Richborough

Rebuttal - Planning

Land to North of Little Green Lane, Croxley Green

In respect of

Appeal Ref 6004972

LPA Reference Number 24/2073/OUT

On behalf of

Richborough

MNP-00124

Issue

04 August 2026

TETRA TECH

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1.0 Mortgagee in Possession Clause and CIL Regulation 122

1.1 My rebuttal deals with a succinct matter relating to the Mortgagee in Possession clause and CIL Regulation 122, in particular whether the Council's proposed 5-month moratorium period is necessary and fairly and reasonably related in scale and kind for the purposes of Regulation 122(2)(c). It should be read alongside the Rebuttal of Mr Richard St John Williams on the operation, market purpose and funding consequences of the Mortgagee Protection Clause ("MPC"). A signed letter dated 31 July 2026 from the National Housing Federation and the Property Finance Working Group is appended at Appendix A.

1.2 I respond briefly to paragraph 5.1 of Mr Pinnock's Proof of Evidence. Mr Pinnock states that the Statement of Common Ground does not record any dispute in relation to the need for affordable housing to be secured by planning obligation for the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010 or NPPF paragraph 58, and that there is no dispute about the need for the MPC to be effective.

1.3 That statement is correct only at a high level of generality. It should not be read as an agreement that every element of the Council's preferred MPC wording satisfies Regulation 122. In particular, it should not be read as an agreement that the Council's proposed 5-month moratorium period is necessary, directly related, or fairly and reasonably related in scale and kind. The parties' agreement to the inclusion of an MPC and the parties' dispute over the length of the moratorium period are separate issues.

1.4 The Appellant's position is clear. The affordable housing is to be secured by planning obligation. The Proposal will deliver 50% affordable housing, amounting to 300 affordable homes, and the affordable housing is an important component of the planning benefits and the Proposal's compliance with the Golden Rules. It is also accepted that an MPC is required to ensure that the affordable housing is capable of being funded, charged and transferred to a Registered Provider in a form which is commercially deliverable. However, that does not mean that the Council's preferred 5-month moratorium period is necessary or Regulation 122 compliant.

1.5 The signed Letter dated 31 July 2026 from the National Housing Federation and the Property Finance Working Group ("PFWG") (at Appendix A), is directly relevant to that distinction and to the market context addressed in the evidence of Mr Richard St John Williams. It explains that the PFWG is made up of key stakeholders operating in, and providing professional services to, the affordable housing sector, including borrower and lender legal advisers, valuers and those representing the borrower community. It was established to identify inconsistencies in property security transactions and promote a standardised approach.

1.6 The Letter confirms that a standard MPC was agreed by the PFWG in 2015 for use in relevant affordable housing documentation, including Section 106 Agreements, and that it has been adopted widely in the affordable housing sector. The model Affordable MPC appended to the letter includes a three-month period during which the mortgagee, chargee or receiver must use reasonable endeavours to complete a disposal of the affordable dwellings to another Registered Provider or to the Council before the assets may be disposed of free from the affordable housing provisions.

1.7 The Letter identifies timings as one of the fundamental requirements of an effective Affordable MPC. In particular, it states that a lender must have certainty as to the time period in which it must first try to preserve the property assets within the affordable housing sector, and that this period must not be excessive so that the ability of the lender to realise the secured assets quickly is not compromised.

1.8 The Letter explains that, where there is no mortgagee protection clause, or where a clause is deemed by a lender or valuer to be ineffective because it does not address the fundamental requirements of the Affordable MPC, the 'market value subject to tenancies' funding valuation basis will be unavailable and the value of the assets would be limited to the 'lower existing use value for social housing' basis. This is consistent with, and supports, the evidence of Mr St John Williams that the three-month moratorium period is the market standard and that departures from the standard wording can affect funding, valuation and Registered Provider appetite.

1.9 In my planning judgment, the 5-month moratorium period fails the Regulation 122 test. The planning purpose of the MPC is to strike a proportionate balance between preserving affordable housing within the affordable sector, where possible, and ensuring that lenders have sufficient certainty to fund Registered Providers. A reasonable moratorium period forms part of that balance. However, the Council's proposed 5-month period goes beyond what is necessary to make the development acceptable in planning terms.

1.10 A 3-month moratorium period would provide a defined opportunity for the Council, a Registered Provider or another appropriate body to secure the affected affordable dwellings within the affordable housing sector in the event of default. It would therefore meet the planning purpose of the MPC. The additional 2 months sought by the Council would provide a further period of protection in a distressed sale scenario, but the Council has not demonstrated that this additional period is necessary to make the development acceptable in planning terms.

1.11 The issue is not whether a longer moratorium period might provide the Council with a greater degree of comfort. Regulation 122 imposes a stricter test. The question is whether the 5-month period is necessary to make the development acceptable, and whether it is fairly and reasonably related in scale and kind. In my view it is not. A requirement which may be desirable from the Council's perspective is not, for that reason alone, necessary in planning terms.

1.12 The scale of affordable housing in this case reinforces that conclusion. The Proposal's affordable housing benefit depends on the delivery of 300 affordable homes. A moratorium period which materially reduces Registered Provider appetite, affects the funding assumptions on which Registered Providers rely, or increases the risk that the affordable housing cannot be transferred on the terms proposed, would undermine rather than secure the affordable housing benefit. A planning obligation which risks frustrating the delivery of the affordable housing package cannot rationally be said to be necessary to make the development acceptable.

1.13 The Council's position also risks conflating two different questions. The first is whether affordable housing should be secured through the Section 106 Agreement. It should. The second is whether the Council's preferred 5-month moratorium period is necessary and proportionate. It is not. The SoCG records agreement on the former. It does not record agreement on the latter.

1.14 This is important in the context of the planning balance. The very substantial weight (or 'substantial' by the LPA) afforded to affordable housing depends on the affordable housing being deliverable and secured in a form which is capable of being taken forward by the market. If the Council's preferred moratorium period creates a material risk that the affordable housing will be delayed, renegotiated, or not delivered in the form proposed, then it would reduce rather than enhance the planning benefit. That is the opposite of what a Regulation 122-compliant obligation should do.

1.15 I therefore conclude that the inclusion of an MPC is Regulation 122 compliant, but the Council's proposed 5-month moratorium period is not. The appropriate and proportionate form of obligation is an MPC with a 3-month moratorium period. That would secure the planning purpose of the clause, maintain the deliverability of the affordable housing, and avoid imposing an additional requirement which has not been demonstrated to be necessary, proportionate, or fairly and reasonably related in scale and kind.

Appendix A: National Housing Federation and the Property Finance Working Group signed letter

National Housing Federation
Property Finance Working Group

31 July 2026

Inspector George Baird
C/O Owen Weaver,
The Richborough Estates Partnership LLP,
Waterloo House,
Waterloo Street,
Birmingham,
B2 5TB

F.A.O: **Inspector Baird**

Re: PINS Ref: 6004972

This letter is issued in conjunction with and on behalf of the Property Finance Working Group (**PFWG**), which is constituted of various key stakeholders operating in and providing professional services to the affordable housing sector (including borrower and lender legal advisers, valuers and those representing the borrower community). The PFWG was established primarily to identify areas of inconsistency in property security transactions, with a view to achieving a standardised approach to the completion of property security and related due diligence.

A standard mortgagee protection clause was agreed by the PFWG in 2015, for use in all relevant documentation within the affordable housing sector including, but not limited to, Section 106 Agreements. A copy of that mortgagee protection clause (**Affordable MPC**) is set out below. The availability of the Affordable MPC has been publicised through the National Housing Federation and has been adopted widely in the affordable housing sector.

The intention of the Affordable MPC is to provide a template by which, if incorporated correctly into the relevant documentation, it will provide the lender (including a mortgagee acting on its behalf and other appointed parties) with a mechanism to sell the property assets on the open market, either to a housing association / Registered Provider (**RP**) or a non-regulated purchaser, free of any affordable housing restrictions. By doing so the affordable housing borrower is able to secure private finance at a higher level (known as the Market Value Subject to Tenancies or ‘MV-STT’ basis) than otherwise would be available should affordable housing obligations continue to apply. This facilitates greater delivery of affordable housing, enabling more people to access secure, affordable homes, reducing waiting lists, supporting thriving and inclusive communities, and providing the foundation for improved health, opportunity and economic growth.

Of particular note are the following fundamental requirements of the Affordable MPC:

- Beneficiaries – the Affordable MPC anticipates that different methods of enforcement of the lender’s security could be utilised and ensures that all relevant funding parties may benefit from the exclusion.

- Timings – a lender must have certainty as to the time period in which it must first try to preserve the property assets within the affordable housing sector and this must not be excessive, so that the ability of the lender to realise the secured assets quickly is not compromised.

- Consideration – a lender must not be forced to dispose of the property assets for less than the secured debt.

Where there is no mortgagee protection clause, or where this is incorporated but deemed by a lender/valuer to be ineffective (because it does not address the fundamental requirements), then the MV-STT funding valuation basis will be unavailable. The value of the property assets would then be limited to a lower Existing Use Value for Social Housing (or 'EUV-SH'). In that scenario the relative secured funding available would also be lower.

Registered Providers (RPs) need to leverage their property assets for affordable housing regulatory compliance and ongoing expenditure on health and safety standards, to pay for retrofitting, building safety, new development and net zero challenges. MV-STT valuations are therefore an important consideration for RPs as higher valuations can support increased borrowing against assets. Lenders in the affordable housing sector typically require assurance that mortgagee protection clauses will enable MV-STT valuations as part of their credit assessments, making the impact of the inclusion of the Affordable MPC a material consideration.

<u>Affordable MPC</u>

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*

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Signed on behalf of the
Property Finance Working Group

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Signed on behalf of the
National Housing Federation