LAND TO NORTH OF LITTLE GREEN LANE, CROXLEY GREEN
APPEAL
(APPEAL REFERENCE 6004972)

PROOF OF EVIDENCE ON BEHALF OF THREE RIVERS DISTRICT COUNCIL

ROY PINNOCK

DENTONS UK AND MIDDLE EAST LLP

CONTENTS

1 INTRODUCTION AND EXPERIENCE

1.1 I am a solicitor and Head of Planning at Dentons UK and Middle East LLP (where I have been a Partner since 2015).

1.2 I am instructed by Three Rivers District Council (**the Council**) to provide evidence in relation to the wording within the proposed Section 106 planning obligation relating to mortgagees of registered providers of social housing (**RPs**).

1.3 I hold a BSocSc in Geography and Planning and a MSc in Urban and Regional Studies from The University of Birmingham. I am also a Solicitor Advocate with Higher Rights of Audience. Before qualifying as a solicitor in 2006, I worked in local government and in built environment consultancy.

1.4 I advise local authorities, developers, receivers, government Ministers, RPs and investment funds in relation to planning and compulsory purchase matters. This includes advice on planning obligations relating to affordable housing controls and viability reviews.

1.5 Annexures to this proof are referred to as follows **[Annex number]**.

2 BACKGROUND

2.1 The Appellant's Position

2.1.1 The Statement of Common Ground (7 July 2026) notes that:

(a) 50% affordable housing is proposed (being 300 homes) ;

(b) the Appellant does not agree with the use of a 5-month moratorium period [within the mortgagee exclusion clause that forms part of the draft S106 agreement] (and seeks a 3-month period instead) [1].

2.2 I understand that this issue was first raised on 25 June 2026. No further information on the Appellant's position is available at the point of preparing this proof. I understand from the Core Documents list, however, that the Appellant will call witnesses to explain its case on this point and give evidence in relation to it.

[1] SoCG (3.2(c))

2.3 Mortgagee Exclusion Clauses

2.3.1 The role of a Mortgagee Exclusion Clause (**MEC**) is well-described as follows[2]:

> […] [it] *permits a mortgagee to dispose on the open market, free from affordable housing restrictions (often following a three-month process during which it must seek to dispose to another RP as affordable housing). An acceptable MEC can change the valuation basis of a property from EUV-SH to MV-ST.* […]

2.3.2 MV-STT refers to 'market value subject to tenancies' [3]. EUV-SH refers to existing use value – social housing [4].

2.3.3 An MEC does not prevent a mortgagee dealing with the property in the event of a distressed sale [5]. It simply establishes when, in the event of a distressed sale, the affordable housing obligations would cease to apply.

2.3.4 The purpose of a MEC is to strike an appropriate balance between:

(a) The planning purpose of preserving the affordable housing in perpetuity [6]; and

(b) The commercial need for certainty that in the event of default a lender will be able to recover the monies owing under a charge if it has not been possible to sell the property as affordable housing.

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[2] Excerpt from Addleshaw Goddard Affordable Housing A-Z website

[3] This is helpfully defined as follows on the Addleshaw Goddard Affordable Housing A-Z website:

Valuation methodology which determines the value of the properties based on a disposal of the portfolio with the existing tenants remaining in occupation under the existing tenancies. It generally gives a higher value than EUV-SH as it assumes properties could then be sold on the open market out of the social housing sector when the existing tenant vacates, or that rents could be increased to market rents. There must be no binding restrictions on use as affordable housing and various other criteria satisfied for this valuation to be achieved. [emphasis added]

[4] Again, this is helpfully defined as follows on the Addleshaw Goddard Affordable Housing A-Z website:

Valuation methodology specifically created for this sector based on the rental income achievable. It determines the value of properties based on their existing use value and on the assumption it is to remain as social housing – generally where there is a binding restriction on its use as social housing.

***Remember**: This usually gives a lower valuation than **MV-ST**.*

[5] i.e. where the Registered Provider who has borrowed against the affordable housing has defaulted in some way that allows the lender to exercise a power of sale

[6] In line with the NPPF Annex 2 Glossary definition of Affordable Housing (which states that affordable homes should remain affordable to future eligible households)

2.3.5 It does so by specifying a realistic, achievable, timeframe to arrange the transfer of the affected affordable dwellings in the event of a RP default. Once this 'moratorium period' is over, the dwellings can be disposed of without the affordability restrictions.

2.3.6 Subject to sight of the Appellant's case on this point, the issue for determination is likely in my view to be whether a 3-month period would be acceptable having regard to the purpose of the mortgagee protection provisions and the practical issues in the context of this scheme. The key question is ultimately whether the period is excessively short to properly achieve its purpose.

3 SCOPE OF EVIDENCE

3.1 I have been involved in distressed sales of properties and portfolios where there are planning issues to be addressed. I do not, however, supervise conveyancing matters. Nor do I advise RPs or their lenders on debt financing or deal structures.

3.2 I do not claim any expertise in valuation matters or in the regulatory framework for RPs.

4 CONTEXT

4.1 I have advised the Council in two cases where it has successfully resisted a 3-month moratorium period on appeal [7]. I also appeared for the Council at the recent Inquiry relating to the Called In determination of the Land East of Oxhey Lane, Carpenders Park (**Carpenders Park Call In**)[8].

4.2 The Appellant has not yet presented its case on why the moratorium period in the Section 106 obligation in this case should not be 5 months. I have nonetheless sought to set out the Council's position on what I understand to be the likely main issues, to assist the Inquiry and try to limit the scope of rebuttal evidence that is needed.

4.3 The Council has previously dealt with MEC issues in decided cases, including the conjoined appeals on the 17-49 Church Lane, Sarratt site (**Church Lane Decision**)[9]. In the Church Lane Decision, the Inspector allowed the appeal but upheld the Council's position on the MEC moratorium period.

4.4 In giving evidence in relation to the Carpenders Park Call In scheme, I have reviewed various emails from Registered Providers. I also presented background correspondence from the Council to the applicant in that case which addressed the Council's concerns in detail. In the

[7] The Church Lane Decision and **Leavesden Park** (APP/P1940/Q/17/3181213, 22 March 2018)

[8] APP/P1940/V/26/3378268

[9] Conjoined appeals APP/P1940/W/22/3311477 and APP/P1940/W/22/3311479 (3 May 2024)

interests of not burdening the Inquiry process with information that may be extraneous, having not seen the shape of the Appellant's case on this point, I have not annexed that material to this proof. I instead provide a level of detail consistent with the level of detail available at this stage on the Appellant's case. In this sense, I note that it may be necessary to refer to some of this material in rebuttal if required in light of the Appellant's evidence, in order to assist the Inquiry.

4.5 The Inspectors considering the Council's practical concerns to date have agreed that a 3-month period would create a real risk that the MEC protections would be ineffective:

(a) In dismissing the Leavesden Park appeal[10] the Inspector found that 3 months would not allow sufficient time for the process of disposing of the affordable housing stock to take place[11];

(b) In allowing the Church Lane appeal, the Inspector nonetheless decided that:

> *The Council has set out detailed reasons why a five month period would be necessary, and why three months would be too short.* […].
>
> *I find the Council's detailed submissions on this matter compelling and am satisfied that a five month period would be appropriate in this instance.*

4.6 I deal with the process assumed by the Council in its submissions to the Church Lane Inspector and its relevance in this case below (at 6.1.2 to 6.1.9).

5 KEY ISSUES

5.1 The SoCG does not record any dispute in relation to the need for the affordable housing to be secured by planning obligation for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010 or NPPF 58. Nor is there any dispute, as I understand it, about the need for the MEC to be effective for the purpose noted above.

5.2 The issue is therefore whether the length of the moratorium period strikes an appropriate balance between the planning purpose of preserving affordable housing in perpetuity and the commercial need for certainty that, in the event of default, a lender will be able to recover the monies owing under a charge.

[10] made by a Registered Provider under section 106B TCPA 1990 against a refusal by the Council to vary an MEC moratorium from 6 months to 3 months
[11] Leavesden Park DL[19]

5.3 Subject to sight of the Appellant's evidence on the MEC moratorium period, I note the following in relation to the broad proposition that an MEC period 'should' be no more than 3 months:

(a) My understanding is that no party suggests that lenders will not lend to RPs in relation to affordable housing stock *at the EUV-SH value of that stock* if the MEC moratorium period is longer than 3 months;

(b) I understand that it is commercially desirable for RPs to secure lending on affordable housing stock at MV-STT rather than EUV-SH values. I also understand that individual RPs may potentially choose to pursue opportunities for such higher gearing in preference for opportunities that only allow for a lower gearing. That is not the same as there being no prospect of investment by any RP in the 300 homes in thic case (and I note that Mr Ralton deals with the position locally in his proof of evidence in this sense);

(c) It is not clear why MV-STT valuation is *only* achievable with a moratorium period set at *no longer than* 3 months. It would make sense if the valuer had formed the view, or been advised, that such a period was realistically likely to be too short to effectively deal with the fully completed distressed sale transaction;

(d) The Council considers that adopting such a provision on the basis that it is dysfunctional, simply to achieve the commercially desirable outcome of greater debt gearing, is not appropriate.

6 RELATIVE RISKS

6.1 Practical Issues - Timescales

6.1.1 The Council's concern in this case is that there is a real risk that 3 months would be inadequate to complete the transfer of 300 affordable homes in the event of a distressed sale.

6.1.2 The Council explained its concerns in submissions relating to the Church Lane Decision and I include the summary timeline that it submitted for that purpose, at **[Annex 1]**. The timeline suggests that a distressed disposal could well take more than 3 months to complete from start to finish. I have marked in double underline and bold in Annex 1 the introductory text in the excerpt. It is clear in this text that the Council was approaching the timeline on the basis of steps it would need to either run or supervise.

6.1.3 I note that it is, in fact, most likely that a Receiver would be running the disposal process (rather than the Council). Nonetheless, substantially similar steps to those noted in Annex 1 would need to be undertaken by the mortgagee or Receiver in order to dispose of the affordable homes in the distressed sale scenario that the MEC covers.

6.1.4 I also understand that some form of regulatory oversight may precede a distressed disposal stage (i.e. including the exercise of the functions of the Regulator of Social Housing and/ or Housing Administrator). This could, in theory, result in paving of the way for some of the steps in Annex 1 in terms of searching for alternative RPs to take the 300 homes. That is not certain, though.

6.1.5 I note in this context that lenders themselves do not simply rely on the existence or potential operation of such a regulatory regime – they are sufficiently concerned to rely on the effective functioning of the MEC itself to protect them in the scenario of a distressed disposal. It is therefore appropriate to address the question I note earlier – whether the moratorium period is excessively short – *within* that scenario.

6.1.6 I am aware that the mortgagee or receiver is subject to a positive contractual obligation under a standard MEC to use reasonable endeavours to complete a disposal to another registered provider or to the Council within the moratorium period. I note, however, that if the moratorium period is simply too short to realistically complete the conveyancing transaction for the 300 affordable homes, the use of reasonable endeavours within that excessively short period does not cure the fundamental problem.

6.1.7 In this case, a distressed disposal within the scenario contemplated by the MEC would involve 300 affordable homes.

6.1.8 Although I am not a conveyancing expert, I know that conveyancing transactions can take longer than an idealised or quickest possible scenario. I am also aware that distressed disposals are not always straightforward.

6.1.9 Overall, the timeline in Annex 1 therefore looks to me like a reasonable cautious assessment which underlines the concern that 3 months is unlikely to be sufficient.

6.1.10 It is important to note that the Council's concern is not that it is theoretically impossible to conduct the full chain from event of default to disposal in 3 months in some cases, but that it is very risky to simply assume that is the case (particularly where there are 300 homes). Indeed, if the moratorium period is obviously too short it would make sense that it would "*change the valuation basis of a property from EUV-SH to MV-ST*" (as noted at 2.3.1 above) by baking in this position.

6.1.11 Affordable housing is relatively scarce and meant to be secured in perpetuity for NPPF purposes, subject to the proportionate protection of the mortgagee's speed of exit as noted at

2.3.4 above. At least some degree of caution is therefore justified when weighing risks and consequences of a moratorium period that is so short that it allows affordable homes to be valued at an open market value by, it is assumed, baking in the infeasibility of disposal within that period even for a smaller scheme.

6.2 Distress

6.2.1 It is important to note that MEC provisions are intended to operate in a scenario *where a distressed sale is taking place*. The effectiveness of the drafting can only logically be considered taking that scenario as a given.

6.2.2 The relative risk of such a scenario arising is a different matter. I am not an expert in RP borrowing or liquidity. Nonetheless, I note that this issue was considered relatively recently by the House of Commons Levelling Up, Housing and Communities Committee, which noted that [12]:

> *4.* […] *a small number of social housing providers have become or have come very close to being insolvent, by being unable to meet payments on loans (e.g. Ujima) or by having insufficient cash to cover their costs (e.g. Cosmopolitan). Both Ujima and Cosmopolitan housing associations were ultimately rescued by merging with other housing providers which prevented them from breaching the terms of their loans, protecting their tenants and properties, and keeping both in the social housing sector.*
>
> […]
>
> *153. Despite the fact that the sector as a whole has been able to demonstrate resilience under significant financial pressures, there is an increased chance some social housing providers may encounter serious financial difficulties, potentially becoming insolvent and unable to repay loans or pay bills.*

[12] House of Commons Levelling Up, Housing and Communities Committee *'The Finances and Sustainability of the Social Housing Sector'* Sixth Report of Session 2023–24

6.2.3 Overall, therefore:

(a) Querying whether an event of default in which the distressed sale scenario would be in play is 'that likely' seems to me to miss the point – the drafting is, after all, providing comfort to the mortgagee in a scenario where it has occurred [13];

(b) It cannot properly be said to be a 'non-issue' – it is a risk that the MEC provisions are by definition there to address.

6.3 Loss of Affordable Housing

6.3.1 The MEC provisions are used to strike a proportionate balance between:

(a) On the one hand, preventing a mortgagee from realising value from the asset for so long that it would be an impediment to lending;

(b) On the other hand, allowing the affordable housing to be too easily lost given the scarcity of this asset and the complexity of potentially placing it with another RP in the event of a distressed sale.

6.3.2 The Council's position on the length of the moratorium period in this case is driven by the number of affordable homes (300) that would need to be disposed of within a 3-month period.

6.3.3 The Council adopted a 3-month period in the case of the South Oxhey regeneration scheme in 2020. The reasons for doing so were noted in a Committee Report (**[Annex 2]**).

6.3.4 In short, by reference to section 2 of the report, it is clear that:

(a) The Council faced the potential loss of the RP from an ongoing regeneration scheme because it had adjusted its original pricing of the units based on how they could be charged (not because the units were rendered unfundable);

(b) The Council had intimate knowledge of the scheme and a contractual relationship with the delivery partner which was considered to help mitigate the identified concern regarding the shortness of the 3-month period.

[13] Which itself suggests that mortgagees do not exclude this scenario (and are in fact sufficiently concerned about it to want the protection)

7 AFFIRMATION

7.1 Insofar as the facts stated in this proof of evidence are within my own knowledge, I have made clear what they are and I believe them to be true. The opinions expressed represent my true and complete professional opinion.

7.2 I understand that my duty as a witness is to the Inquiry/ Inspector and that my role is to assist the Inquiry/ Inspector on matters within the scope of my expertise. I also understand that my duty as a witness overrides any duty to those instructing me. I have complied with it in giving my evidence impartially and objectively (and I will continue to comply with that duty as required).

7.3 I am not instructed under any conditional fee arrangement and I do not have a conflict of interest in relation to the application.

7.4 This proof of evidence has not been produced with the use of AI technology.

Roy Pinnock
Partner, Dentons UK and Middle East LLP

21 July 2026

Annex 1 – The Council's Timeframe Submissions (Church Lane Decision)

(excerpt)

Why is 5 months necessary, why would 3 months render the MIP clause nugatory?

In the event of a distressed sale, **the onus will be on the Council to facilitate the transfer of the affordable dwellings to a new RP. The process the Council would be required to undertake would be as follows:**

1) Market the 44/48 dwellings. This would first require preparation of Particulars of Sale, detailing each dwelling- its size, type, rental figure, tenancy agreement details and where a dwelling was shared ownership dwelling, the equity in the dwelling owned by each occupant, the details of the shared ownership lease. All tender documents would also need to be prepared. **It is estimated that would take at least one month to undertake.**

2) RPs submit new bids. Following the initial marketing of the properties, the Council would need to give a reasonable period of time for interested parties to put their detailed bids together. Before doing so it would expected that on a scheme of this size, bidders may need to ensure that in principle funding would be available, were its bid to be successful. On a scheme of this size, **it is likely that the Council would need to give potential bidders 6 – 8 weeks to put together and submit their bids.**

3) Evaluating bids and recommending preferred bidder. Time would need to be allowed for the Council to receive, consider and evaluate (the input of external advisers- surveyors/valuers would be necessary due to the lack of in-house resources) all bids of which there could be many. **That process would be likely to take 3-4 weeks** (and assumes that officers had during the above process managed to obtain delegated authority to make the necessary recommendation to the lender without recourse to a committee which could not be guaranteed)

4) Contract stage. Deal with the contract stage including answering/facilitating all due diligence enquiries i.e. responding to all pre contract enquiries (including highways, drainage, environmental issues), deducing title and answering all requisitions on title, deal with all enquiries from third parties eg. the buyers lender(s). **4- 6 weeks**

5) Post contract stage. Exchange contracts and deal with all post exchange matters including drafting and agreeing all documentation and dealing with completion. Time required: **2-3 weeks.**

LIKELY TIME REQUIRED: 19 -23 weeks (5-6 months)

It is clear that 3 months would on any view be too short a period to secure the continuing future of the dwellings as affordable housing in the event of a distressed sale.

Annex 2 - South Oxhey Regeneration Committee Report

19/2133/FUL - Demolition of existing buildings and provision of 345 residential units (Use Class C3) in 2 buildings ranging from 3-7 storeys including a 1 and 2 storey podium; 621sqm of flexible commercial floor space (Use Class A1-A5, B1, D1/D2); 1,754sqm retail floorspace (Use Class A1) podium and surface level car and cycle parking; landscaping; and associated works at LAND AT SOUTH OXHEY, SOUTH OXHEY CENTRAL, HERTFORDSHIRE (DCES)

ADDENDUM REPORT

Parish: Watford Rural	Ward: South Oxhey
Expiry of Statutory Period: 25.09.2020 (Agreed extension)	Case Officer: Claire Westwood

Recommendation: Approval subject to the Conditions and Informatives as set out in Appendix A, with conditions C3 (Affordable Housing) and C38 (Bats) and Informative 9 (Affordable Housing – Definitions) amended as set out below and subject to the completion of a S106 Agreement.

Reason for consideration by the Committee: Council interest in the land.

1 Background

1.1 A preliminary report was brought to the Planning Committee on 23 January 2020 where the application was discussed and clarification was sought on a number of aspects.

1.2 The report and analysis was updated and a full report was returned to the Planning Committee on 19 March 2020 where Members resolved to grant planning permission subject to conditions and the completion of a S106 Agreement.

1.3 A copy of the officer's report to the 19 March 2020 Planning Committee is attached as **Appendix A**.

1.4 At the 19 March 2020 Planning Committee meeting officers reported a verbal update to the wording of condition C38 (Bats) which was agreed by Members as part of the resolution to grant.

1.5 Condition 38 (Bats) as approved reads:

A dusk presence/absence bat survey of the low-risk roost features identified in Table 1 of the Bat report should be undertaken prior to demolition should this take place between the months of April to September inclusive. The survey must be undertaken by suitably qualified ecologists, in accordance with Bat Conservation Trust's Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd Edition) recommendations for structures with low risk of supporting roosting bats; advice provided in the survey must be followed.

Reason: To maintain wildlife habitat and to meet the requirements of Policies CP1, CP9 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

1.6 Since the 19 March 2020 Planning Committee meeting, discussions have been ongoing to secure the completion of the S106 Agreement. It has come to light during these discussions that the appointed Affordable Housing Provider for phases 1, 2 and 3 of the scheme Homegroup Limited is unwilling to purchase the affordable dwellings which will be secured as part of the grant of this planning permission without an alteration to the mortgagee in possession element of the affordable housing condition whereby the moratorium period is reduced from 5 months to 3. For the reasons set out below, without this amendment officers are satisfied that there is a real risk that the planning permission will not be implemented, resulting in a reversion to the original 2016 planning permission and the consequent loss of the provision of an additional 145 dwellings of which 65 will be provided as affordable housing.

1.7 This addendum report deals only with the proposed amendment to Condition C3 (Affordable Housing). All other aspects of the development are as previously considered and approved by Members on 19 March 2020.

2 Analysis

2.1 Affordable Housing Policy

2.1.1 The original 2016 permission was subject to an affordable housing condition which contained a "Mortgagee in Possession" (MIP) clause. Under this, a lender to the Affordable Housing Provider (AHP) would in the event of a default on the mortgage over the affordable dwellings and a decision by the bank to step in and sell the properties to realise its security, have 3 months to try to sell the affordable housing (AH) as affordable housing to a new AHP. If a sale cannot be concluded in that period, the AHP is able to dispose of the AH on the open market, free of any obligation they remain as affordable housing.

2.1.2 In recent years, the Council's approach to these risks has become more sophisticated, given that 3 months is very likely in practice to be inadequate to deal with the re-sale of the affordable housing in the event of a default. This gives rise to the risk that in the event of AHP default and step in by the lender, the AH stock would be lost simply because the period was too short. The inadequacy of the 3 month period in this sense appears to be recognised more widely, because RICS registered valuers are willing to increase the value of the affordable units for the purposes of lending against them to a full market value (subject to tenancy) where the 3 month period is used (i.e. treating them as being free of any affordable housing restrictions in the event of a step in by the lender without having to await the outcome of the process during the 3 month period).

2.1.3 The current MIP clause as set out in condition C3 ensures that should the AHP get into financial difficulties, the Council would be provided with a 5 month period to find and arrange the transfer of the affected affordable dwellings to a new Affordable Housing Provider. In this scheme, there are 65 affordable dwellings that would be affected in that scenario.

2.1.4 The 5-month period is considered necessary in the event of default, to provide a reasonable period of time for the Council to arrange and secure the transfer of the dwellings, and is proportionate to the overall importance of preserving the AH stock where reasonably possible, thus giving effect to national planning policy on the use of planning conditions

2.1.5 At the time of the drafting of the Committee Report it would appear that Homegroup were unaware of the change to the MIP clause from that as contained in the 2016 planning permission and assumed that the 3 month MIP clause used in 2016 would be repeated. Homegroup seek the application of the 3 month period.

2.1.6 This short period would mean that in the event of a mortgage default there would be a real risk that the dwellings would be lost as affordable housing. This would be contrary to national planning policy.

2.1.7 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the Council determines applications in accordance with the adopted development plan unless material considerations indicate otherwise. The Annexe to the NPPF which advises that affordable housing should (subject to certain enshrined rights) be provided in perpetuity is a material consideration. The use of MIP clauses is an exception which is commonly adopted. The Council's approach to the detail of these provisions has evolved since 2016 given the balance between the risk and other factors noted above. However officers consider that there are exceptional factors in this case which justify the continued application of the 3 month period in this case:

- The scheme is a multi-phase long term project where the 3 month period was used at the outset. The applicant Countryside Properties UK Limited and Homegroup are established development partners in respect of the whole of the South Oxhey regeneration scheme, having entered into a Development Agreement to purchase and develop the site in 2015. Homegroup is the AHP who will own and manage all of the affordable dwellings on the Site: both those 96 dwellings provided as part of phases 1 and 2 and the additional 65 dwellings to be provided as part of the proposed planning application. Additionally it is a development partner in respect of the open market housing to be provided pursuant to the current planning application.

- Homegroup have indicated that the price agreed to be paid for the affordable housing (which was renegotiated and agreed in [early] 2020) was based on an assumption that the MIP clause which would be imposed as part of the grant of this planning permission, would reflect the 3 month 2016 MIP clause. If the 5 month MIP clause were to be imposed, Homegroup would be contractually free to walk away from the currently proposed phase 3 scheme.

Officers are mindful of the fact that seeking and appointing a new AHP as a result of such disruption would be likely to delay the delivery of this element of the scheme which involves a substantial contribution of affordable housing and new market homes (80 open market and 65 affordable dwellings) in the context of the Council's shortfall in 5 year housing land supply and pressing need for affordable housing.

Countryside have also raised concerns with regard to the potential detrimental effect on the consistency and quality of management of the development were a new Affordable Housing Provider to be found willing to purchase the affordable housing. They explain that the project objective of Countryside and Homegroup's joint submission to the Council was to provide a consistent joined up housing and neighbourhood management solution with a single Affordable Housing Provider owning and managing all of the affordable housing to be provided on the Site.

2.1.8 On balance, officers therefore consider that the most appropriate balance of risk and benefit in this case lies in continuity with the arrangements imposed on the wider scheme in 2016.

2.1.9 Whilst the 3 month MIP clause is accepted, other amendments to the condition such as the inclusion of 'and costs and expenses' at D (i) are not agreed. Such costs and expenses, the amounts of which are unknown and uncapped, could in the event of a default be significant and would further undermine the efficacy of the MIP Clause. The Law Society's model S106 which was prepared in conjunction with the Council of Mortgage Lenders and which contains standard MIP clauses does not permit the passing on of such costs and expenses to a new AHP in the event of a distressed sale In essence, it would not be appropriate to expect any new Affordable Housing Provider to pay these additional costs.

3 Recommendation

3.1 That PLANNING PERMISSION BE GRANTED subject to the Conditions and Informatives as set out in Appendix A, with Conditions C3 (Affordable Housing) and C38 (Bats) and Informative 9 (Affordable Housing – Definitions) amended as set out below and subject to the completion of a S106 Agreement.

C3 Affordable Housing

No development shall take place until a scheme for the provision of sixty five dwellings to be constructed on the site pursuant to the planning permission as Affordable

Housing has been submitted to and approved in writing by the Local Planning Authority. The Affordable Housing shall be provided in accordance with the approved scheme. The scheme shall include:

i. The nine x one-bed two person units, five x two-bed three person units, fourteen x two-bed four person units and five x three-bed five person units identified in the table below which shall be constructed on the site and provided as Affordable Rented Dwellings.

ii. The twenty one x one-bed two person units, six x two-bed three person units and five x two-bed four person units identified in the tables below which shall be constructed on the site and provided as Shared Ownership Dwellings.

Block K (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01 and SOX-BPTW-02-05-DR-A-1065 C01)

	1B2P	2B3P	2B4P	3B5P
Affordable Rent	K2.05, K2.06, K2.07, K3.05, K3.07, K4.05, K4.07, K5.05, K5.07,	K0.01, K0.02, K3.06, K4.06, K5.06,	K1.01, K1.02, K2.01, K2.02, K2.04, K3.01, K3.02, K3.04, K4.01, K4.02, K4.04, K5.01, K5.02, K5.04,	K1.03, K2.03, K3.03, K4.03, K5.03,

Block L (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01 and SOX-BPTW-02-05-DR-A-1065 C01)

	1B2P	2B3P	2B4P	3B5P
Shared Ownership	L1.01, L1.02, L1.04, L2.01, L2.02, L2.03, L2.04, L2.06, L3.01, L3.02, L3.04, L3.06, L4.01, L4.02 L4.04, L4.06, L5.01, L5.02, L5.04, L5.06,	L0.01 L3.03, L4.03, L5.03,	L1.03, L2.05, L3.05, L4.05, L5.05,	

Block U (Plan references SOX-BPTW-02-00-DR-A-1060 C01, SOX-BPTW-02-

01-DR-A-1061 C01, SOX-BPTW-02-02-DR-A-1062 C01, SOX-BPTW-02-03-DR-A-1063 C01, SOX-BPTW-02-04-DR-A-1064 C01, SOX-BPTW-02-05-DR-A-1065 C01 and SOX-BPTW-02-06-DR-A-1066 C01)

	1B2P	2B3P	2B4P	3B5P
Shared Ownership	U3.07	U3.08, U3.13		

iii. the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing;
iv. the arrangements for the transfer of the Affordable Housing to an Affordable Housing Provider or the arrangements for the management of the Affordable Housing if those dwellings are not to be transferred to a Affordable Housing Provider;
v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing; and
vi. the occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced.
vii. the timing of the completion of a Nominations Agreement to be entered into formalising the details to be agreed in respect of paragraphs (iv) and (v) above (in any event that Nominations Agreement to be completed prior to first Occupation of the Affordable Housing).
viii. where public subsidy or grant monies are used, the arrangements for the use of any Net Proceeds following the sale of an interest in any of the Affordable Housing (in accordance where applicable with Homes England guidance).

The Affordable Housing shall be provided in accordance with the approved scheme. The dwellings constructed shall not be used for any other purpose than as Affordable Housing in accordance with that approved scheme, subject to:

(A) any rights to acquire pursuant to the Housing Act 1996 or any equivalent statutory provision for the time being in force;
(B) any right to buy pursuant to the Housing Act 1985 or any equivalent statutory provision for the time being in force;
(C) where a tenant of a Shared Ownership Dwelling granted a Shared Ownership Lease has purchased the remaining shares so that the tenant owns the entire Shared Ownership Dwelling).
(D) the restriction upon the use and disposal of the Affordable Housing shall cease to apply to the whole or any part of an Affordable Dwelling (hereafter referred to as the ‘Affected Affordable Dwelling’) where that whole or part is transferred or leased, pursuant to an event of default by any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee, or by any receiver or manager (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 Affected Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee PROVIDED THAT:
    (i) such mortgagee or chargee or Receive shall first give written notice to the Council of its intention to dispose of the Affected Affordable Dwelling 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 Affected Affordable Dwelling to another registered provided 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 and interest; and
    (ii) if such disposal has not been completed within the three month period, the

mortgagee, chargee or Receiver shall be entitled to dispose of the Affected Affordable Dwelling free from the Affordable Housing provisions which provisions shall determine absolutely.

Reason: This is a pre commencement condition to meet local housing need within the Three Rivers district and to comply with Policies CP1, CP2, CP3 and CP4 of the Core Strategy (adopted October 2011) and the Affordable Housing SPD (approved July 2011).

C38 Bats

Demolition should take place outside the active bat season. If demolition takes place in May 2020 as planned or between the months of April to September inclusive, the destruction of the potential roost features identified in Table 1 of the Bat report should proceed only under the supervision of a suitably qualified, experienced ecologist. Should evidence of bats be found, work must cease immediately.

Reason: To maintain wildlife habitat and to meet the requirements of Policies CP1, CP9 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

I9 Affordable Housing – Definitions:

The following terms (and those related to them) referred to at Condition C3 shall be defined as set out below:

Affordable Housing means Affordable Rented Dwellings and Shared Ownership Dwellings meeting Scheme Design and Quality Standards at costs below those associated with open market housing and which is available to, affordable by and occupied only by those in Housing Need.

Affordable Rented Dwellings means a dwelling provided through an Affordable Housing Provider let to households who are in Housing Need subject to rent controls that require a rent that does not exceed the South West Herts Local Housing Allowance (including any Reasonable Service Charge).

Affordable Housing Provider means a registered provider registered with the Homes England (HE) or other body registered with the HE under the relevant Housing Act or other body approved by the HE to receive social housing Grant such Affordable Housing Provider in any event to be approved by the Council.

Choice Based Lettings Scheme means the system which is used by TRDC which enables properties to be let to applicants.

Housing Allocations Policy is the Council's policy which determines the Council's priorities and procedures when allocating accommodation in accordance with the requirements of Section 167 of the Housing Act 1996.

Dwelling means a residential unit comprised in the development.

Homes England (HE) means the agency of that name established by the Government (pursuant to the Housing and Regeneration Act 2008) which exercises the function of the former Housing Corporation in relation to financial assistance for new affordable homes (or any successor body).

Housing Need means persons who are assessed by the Council as being unable to resolve their housing needs in the private sector market because of the relationship between housing costs and incomes in accordance with the Choice Based Lettings Scheme.

Market Housing means those dwellings constructed on the site pursuant to the planning permission which shall not be Provided as Affordable Housing.

Net Proceeds means any receipts or consideration received by a Affordable Housing Provider from the sale of an interest in any of the Affordable Housing following its initial occupation after deduction of the Affordable Housing Provider's reasonable evidenced costs of acquisition, construction and sale of the relevant affordable dwelling and the deduction of any Grant repayable.

Nominations Agreement means a contract to be entered into between the Council and the owner of the Affordable Housing whereby the Council shall have 100% nomination rights in respect of the Affordable Housing on first Occupation and 75% thereafter on re-lets to enable the Council to nominate occupiers. It shall also secure the prioritisation of Shared Ownership Dwellings to persons who are TRDC residents (have resided in the District for 5 years) or who have a local connection (as per the TRDC Housing Allocations Policy).

Open Market Value means the value confirmed by a certificate (from a professionally qualified valuer and produced in accordance, where applicable, with the Homes and Communities Agency Capital Funding Guide or successor requirements) that the relevant interest in the dwelling would fetch if sold on the open market by a willing vendor to a willing purchaser

Provided means practically completed, ready for first occupation, fully serviced and subject to a contract with an Affordable Housing Provider for the acquisition of the freehold or no less than a 125 year leasehold interest.

Reasonable Service Charge means a sum that covers the contribution requested from time to time for those services and facilities which are of a nature and to a standard reasonably required in connection with and which directly benefit the relevant Affordable Housing, such sum to be set at a fair and reasonable proportion of the costs relating to the services provided.

Scheme Design and Quality Standards means standards in relation to the internal environment sustainability and external environment of Affordable Housing as set out in the Housing Corporation's document entitled 'Design & Quality Standards 2007' or such other replacement design standards as may be issued from time to time.

Shared Ownership Dwellings means Affordable Housing owned and managed by an Affordable Housing Provider sold subject to a Shared Ownership Lease
Shared Ownership Lease means a lease substantially in the form approved or published by the HCA whereby:
(a) the initial share sold to the leaseholder
i) is a minimum of 25% (twenty five per cent) and a maximum of 75% (seventy five per cent) of the total equity in the unit; and
ii) is sold for a premium equal to the corresponding percentage of the Open Market Value of the property; and
b) the annual rent:
i) does not initially exceed 2.75% (two point seven five per cent) of the full Open Market Value (assessed in accordance with the HCA's Capital Funding Guide) of the

Registered Providers retained share of the equity in the relevant Shared Ownership Dwelling
ii) is not at a level which is in conflict with any applicable Homes and Communities Agency successor restrictions relating to charges payable by the tenant; and
c) the tenant:
i) pays no more than a Reasonable Service Charge (where applicable) and
ii) may in successive tranches purchase the remainder of the equity in the dwelling