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Our Ref: 772676
Your Ref: PINS Appeal Reference is 6004972

Richborough
Fivefields,
8 – 10 Grosvenor Gardens,
London,
SW1W 0DH

For the attention of Mr N Banks and Mr Owen Weaver

Dear Sirs,

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

Instructions

Savills has been instructed by Richborough to provide commentary on the valuation implications on new build affordable housing proposed at the above scheme having regard to the social housing finance marketplace and planning law specifically relating to the S106 Mortgagee in Possession ('MIP') Exclusion Clause and how a lender can enforce their security.

Our advice relates to the LPA Planning Application Reference 24/2073/OUT, the LPA Appeal Reference: 26/0012/REF and the PINS Appeal Reference is 6004972. The appeal relates to Three Rivers District Council proposing a five month Moratorium Period.

Savills advice relates specifically to the valuation implications relating to the Moratorium Period, being either the 3 months, or extended to 4 months or 5 months by comparing the MV-STT valuation to the EUV-SH valuation principles.

As an RICS Regulated Firm, in providing our advice, we are bound by the terms of the RICS Valuation - Global Standards, ("the RICS Red Book") which applies to valuation advice. The Red Book sets out strict requirements for RICS Registered Valuers around issues such as confirming instructions, carrying out due diligence enquiries and writing valuation and valuation related advice. This advice is based on definitions of value equivalent to those outlined within VPS 2 of the RICS Red Book.

Qualifications and Experience

Savills has carried out a conflict of interest search within Savills on our internal data base and can advise there is no conflict of interest which would affect our ability to act impartially in this matter. If we subsequently become aware of any other potential or actual conflicts, we will of course let you know.

Giles Sutcliffe has been MRICS qualified since 1996 and is a RICS Registered Valuer, being a Director at Savills (UK) Limited in the Housing Valuations division.

Of most relevance to this matter is my experience in providing RICS Red Book loan security valuation advice to Banks, negotiating Option Agreements for land owners and acting as a consultant in financial viability in planning issues, negotiating S106 agreements in the south east and south of England regularly acting for Westminster City Council, The City Of London Corporation, various charities, large and small residential developers, housing associations and landowners.

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Property Finance Working Group

The Property Finance Working Group (PFWG) is made up of 12 representatives including lawyers, acting for both funders and borrowers, together with their valuers. The PFWG is represented by Addleshaw Goddard, Allen & Overy, Clifford Chance, Trowers & Hamlins, Devonshires, Wright Hassall, Winckworth Sherwood, JLL and Savills. These various sector stakeholders have formulated an example Mortgagee Protection Clause ("MPC") which should allow housing associations to obtain Market Value Subject to Tenancy (MVS-TT) when using s106 assets as loan security.

The Group have worked to agree a consistent approach to the MPC within Section 106 Agreements to ensure that housing associations can achieve best possible funding value when securing loans against the assets.

The Group agreed a "sector approach" to MPC in 2015 with a view to agreeing an example of how associations could obtain MV-STT on assets being used for private finance. This was further amended in 2017, following the deregulatory measures and the Housing and Planning Act 2016 .This example clause , attached at **Appendix A**, is already in use by many local authorities.

Background to Registered Providers' property transfers

Registered Providers (RPs) have recognised the importance of MV-STT, particularly in a marketplace challenged by the need to develop new affordable housing, achieve net zero or meet the demands of maintaining stock against the significant costs, for example, of Grenfell Tower cladding or damp and mould associated issues compounded with a high inflation environment with slow rental growth. Accordingly, MV-STT uplift has enabled improved borrowing abilities with treasury advisers and solicitors alike having advised RPs that moving to MV-STT is preferable in certain circumstances.

Mortgagee in Possession Purpose

The Mortgagee in Possession (MIP) Clause (or Mortgagee Exclusion Clause ('MEC')) in S106 agreements dictates how a lender can enforce their security. The MIP period acts as a moratorium allowing the lender to achieve a higher MV-STT valuation over the lower EUV-SH valuation.

The MIP is a legal grace period where a lender, upon a borrower's default, must use reasonable endeavours to sell the affordable housing units to another RP or a local authority. The timeframe is to secure an in-sector buyer within a certain term. If it is longer, it reduces the necessary lender security which in turn affects the property's value. After the MEC the Bank can seek a price that allows them to fully redeem the mortgage, including associated interest and costs. If the lender is unable to sell to another RP or local authority within this timeframe then the lender should be able to sell to anyone free of the affordable housing restrictions which then automatically fall away.

Taking a step back from the technicalities of the three to five months MPC issue it is acknowledged that the NHF working group maintains a list of all local authority areas in England who either do or do not accept the minimum standard NHF MPC release. The vast majority of councils and the GLA accept and use either their own absolute release or the NHF minimum standard clause, which we have attached at **Appendix A**. There are a few local authorities who resist the NHF's standard clause using their own versions which are ineffective, sometimes deliberately so.

Whenever a committee member encounters a local authority who has changed their MPC from the standard this is noted. In recent years East Cheshire District Council changed their approach and reverted to the MPC standard. In the last year York City Council did the same. In some cases it was demonstrated to the council the difference between EUV-SH and MV-STT, and this was enough to persuade them. It must be noted, however that some councils will not concede on ideological grounds and simply do not want third-party registered housing providers developing in their boroughs or are unwilling to aid them by releasing the MPC longer MEC to enable higher refinancing values.

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Valuation Definitions

Existing Use Value - Social Housing (EUV-SH)

EUV-SH refers to the value of a property or land if it were to be used for social housing in perpetuity. It assumes a hypothetical sale to another RP on assumptions that the stock can be let at affordable rents, and will be managed in accordance with the Housing Regulators requirements and that void properties will be re-let on the same tenure basis and not sold with vacant possession. It therefore limits the level of rent that the properties may attract which remain at affordable or social rent levels which are typically lower than those generated from private rented accommodation in the open market. The EUV-SH valuation approach therefore ignores alternatives. This limits the value of the security, yielding significantly lower borrowing capacities which can be between 25% to 30% of Market Value with vacant possession, assuming private tenure.

Market Value Subject to Tenancies (MV-STT)

The MV-STT refers to the value of a property with an existing tenancy in place and values the property if the property were sold subject to the existing tenancy agreement and assumes a hypothetical sale which would not be bound by the same regulatory rules as EUV-SH and could be traded in a more commercial way. The MV-STT considers the value of the property as private residential housing, with the potential of removing the Section 106 affordable housing restrictions and therefore allows rents or sales on the open market.

The MV-STT model implies that, in Bank repossession, properties can increase rents to a market level and void units can be sold in the open market. However, in areas of severe poverty or pockets of acute concentration of stock, the locality may be limited as to how far market rents may be adjusted, or whether sales can be achieved in volume without debasing the local pricing level.

There are very few, if any, sales of Banks' repossessed affordable housing properties whether individual or estates, therefore, in the absence of comparable evidence, hypothetical valuation methods are applied by valuers. There is evidence in affordable housing stock rationalisation that bidding RPs base their bids at MV-STT if there is potential that the developments or stock is unrestricted which offers higher re-finance collateral.

MV-STT provides an increase in value that is a significant advancement for many RPs, adding to hundreds of millions to the RPs' treasury pool. Over the last five years Savills and others have undertaken a significant amount of MV-STT exercises, which, generally, has allowed for a considerable uplift that has allowed the RPs to re-finance.

Housing Associations struggle to accept a Moratorium Period of more than three months and, if they do, they make an offer to buy the affordable housing at a reduced value to EUV-SH, which reflects the restriction. The three-month Moratorium Period is the established industry standard, endorsed by Social Housing Valuers in conjunction with lenders in the marketplace, also consulting the National Housing Federation ('NHF') and the Greater London Authority ('GLA').

Mortgagee in Possession ('MIP') implications

There has been a marked shift in the metric used to value social housing stock, from Existing Use Value - Social Housing (EUV-SH) to Market Value Subject to Tenancy (MV-STT). MV-STT is therefore undoubtedly a crucial marketplace consideration, however must be considered carefully.

The intention behind an MPC is to protect the funder and anyone acting on behalf of the funder and the funder to be able to carry out its duty as a mortgagee, should a borrower default on its loan. Where the MPC does not provide sufficient protection for the funder they would be bound by the affordable housing restrictions in the S106 Agreement, the value would be limited to Existing Use Value for Social Housing ("EUV-SH"). The best possible funding value is Market Value Subject To Tenancies ("MV-STT"), where the funder would be able to sell on the open market, either to a housing association or a non-regulated purchaser; and neither the lender nor successors in title would be bound by the affordable housing restrictions in the S106 Agreement.

Conclusion

Whilst it is important to protect the quantity of affordable housing in the UK, from a commercial aspect MIPs should afford sufficient protection for funders and allow housing associations to achieve MV-STT. Housing associations, in conjunction with residential developers, are encouraged to consider the wording of the MIP within the Section 106 Agreements and understand the value which could be achieved at the earliest possibility, i.e. at the point of negotiation of the S106 agreement using in-house expertise or external advice. It should be recognised that the longer the Moratorium Period the larger reduction in value and, in our opinion, the increase in the period from 3 months to, say, 5 months, would reduce the value being split between MV-STT and EUV-SH, which affects the RP's ability to optimise their borrowing facility. We will be pleased to provide a worked example of MV-STT and EUV-SH to demonstrate to Three Rivers DC the significant deduction in viability that an ineffective MPC resulting in only a low EUV-SH.

The endeavours of optimising the purpose of the MIP are fundamental to the balance of protecting the affordable housing offer by enabling housing associations to secure the funds needed to build the homes required in the marketplace.

Yours sincerely,

Giles Sutcliffe
RICS Registered Valuer
Director

For and on behalf of Savills (UK) Limited

Appendix A

NHF minimum standard Mortgagee Exclusion Clause

1. Proposed Absolute Standard Mortgagee Exclusion Clause

"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 dwellings] or any persons or bodies deriving title through such mortgagee or chargee or Receiver"

2. Minimum Standard - 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:

(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

(2) 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) 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