have attached at Annex 1 to this Proof a number of examples of mortgagee in possession clauses from section 106 agreements on which I have advised within the last 18 months, each of which includes a maximum three-month Moratorium Period. I can also confirm that I have never advised on a section 106 agreement which includes a Moratorium Period in excess of three months.

4.4 Annex 1 contains mortgagee in possession clauses from the following section 106 agreements I have advised on in the past 18 months:

- (a) Annex 1A – Acting for Alfred Homes on a site in Twyford within the administrative boundary of Winchester City Council; agreement dated 10 February 2025;
- (b) Annex 1B – Acting for Welbeck Strategic Land on a site in Polegate within the administrative boundary of Wealden District Council; agreement dated 27 February 2025;

- (c) Annex 1C – Acting for Barratt Homes on a site in Heyford Park within the administrative boundary of Cherwell District Council; agreement dated 12 March 2025;
- (d) Annex 1D – Acting for Welbeck Strategic Land on a site in Walberton within the administrative boundary of Arun District Council; agreement dated 18 March 2025;
- (e) Annex 1E – Acting for an individual landowner on a site in Whitstable within the administrative boundary of Canterbury City Council; agreement dated 16 April 2025;
- (f) Annex 1F – Acting for Places For People on a site in Birmingham within the administrative boundary of Birmingham City Council; agreement dated 6 May 2025;
- (g) Annex 1G – Acting for Vistry on a site in Tangmere within the administrative boundary of Chichester District Council; agreement dated 29 May 2025;
- (h) Annex 1H – Acting for Barratt Homes on a site in Felbridge within the administrative boundary of Mid Sussex District Council; agreement dated 12 June 2025;
- (i) Annex 1I – Acting for Barratt Homes on a site in Great Haddon within the administrative boundary of Peterborough City Council; agreement dated 20 June 2025;
- (j) Annex 1J – Acting for Barratt Homes on a site in Westham/Stone Cross within the administrative boundary of Wealden District Council; agreement dated 16 September 2025;
- (k) Annex 1K – Acting for Welbeck Strategic Land on a site in Deddington within the administrative boundary of Cherwell District Council; agreement dated 6 October 2025;
- (l) Annex 1L – Acting for Bloor Homes on a site in Feniton within the administrative boundary of East Devon District Council; agreement dated 18 December 2025;
- (m) Annex 1M – Acting for Barratt Homes on a site in Newbury within the administrative boundary of West Berkshire Council; agreement dated 24 March 2026;

- (n) Annex 1N – Acting for Thames Valley Housing Association on a site in Wokingham within the administrative boundary of Wokingham Borough Council; agreement dated 27 April 2026;
- (o) Annex 1O – Acting for Crest Nicholson on a site in Wickford within the administrative boundary of Basildon Borough Council; agreement dated 14 May 2026;
- (p) Annex 1P – Acting for Crest Nicholson on a site in Dunton within the administrative boundary of Basildon Borough Council; agreement dated 14 May 2026;
- (q) Annex 1Q – Acting for Gleeson Land on a site in Aylesbury within the administrative boundary of Buckinghamshire Council; agreement dated 26 May 2026;
- (r) Annex 1R – Acting for Claudel Venture Holdings Limited on a site in Hersham within the administrative boundary of Elmbridge Borough Council; agreement dated 11 June 2026; and
- (s) Annex 1S – Acting for Vistry on a site in Royston within the administrative boundary of North Hertfordshire District Council; agreement dated 3 July 2026.

4.5 I note that each of the example agreements at Annex 1 contains a three-month Moratorium Period except for the agreement at Annex 1M, which contains a six-week Moratorium Period. None of these examples contains a Moratorium Period in excess of three months.

4.6 In addition, I direct the Inspector's attention to the standard model mortgagee in possession clause published by the Property Finance Working Group, which is frequently adopted at least as the starting point of negotiations between parties to a section 106 agreement. The membership of the Property Finance Working Group consists of lawyers (who act for both lenders and borrowers), borrowers and valuers within the housing industry. I attach a copy of this standard clause to this proof at Annex 2.

5. Moratorium Periods exceeding three months

5.1 It is the Council's position that the Moratorium Period in the section 106 agreement to be agreed in connection with the Appeal should be five months.

5.2 I confirm that, in my career to date, I have not encountered a Moratorium Period in a completed section 106 agreement which exceeds three months. Although I have advised on section 106 agreements where the local planning authority has initially requested a Moratorium Period exceeding three months, following negotiation and explanation of the standard position, this has always been agreed as three months or less.

6. Affirmation

6.1 I confirm that all facts stated within this Proof of Evidence are within my own knowledge and are true to the best of my knowledge and belief.

6.2 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 experience. I also understand that my duty as a witness overrides any duty I owe to those instructing me. I have complied with my duty as a witness by giving my evidence impartially and objectively.

6.3 I am not instructed under any conditional fee arrangement nor do I have a conflict of interest in relation to the Appeal.

6.4 I used an LLM (Legora) to assist with the collation of the examples provided in Annex 1 to this Proof, which I then checked manually. I have not otherwise used AI technology in the preparation of this Proof of Evidence.

This Proof of Evidence is dated 21 July 2026.

Annex 1A

- 1.12 The affordable housing provisions in Schedule 2 of this Agreement shall not be binding upon a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 1.12.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable dwellings and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 1.12.2 if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the affordable dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

Annex 1B

- 8.3 The Affordable Housing obligations contained in Schedule 1 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee PROVIDED THAT
- (a) prior to seeking to dispose of the Affordable Housing Land (or part thereof) and/or the Affordable Housing Units (or any number of them) (as applicable) pursuant to a default under the terms of the Charge such Chargee shall first serve a Default Notice and shall have used reasonable endeavours over a period of three (3) months from the date of service of the Default Notice on the Council to complete a disposal of the Affordable Housing Land (or part thereof) and/or the Affordable Housing Units (or any number of them) (as applicable) to another Registered Provider for a consideration not less than the amount due and outstanding under the terms of the relevant Charge including all accrued principal monies, interest and costs and expenses and
 - (b) if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Land (or part thereof) and/or the Affordable Housing Units (or any number of them) (as applicable) free from the Affordable Housing obligations contained in Schedule 1 of this Deed which provisions only in respect of that land and/or those units (as applicable) shall determine absolutely.

Annex 1C

3. MORTGAGEE EXEMPTION

3.1. The affordable housing provisions in this Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **"Receiver"**)) of the whole or any part of the Affordable Housing Site or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

3.1.1. such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Site; and

3.1.2. shall have used reasonable endeavours over a period of three (3) months from the date of the written notice referred to in Paragraph 3.1.1 above to complete a disposal of the Affordable Housing Site to another Registered Provider or to the District Council for a consideration not less than the amount due and

34

outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

3.1.3. if such disposal has not completed within the three (3) month period the mortgagee or chargee or Receiver shall be entitled to dispose of the Affordable Housing Site free from the affordable housing provisions in this Schedule which provisions shall determine absolutely.

Annex 1D

(e) Mortgagee in Possession Clause

- (i) The Affordable Housing provisions in this Deed shall not be binding on a RP Mortgagee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such RP Mortgagee PROVIDED THAT:

- (A) such RP Mortgagee shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used Reasonable Endeavours over a period of three (3) months from the date of the written notice to complete a Disposal of the Affordable Housing Units to another Affordable Housing Provider, or to the Council, for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (B) if such Disposal has not completed within the three month period, the RP Mortgagee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

Annex 1E

- 1.7 A Mortgagee shall not dispose of the Affordable Housing Units or commence proceedings for possession of any Affordable Housing Units unless it shall:
- 1.7.1 have first given to the City Council no less than five Working Days prior notice of the commencement of such proceedings and at the time it commences such proceedings shall send copies of any notices or documents served in relation to such proceedings to the City Council;
 - 1.7.2 in the event that the Mortgagee chooses to exercise its power of sale it shall use its reasonable endeavours over a period of three months from the date on which it served notice on the City Council in accordance with **paragraph 1.7.1** to dispose of the Affordable Housing Unit(s) to an Registered Provider on terms which will retain the Affordable Housing as Affordable Housing provided that the Mortgagee shall not be required to dispose of the Affordable Housing for a consideration less than the monies owed to the Mortgagee including all accrued principal monies, interest costs and expenses;
 - 1.7.3 during the three month period specified in **paragraph 1.7.2** above the City Council may nominate a Registered Provider or the City Council by serving notice in writing to that effect on the Mortgagee. Any Registered Provider nominated

by the City Council shall be required to complete the purchase of the Affordable Housing Units in accordance with **paragraph 1.7.2** above and within the three month period specified in **paragraph 1.7.2** above; and

- 1.7.4 in the event that the Mortgagee or the City Council is unable to arrange the disposal of the Affordable Housing Units within the said period of three months the Mortgagee shall be entitled to dispose of any Affordable Housing Units at its discretion free from all the obligations or restrictions in this Schedule.

Annex 1F

7. The Shared Ownership Unit provisions in this Schedule and the Second Schedule shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Shared Ownership

Page 31 of 61

Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Shared Ownership Unit and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Shared Ownership Unit to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Shared Ownership Unit free from the Shared Ownership Unit provisions in this Schedule which provisions shall determine absolutely

Annex 1G

1.15. The affordable housing provisions in Part 1A and Part 1B of this First Schedule shall not be binding on a mortgagee or chargee ((or any receiver) (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "**Receiver**") of the whole or any part of the Affordable Dwelling Units (including the relevant part(s) of the Affordable Dwelling Land) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

1.15.1. Such mortgagee or chargee or Receiver shall only exercise any power of sale under a mortgage or charge over any Affordable Dwelling Unit in the event of default by the Registered Provider or owner or tenant of an Affordable Dwelling Unit;

1.15.2. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling Unit(s) and shall have used reasonable endeavours over a period of

51

three (3) months from the date of the written notice to complete a disposal of the Affordable Dwelling Unit(s) to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

1.15.3. if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwelling Unit(s) free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

Annex 1H

8 Chargee Clause

8.1 Prior to seeking to dispose of the Social Rented Units and/or Affordable Rented Units and/or (if paragraph 07 of Part One of the Second Schedule applies) Shared Ownership Units (or any one or more of them) and the associated land pursuant to any default under the terms of its mortgage or charge ("**the Charged Property**") the Chargee shall give prior written notice including evidence and written confirmation of the default (the "**Chargee's Notice**") to the District Council of its intention to dispose and:

8.1.1 the Chargee shall use reasonable endeavours over a period of three (3) months from the date of service of the Chargee's Notice on the District Council to complete a disposal of the Charged Property in such a way so as to safeguard it as Affordable

Housing in line with paragraph 8.2 for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Charged Property including all accrued principal monies, interest and costs and expenses; and

8.1.2 if such disposal has not completed within the three (3) month period, the Chargee shall, subject to the proviso set out in paragraphs 7.2 and 8.2 of this Part One of the Second Schedule, be entitled to dispose of the Charged Property free from the affordable housing provisions contained in the Second Schedule to this Agreement which provisions shall determine absolutely

Annex 11

3 Chargee Protocol

3.1 The affordable housing provisions in this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

3.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

3.1.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

Annex 1J

- 1.9 Delete Sub Clause 9.3.2 of the Original Agreement in its entirety and insert a replacement Sub Clause 9.3.2 in the Original Agreement as follows:

9.3.2 a Chargee or any bodies deriving title through such Chargee PROVIDED THAT:

- a) *prior to seeking to dispose of the Affordable Housing Land (or part thereof) and/or Affordable Housing Units (or any of them) (as applicable) pursuant to a default under the terms of the Charge or otherwise such Chargee shall first serve a Default Notice to the Council and shall have used reasonable endeavours over a period of three months from the date of service of the Default Notice on the Council to complete a disposal of the Affordable Housing Land (or part thereof) and/or Affordable Housing Units (or any number or them) (as applicable) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant Charge including all accrued principal monies, interest and costs and expenses; and*
- b) *if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Land (or any part thereof) and/or Affordable Housing Units (or any number of them (as applicable) free from the affordable housing provisions in Schedule 1 in this Deed only in respect to that land and/or those units (as applicable).*

Annex 1K

5. Chargee exemption

- 5.1 The obligations in paragraph 4 (*Affordable Housing other than First Homes Dwellings*) of this Schedule in relation to the Affordable Housing Dwellings (excluding First Home Dwellings) will not be binding on a Chargee or a bona fide purchaser for value from a Chargee or the successors in title of such Chargee or such purchaser, if the Chargee:
- (a) have first served written notice on the District Council of its intention to exercise its power of sale or other power or right conferred upon it, its mortgage, charge or other security; and
 - (b) have used reasonable endeavours over a period of 3 months from receipt of notification pursuant to paragraph 5.1(a) above to complete a disposal of the Mortgage Land subject to any leases and tenancies then subsisting and to the terms of this Deed to a Registered Provider or the District Council provided always that nothing herein shall require the Chargee to dispose of the Mortgage Land at a price which is less than the greater of the open market value of the Mortgage Land (subject to the restrictions contained within this Schedule) or all sums due and outstanding under the terms of the Chargee's mortgage or charge or security documentation including all accrued principal monies interest, costs and expenses; and
 - (c) if upon the expiry of 3 months from the date of receipt by the District Council of the notice in paragraph 5.1(a) above and provided the steps in this paragraph have been completed and no transfer of the Mortgage Land to either the District Council or a Registered Provider has completed within the said period of 3 months then upon expiry of the said 3 months the Chargee shall be able to sell the Mortgage Land free from the restrictions in paragraph 4 (*Affordable Housing other than First Homes Dwellings*) of this Schedule with the effect that they shall cease to bind the Mortgage Land.

Annex 1L

8 Release

8.1 The Affordable Housing obligations within this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver **PROVIDED THAT:**

- 8.1.1 such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 8.1.2 if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations in this Deed which provisions shall determine absolutely.

Annex 1M

- i. In the event that a mortgagee of a Registered Provider or of a shared ownership lessee of the Social Dwellings or any of them is bound by the terms of this Deed as mortgagee in exercise of its power of sale of the Social Dwellings or any of them none of the Social Dwellings shall be sold

10

or otherwise disposed of by the mortgagee unless the following procedure has been followed in respect of each of the Social Dwellings

- A. the mortgagee shall on each such sale have first offered in writing to transfer each of the Social Dwellings at the price hereinafter defined in sub-paragraph C for the purposes of social housing to the Council or to a Registered Provider nominated by the Council whose objects or functions include the provision of low cost rented housing (the deed of transfer relating to such transfer to be in such form as the Council or the Homes and Community Agency shall reasonably require) or in the case of Shared Ownership Dwellings or any of them to a person nominated by the Council
- B. the Council has refused the offer or has failed to accept such offer or is unable to nominate a Registered Provider or in the case of the Shared Ownership Dwellings or any of them is unable to nominate a person for such dwelling(s) within a period of six weeks from the date of receipt by the Council of the offer in writing by the mortgagee OR has accepted such offer or made such nomination and has failed to complete the disposal arising from such offer or nomination within a period of six weeks from the date of such offer or nomination AND the mortgagee shall then be at liberty to dispose of the Social Dwellings or any of them free from the restrictions contained in this Schedule
- C. the price referred to in (A) above shall be a sum equal to the open market value on the date of the offer of each of the Social Dwellings on the assumption (if not the case) that on the date of the offer each of the Social Dwellings is either let on an assured tenancy (if one of the Rented Dwellings) or subject to a shared ownership lease or held on a shared equity basis (if one of the Shared Ownership Dwellings) PROVIDED THAT for the purposes of this paragraph all references to a disposal by a mortgagee shall mean a transfer

Annex 1N

- 1.8 The definition of 'Moratorium Period' shall be inserted in clause 1 of the Principal Agreement as follows:

"Moratorium Period means, in each instance where an Affordable Housing Mortgagee has served a Default Notice under paragraph 1.1.1, of Part 2 of Schedule 1 of this Deed the period from (and including) the Date of Deemed Service on the Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Affordable Housing Mortgagee and the Council)"

- 1.6 The Affordable Housing Mortgagee may dispose of the relevant Affordable Housing Units free from the obligations and restrictions contained in Part 1 of this Schedule which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:

- 1.6.1 the Council has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
- 1.6.2 the Council (or its nominated substitute Registered Provider or a Preferred Registered Provider or Approved Registered Provider as the case may be) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units on or before the date on which the Moratorium Period expires; or
- 1.6.3 the Council (or its nominated substitute Registered Provider or a Preferred Registered Provider or Approved Registered Provider as the case may be) has notified the Affordable Housing Mortgagee in writing pursuant to the Option that it no longer intends to exercise the Option.

Annex 10

6 Exclusions

6.1 The obligations contained in this Schedule shall not be binding upon nor enforceable against

6.1.1 any mortgagee or chargee or any receiver (including an administrative receiver) or manager 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 ("**Appointee**") or any administrator (howsoever appointed) ("**Administrator**") including a housing administrator (each a "**Receiver**") of a Registered Provider of the Affordable Housing Land and/or Registered Provider of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver **PROVIDED ALWAYS THAT**

6.1.1.1 any power of sale available to any such Appointee Administrator or Receiver shall only be exercised in the event of there being a default of any obligation under the security documentation;

32

6.1.1.2 such Appointee Administrator or Receiver shall first have notified the Council and the Housing Delivery Manager that it wishes to exercise its statutory power of sale; and

6.1.1.3 within 3 (three) clear calendar months of the date of such notification the Appointee Administrator or Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Land and/or Affordable Dwelling to another Registered Provider (who shall take subject to the provisions of this Deed) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses,

PROVIDED THAT and for the avoidance of doubt if such disposal has not been completed within such 3 (three) month period then the Appointee Administrator or Receiver shall be entitled to dispose of the relevant Affordable Housing Land and/or Affordable Dwelling free from the obligations contained in this Schedule which provisions shall determine absolutely;

Annex 1P

6 Exclusions

6.1 The obligations contained in this Schedule shall not be binding upon nor enforceable against

6.1.1 any mortgagee or chargee or any receiver (including an administrative receiver) or manager 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 ("**Appointee**") or any administrator (howsoever appointed) ("**Administrator**") including a housing administrator (each a "**Receiver**") of a Registered Provider of the Affordable Housing Land and/or Registered Provider of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver **PROVIDED ALWAYS THAT**

6.1.1.1 any power of sale available to any such Appointee Administrator or Receiver shall only be exercised in the event of there being a default of any obligation under the security documentation;

32

6.1.1.2 such Appointee Administrator or Receiver shall first have notified the Council and the Housing Delivery Manager that it wishes to exercise its statutory power of sale; and

6.1.1.3 within 3 (three) clear calendar months of the date of such notification the Appointee Administrator or Receiver shall use reasonable endeavours to complete a disposal of the relevant Affordable Housing Land and/or Affordable Dwelling to another Registered Provider (who shall take subject to the provisions of this Deed) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses,

PROVIDED THAT and for the avoidance of doubt if such disposal has not been completed within such 3 (three) month period then the Appointee Administrator or Receiver shall be entitled to dispose of the relevant Affordable Housing Land and/or Affordable Dwelling free from the obligations contained in this Schedule which provisions shall determine absolutely;

Annex 1Q

Mortgagee Protection and Releases

9. The restrictions in this First Schedule and in the Second Schedule and Third Schedule shall not be binding in respect of Affordable Housing on :

9.1 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT

9.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the whole or any part of the Affordable Housing and shall have used reasonable endeavours

131

over a period of three months from the date of the written notice to complete a disposal of the said Affordable Housing to another RPSH or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

9.1.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the said Affordable Housing free from the affordable housing provisions in the First Schedule, the Second Schedule and the Third Schedule to this Agreement which provisions shall determine absolutely in respect of the relevant Affordable Housing

Annex 1R

11. The Parties agree that the Affordable Housing provisions in this Deed shall not be binding on a Mortgagee/Chargee (or any receiver including an administrative receiver) appointed by such Mortgagee/Chargee or any other person appointed under any security documentation to enable such Mortgagee/Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a '**Receiver**') of the whole or any part of the Affordable Housing Land or Affordable Dwelling(s) or any persons or bodies deriving title through such Mortgagee/Chargee or Receiver PROVIDED THAT:
 - 11.1 such Mortgagee/Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land or Affordable Dwelling(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Land or Affordable Dwelling(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 11.2 if such disposal has not completed within the three months period, the Mortgagee/Chargee or Receiver shall be entitled to dispose of the Affordable Housing Land and/or Affordable Dwelling(s) free from the affordable housing provisions in this Deed which provisions shall determine absolutely.

Annex 1S

2. The provisions of Paragraph 1 of Part 1A of this Schedule shall not be binding or enforceable against:

2.1 any person who shall acquire the freehold or leasehold interest in any Affordable Housing Unit pursuant to any statutory right of acquisition and any successor in title or mortgagee of that person;

44

2.2 a Chargee which shall have the benefit of a legal mortgage or charge secured against the Affordable Housing Provider's estate or interest in any Affordable Housing Unit(s) on the Affordable Housing Land who wishes to exercise its power of sale (or any person deriving title from such Chargee) PROVIDED THAT the Chargee or receiver or manager appointed by the Chargee has notified the Council in writing that it wishes to exercise its statutory power of sale and for a period of three months from such written notification the Chargee having used reasonable endeavours has not completed the Disposal of the Affordable Housing Unit(s) to an Affordable Housing Provider PROVIDED THAT nothing in this paragraph shall require the Chargee to Dispose of the Affordable Housing Unit(s) at a price which is less than the outstanding balance due under its legal mortgage or charge over the Affordable Housing Unit(s) (including all accrued principal monies, interest cost and expenses) FOR THE AVOIDANCE OF DOUBT if such Disposal has not completed after the three month period from such written notification the Chargee, shall be entitled to Dispose of the Affordable Housing Unit(s) free from the provisions of this Part of this Schedule which shall determine absolutely with respect to the said Affordable Housing Unit(s)

Annex 2

(Updated April 2023)

Proposed Standard Mortgagee Exclusion Clause

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

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