IN THE MATTER OF:

LAND NORTH OF LITTLE GREEN LANE, CROXLEY GREEN

APP. REF. 6004972

APPELLANT OPENING SUBMISSIONS

Introduction

1. This is an appeal by Richborough Ltd ("the Appellant") against the decision of Three Rivers District Council ("the Council") to refuse outline planning permission for up to 600 homes, a 5-bed property for children's supported living, a one-form entry primary school with land for expansion, local centres for NHS health and social care and retail/café provision, and substantial country park and open space areas ("the Scheme") at Land North of Little Green Lane, Croxley Green ("the Site").

2. Despite having refuse the application, the Council now agrees that the appeal should be allowed, and that planning permission should be granted[1]. That is wholly unsurprising, in light of:

    a. the Council's truly hopeless housing land supply position (which even on the Council best evidence it accepts teeters at just over the 1-year mark[2], placing it amongst the worst-performing authorities in the country[3]);

    b. the equally hopeless position of its emerging local plan as a solution to that problem, which has been the subject of a highly critical intervention from the Secretary of State[4];

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[1] Statement of Common Ground (CD 9.5), §8.1
[2] Joint Statement on Housing Land Supply (CD 9.14), §4.1
[3] Cameron Austin-Fell, Proof of Evidence (CD 13.1), §4.17
[4] Stephen Harris, Proof of Evidence (CD 13.4), §§2.4-2.5

c. the fact that the Site has already twice been recommended by Officers for allocation in that emerging plan[5];

d. directed expressly for inclusion within the Regulation 19 plan by the Secretary of State in his intervention[6] the first time this has ever happened;

e. the Scheme itself was recommended for approval by Officers at Committee[7];

f. the even more dire position in relation to affordable housing, this being an authority in which lower quartile house prices are 93% higher than the national figure[8], despite which the Site sits in a ward in which not a single affordable house has been delivered in almost a quarter of a century[9];

g. the manifest other benefits of the Scheme, including a one-form entry primary school with secured land for expansion to two-form, a mixed-use local centre with NHS health and social care services, a five-bedroom property for children's supported living;

h. the provision of a large country park, allotments, and orchard leading to some 60% of the Site being preserved as open space[10]; and

i. the absence, on the Council's own case, of planning harms that might outweigh those benefits in the balance, particularly in light of the fact that the Site is on any realistic analysis Grey Belt, and that the Scheme will not cause any loss or deterioration of ancient woodland.

3. In light of that position, in Opening, the Appellant will not spend time on the overall planning merits of the scheme. Those merits are now agreed – planning permission should be granted. Instead, the Appellant will focus on those matters which are still outstanding, all of which relate to the draft section 106 agreement, on which the Inspector will hear evidence. There are essentially four such issues:

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[5] Cameron Austin-Fell, Proof of Evidence, §2.2
[6] Cameron Austin-Fell, Proof of Evidence, §5.21
[7] CD 4.2
[8] James Stacey, Proof of Evidence (CD 13.6), §7.29
[9] James Stacey, Proof of Evidence, §4.29
[10] Cameron Austin-Fell, Proof of Evidence, §6.94

(1) the moratorium period within the mortgagee in possession clause,

(2) the affordable housing cascade mechanism,

(3) the contribution payable in respect of secondary education; and

(4) the contribution sought by Transport for London ("TfL") to implement step-free access at Croxley underground station.

Overall Submissions on the Outstanding Issues

4. On these issues, it is necessary to deal with three points of overarching importance.

5. First, it does not appear to be the Council's case that the ultimate outcome of this appeal depends to any extent on the resolution of those four remaining issues. Ms Fitzgerald has already accepted on behalf of the Council that, even if the cascade issue is resolved against the Council, planning permission should still be granted[11], and the presence of blue pencil clauses in respect of the other three issues supports the same conclusion on each.

6. Second, despite that, each of these issues is still of real, practical importance to the Appellant. The Appellant is not seeking to raise issues with the section 106 agreement simply for the sake of it. It has already agreed to contributions totalling over £13 million through that agreement, in recognition of the fact that the Scheme will inevitably generate impacts upon the local area which require mitigation[12]. The four points which the Appellant continues to take reflect genuinely-held concerns, being expressed by a very experienced operator in the residential development sector, who is simply seeking to ensure that the benefits of the Scheme which the Council accepts should lead to the grant of planning permission <u>are actually secured</u>.

7. That is particularly so in relation to the two issues which concern affordable housing. The Appellant's concern in relation to both is, contrary to the Council's case, purely to seek to ensure that the benefit of that affordable housing <u>can actually be secured in practice</u>. Particularly as regards the moratorium period, the Appellant's concern is to ensure that it will actually be able to find a Registered Provider ("RP") to take on the 300 affordable homes which the permission will secure. It would not take that point

[11] Liz Fitzgerald, Proof of Evidence (CD 12.1), §7.6

[12] Section 106 Statement of Common Ground (CD 9.6), Section 2

(requiring a four-day public inquiry on a scheme that the Council already accepts should be granted planning permission) if, in its long-held experience, it felt that such a Provider could realistically be found on the basis of a 5-month moratorium.

8. Third, on Tuesday of this week, the Ministry of Housing, Communities and Local Government published a consultation exercise on standardised section 106 agreements, albeit for medium sites, which deals with both affordable housing issues before the Inspector[13]. Pertinently, the draft agreements for both outline and full permissions include a 3-month moratorium period, specifically proposed by the Government to encourage *"greater certainty and consistency…given that this clause needs to be acceptable to funders to allow Affordable Housing Providers to finance the acquisition of the units"*. The consultation further advises that that timeframe *"aligns with the three-month period encouraged by the National Housing Federation and is generally accepted by lenders"*, precisely as the Appellant has submitted throughout this appeal. Similarly, the consultation response recommends use of a cascade mechanism, *"in areas where there is evidence of reduced Registered Provider demand"*, precisely as the Appellant has provided to this inquiry. That consultation is plainly a material consideration for the Inspector, and reflects the Government's clear intention to achieve consistency and certainty across local authority areas, particularly on the issue of the moratorium.

(1) Moratorium Period

9. The main remaining dispute between the Appellant and the Council is whether the mortgagee-in-possession ("MiP") clause should be attended by a moratorium period of 3 months (as the Appellant suggests) or 5 months (as the Council suggests). The starting point is important –the Council appears to accept that such a clause, with a moratorium period, is a commercial necessity, to ensure that RPs are able to access the funding necessary to deliver affordable housing[14]. There are three simple reasons that the Appellant's 3-month moratorium is to be preferred against that background.

[13] Standard Planning Agreements for Medium-Sized Sites, published 25 August 2026
[14] Roy Pinnock, Proof of Evidence (CD 12.4), §§2.3.4, 5.2, 5.3(a)-(b), 6.3.1(a)

10. First, it is quite simply the industry standard[15]. It has been adopted by the National Housing Federation's Property Finance Working Group (a group specifically comprised of sector-experienced lawyers and valuers[16]) for over a decade[17]. It has that status because it is accepted across the industry to strike an appropriate balance between the requirements of lenders, RPs, and local planning authorities[18]. The Council has singularly failed to contradict that basic assertion in any of its evidence – all the Appellant seeks is the industry standard version of the disputed clause.

11. Second, no doubt as a result, a 3-month moratorium is the overwhelmingly prevalent version of the clause required by local authorities across the country. As Mr Bullivent explains, that period has been utilised in 97% of section 106 agreements issued by Home Counties authorities in the last 2 years on schemes of over 50 dwellings[19]. It is therefore no surprise that Mr Baird, a Partner at one of the leading Planning firms in the country for over 20 years, has never come across a moratorium period in excess of three months[20]. He, providing evidence as an extremely experienced Planning solicitor, describes 3-month moratoriums as *"completely standard"*, and exhibits some 19 section 106 agreements upon which he has advised in the last 18 months, not one of which contains a moratorium of longer than 3 months[21].

12. Third, the evidence 'from the horse's mouth' is that a 5-month moratorium would represent an active disincentive to RPs operating in the region. Across two detailed consultation processes in November 2025 and May 2026, the Appellant has identified three RPs interested in offering on the Site – two of those have made it clear that they would only do so if a 3-month moratorium was substituted[22]. The third has made it clear that while a longer period would not prevent an offer, that possibility *"should be avoided"*, a position which in any event seems to conflict with the position taken by senior management of the same RP just months earlier[23]. Two further RPs expressly cited the proposed 5-month moratorium as a barrier to involvement altogether[24]. That

[15] James Bullivent, Proof of Evidence (CD 13.15), §2.2.11; John Baird, Proof of Evidence (CD 13.11), §2.4
[16] Richard St. John Williams, Proof of Evidence (CD 13.16), §43
[17] James Bullivent, Proof of Evidence, §2.2.7
[18] James Bullivent, Proof of Evidence, §2.2.9
[19] James Bullivent, Proof of Evidence, §2.3.4 and Appendix 4.1.
[20] John Baird, Proof of Evidence, §4.1
[21] John Baird, Proof of Evidence, §4.4 and Appendix 1
[22] James Bullivent, Proof of Evidence, §3.2.6
[23] James Bullivent, Proof of Evidence, §§3.2.7-3.2.8
[24] James Bullivent, Proof of Evidence, §3.2.11

entirely accords with the results of the exercise undertaken as part of the appeal at Oxhey Lane[25], and also entirely accords with the evidence of Mr Sutcliffe, who is abundantly clear that a longer moratorium weakens lender security, reduces borrowing capacity, and ultimately prevents RPs from being able to deliver affordable housing[26]. It is hard to overstate the importance of that evidence – it represents a clear statement from the organisations who would actually be tasked with taking on and delivering the affordable housing in question, that the Council's approach would, in almost all cases, prevent them from even becoming involved.

13. Against the weight of that evidence, the Council hangs its hat on the proposition that the risk of losing affordable housing would be too great with a 3-month period, because of the complexities involved in completing a distressed sale of 300 homes[27]. That is a narrow and weak response on a point of such importance, for two reasons.

14. First, it takes no account of the vanishing unlikelihood of such a sale ever being required. In the last quarter of a century, just 16 affordable homes have been lost through MiP clauses actually coming into effect, out of a total of over 330,000 such homes secured through section 106 agreements – just 0.005%[28]. That is not by accident. As Mr St. John Williams explains, it is the whole purpose of the regulatory regime governing affordable housing, which contains an extensive list of protective measures designed to ensure that MiP clauses are never invoked[29]. The value of that regulatory framework has not only been recognised by the High Court and Court of Appeal in recent litigation[30], but is also reflected in the fact that major credit rating agencies (whose purpose is to assist the pricing of debt for investors) assign significant value to it[31]. The reality, therefore, is that the Council is placing decisive weight on a situation that is extremely unlikely ever to occur, while prejudicing the delivery of affordable housing in the process.

[25] James Bullivent, Proof of Evidence, §3.3.4
[26] Giles Sutcliffe, Proof of Evidence (CD 13.13), p.4
[27] Roy Pinnock, Proof of Evidence, §6.1.1
[28] James Bullivent, Proof of Evidence, §4.9
[29] Richard St. John Williams, Proof of Evidence, §§17-48
[30] Richard St. John Williams, Rebuttal Proof of Evidence (CD 13.18), §19
[31] Richard St. John Williams, Rebuttal Proof of Evidence, §22

15. Second, the Council's case rests on the very ambitious assumption that, despite the prevalence of the industry standard clause already identified, and despite the huge number of stakeholders for which it is a critical aspect of their business, nobody within the industry other than Three Rivers District Council has factored in the amount of time it would take to complete a distressed sale of a large number of homes. That is a simple but important rhetorical point – if Mr Pinnock is right to say that the 3-month option places affordable housing at too great a risk because of the stages involved in a distressed sale, then how can it be that lenders, borrowers, RPs, other local authorities, and regulators overwhelmingly continue to operate on the basis of that option? Either they have simply failed to notice that risk, which would be a case of remarkable negligence, or Mr Pinnock's point is simply not a good one.

16. Ultimately, however, the Council's case is starkest for that which it does not contain. The Council does not offer any evidence that a 3-month period is not the industry standard, or that a 5-month period is the industry standard instead. It does not offer any evidence that RPs are, in fact, perfectly comfortable with that longer period. Perhaps most critically, it does not offer any evidence at all to contradict Mr Sutcliffe's evidence that a 5-month moratorium would result in the affordable stock being valued according to the lower EUV-SH metric[32], reducing the borrowing capacity for any interested RP by as much as 70%[33]. That is a critical and fatal omission – ultimately, not even the Council would presumably seek to force through a provision within a section 106 agreement which rendered it practically impossible for RPs to secure the finance needed to actually deliver the affordable homes required.

17. The reality is, therefore, that the Council's case is governed by fear of the hypothetical and the implausible, while the Appellant's case is anchored in real life and the real world. The end result is that, as Mr Austin-Fell explains, a 5-month moratorium period would not meet the Regulation 122 test, going beyond that which is *"necessary to make the development acceptable in planning terms"*, under Regulation 122(2)(a)[34].

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[32] Giles Sutcliffe, Proof of Evidence, p.4
[33] Richard St. John Williams, Proof of Evidence, §11
[34] Cameron Austin-Fell, Rebuttal Proof of Evidence (CD 13.2), §§1.14-1.15

(2) Affordable Housing Cascade

18. Once again, the dispute between the Appellant and the Council as to the affordable housing cascade is a narrow, but vitally important one in order to ensure that affordable housing guaranteed through the permission is secured in the long-term.

19. Contrary to the evidence of Ms Fitzgerald, the cascade does not introduce a risk of *"the Council failing in their duty to secure adequate affordable housing"*[35], not least because the Council's failure to do so predates this appeal by decades. As Mr Stacey identifies, it does the precise opposite – it ensures that the 300 affordable homes secured through the permission <u>will remain affordable homes</u>, in the unlikely event that neither the Council nor an RP is prepared to take up the preferred tenure mix currently secured[36]. Discounted Market Sale housing is expressly recognised within national policy as a form of affordable housing[37]; Ms Fitzgerald's evidence appears to note that fact in passing[38], but give no further weight to it in the remainder of her analysis. She is therefore simply wrong to contend that the operation of the cascade would jeopardise compliance with either the Golden Rules or Policy CP4[39]. As Mr Stacey observes, it would do no more than *"help different people"*[40], a cohort itself identified within the 2024 LHNA as generating a need for 163 homes per annum[41].

20. There is a further, basic difficulty with the Council's case on the cascade issue, however – it focuses its fire entirely on a position which is expressly back-up and alternative in nature, and therefore starts from the wrong point. The Appellant's primary position has always been a tenure split consistent with the Council's evidence base. It is that upon which weight should be placed, not an alternative position which is not in any event likely to materialise[42].

21. The result is that, in the latest draft of the section 106 agreement, the Appellant has proposed a cascade mirroring precisely the draft appearing within the MHCLG draft

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[35] Liz Fitzgerald, Proof of Evidence, §6.32
[36] James Stacey, Rebuttal Proof of Evidence (CD 13.7), §3.2
[37] NPPF, Glossary (p.104)
[38] Liz Fitzgerald, Proof of Evidence, §6.15
[39] Liz Fitzgerald, Proof of Evidence, §§6.33-6.34
[40] James Stacey, Rebuttal Proof of Evidence, §2.19
[41] James Stacey, Rebuttal Proof of Evidence, §2.21
[42] James Stacey, Rebuttal Proof of Evidence, §3.1

identified above, save that the Appellant's draft in fact provides greater security as regards the long-term future of the affordable housing stock, by including DMS housing as the final stage of the cascade, as opposed to a payment in lieu. It is, against that background, genuinely difficult to see the basis upon which the Council continues to resist its inclusion.

(3) Education Contribution

22. As already identified, the Appellant has no difficulty whatsoever with the principle that appropriate contributions should be made to Hertfordshire County Council ("HCC") as regards education. It is to that end that contributions totalling over £6.3 million have already been agreed in respect of Primary and SEND education[43]. Indeed, the Appellant also accepts that a contribution towards Secondary education of some £1.5 million is adequately justified[44]. The question for the Inspector is simply whether HCC have correctly reflected their own evidence on capacity in seeking a further £2.8 million of secondary/post-16 contribution, up to a total of £4.3 million.

23. There is substantial common ground within that question, too. Even relying on the forecasts preferred by HCC over those taken from the Department for Education, although capacity is currently tight, there is surplus capacity of over 7% for two of the three years currently forecast during which the Scheme will actually be occupied[45]. Extending that forecast to include all five years over which it will be occupied, and splitting it between Years 7-11, there are 11 cohorts out of a total of 25 in which the surplus drops below 5%. The Appellant calculates its proposed figure on that basis, which itself assumes a static position in capacity post-2031/32, contrary to current trends which indicate a likely increase in capacity[46].

24. In response, HCC appears to rely upon (a) consented development which has not yet fed into the forecast demand, and (b) future, unconsented development, including as a result of the emerging local plan, which will eat into that surplus[47]. The Appellant's concerns with each are (a) that neither HCC nor the Council has actually identified

[43] Section 106 Statement of Common Ground, §§2.11, 2.13
[44] Matthew Kinghan, Proof of Evidence (CD 13.20), §7.7
[45] Matthew Kinghan, Proof of Evidence, §5.12
[46] Matthew Kinghan, Proof of Evidence, §5.20
[47] Matthew Kinghan, Proof of Evidence, §5.21 of Kinghan; Christopher Martin, Rebuttal Proof of Evidence (CD 12.28), §§3.2-3.7

and evidenced the consented schemes which are said to affect that forecast, and (b) this Scheme cannot reasonably be expected to mitigate impacts caused by other, future schemes, particularly where they will come forward through a local plan process that is so very far from being realised.

25. In those circumstances, the Appellant's submission, as Mr Kinghan will explain, is that the contribution sought has not been evidenced by HCC to be *"fairly and reasonably related in scale and kind to the development"*, under Regulation 122(2)(c).

(4) TfL Contribution

26. As with education, the Appellant has consistently made it clear both to TfL, and to others involved in the application, that it has no difficulty in securing an appropriate contribution towards step-free access at Croxley station, so long as such a contribution can be properly evidenced. The difficulty is that, despite the Appellant's extensive attempts to contact TfL to seek to obtain clarity as to the basis upon which the request has been calculated[48], no such clarity has been forthcoming. There are currently two major obstacles to including that contribution within the agreement.

27. First, there is no evidence at all before this inquiry that indicates the basis upon which TfL have reached a figure of £1.065 million as a reasonable and proportionate cost for this Scheme. TfL's most recent submission simply quotes *"approximately £25 million"* as the expected cost of the works[49], without providing any evidence as to how that figure has been reached, or any evidence to demonstrate why £1.065 million is a proportionate contribution of that overall figure to be borne by the Appellant. Indeed, it is very difficult to see how it can be – that same figure was quoted by TfL some time ago, based on an overall project cost of around £15 million[50]. The Inspector is therefore faced with two very different project costs, but no working-out for either.

28. Second, as Mr Parker identifies, a freedom of information request from June 2025, which has not been contradicted in any of TfL's later submissions, identified a long-list of 30 stations (to be whittled down to 15), under consideration for step-free

[48] James Parker, Proof of Evidence (CD 13.10), §§3.2.1-3.2.2, Appendix H2
[49] Letter of 13th August 2026
[50] James Parker, Proof of Evidence, Appendix H2 (PDF p.31)

improvements. Croxley station was conspicuously absent, even from that long-list[51]. TfL has never explained why that is so, or provided contrary evidence to demonstrate that the improvements for which the contribution is sought are even still proposed.

29. That being so, the reality is that the Inspector cannot have any confidence that the contribution sought by TfL is *"fairly and reasonably related in scale and kind to the development"*, as required by Regulation 122(2)(c).

Conclusion

30. The Inspector will, in due course, be invited to allow the appeal, and endorse the Appellant's suggested amendments to the section 106 agreement.

Christopher Young KC
Daniel Henderson
No5 Chambers
27th August 2026

[51] James Parker, Proof of Evidence, §§3.2.6-3.2.9 and Appendix H3