REBUTTAL PROOF OF EVIDENCE OF RICHARD ST JOHN WILLIAMS IN SUPPORT OF AN APPLICATION SUBMITTED TO THREE RIVERS DISTRICT COUNCIL, ON BEHALF OF THE RICHBOROUGH ESTATES PARTNERSHIP LLP, FOR OUTLINE PLANNING PERMISSION FOR THE PROPOSED DEVELOPMENT OF LAND TO THE NORTH OF LITTLE GREEN LANE, CROXLEY GREEN, WD3 3SP

PINS APPEAL REF: 6004972

Background

1 I have been asked by The Richborough Estates Partnership LLP (the **Appellant**) to provide this rebuttal proof of evidence to respond to various points raised by Mr Pinnock in his Proof of Evidence dated 21st July 2026.

2 Mr Pinnock's proof of evidence was provided on behalf of Three Rivers District Council (the **Council**) in respect of wording within the proposed section 106 planning obligations matters relating specifically to the mortgagee exclusion clause (the **MEC**).

3 I do not respond to each and every point raised by Mr Pinnock. If I do not respond to a point in this Rebuttal, it should not be taken as my acceptance of it and this rebuttal is not intended to be exhaustive. Instead, I have identified certain points of disagreement in this rebuttal, which I hope may be of assistance to the Inquiry, especially if covered in writing in this Rebuttal ahead of any oral evidence being given.

4 For the avoidance of doubt, I continue to rely upon my main Proof of Evidence.

5 By way of additional background:

(a) Like Mr Pinnock, I appeared at the recent Inquiry relating to the Called In Determination of Land East of Oxhey Lane, Carpenders Park;

(b) In that matter I appeared for Burlington Developments London Limited;

(c) In giving evidence in relation to the Carpenders Park Call in scheme, I reviewed various emails from Registred Providers in respect of that scheme;

(d) I did not provide evidence at the conjoined appeals on the 17-49 Church Lane, Sharratt site;

(e) when I prepared my original proof of evidence, my analysis was based on the authorities then available to me. On 21st July 2026, the Court of Appeal handed down its judgment in Westminster City Council v Gems House Residences Chiltern Street Ltd [2026] EWHC Civ 937 (21 July 2026), which is directly relevant to the issues considered in my Proof of Evidence. The judgment was issued on the same day as both Mr Pinnock's and my Proofs of Evidence were submitted, and I did not have sight of it, nor any commentary upon it, prior to finalising my earlier Proof of Evidence; and

(f) although neither Mr Pinnock nor I referred in our original Proofs of Evidence to the earlier High Court decision in Westminster City Council v Gems House Residences Chiltern Street Ltd [2025] EWHC 1789 (Ch) (22 July 2025), I have since reviewed the Court of Appeal's judgment and its reasoning. I therefore refer to that judgment in this rebuttal, to ensure that my evidence reflects the current position in law and to provide the Inspector with a complete and accurate legal context for the matters in dispute.

6 I do not claim any expertise in valuation matters, am not a qualified planning consultant and my areas of legal expertise are focussed on those described in paragraphs 6 and 7 of my Proof of Evidence. I do not hold myself out to be a lawyer with planning, real estate or conveyancing expertise.

Executive summary

7 The following is an executive summary of the key points made in this rebuttal:

(a) **Purpose of the mortgagee exclusion clause**. Notwithstanding the differences in expertise and professional background between Mr Pinnock and myself, we both recognise the inherent tension within section 106 agreements between the opposing interests of the RP's lending bank and the local planning authority. As recognised in the Westminster City Council case, the primary purpose of the MEC is to encourage sufficient commercial lending for registered providers to acquire affordable housing, rather than to protect affordable housing in perpetuity. It is necessary to keep this primary purpose at the forefront of one's mind when assessing the appropriate balance between these competing priorities and in considering the terms of the MEC, including the duration of the moratorium period.

(b) **The role of the Regulatory Framework**. Mr Pinnock expressly disclaims expertise in the regulatory framework for RPs, yet nevertheless advances arguments at paragraphs 6.1 (particularly, 6.1.4 and 6.1.5) and 6.2 of his Proof of Evidence which are directly concerned with the operation and relevance of that framework. As set out in detail in my Proof of Evidence, the MEC is a mechanism of last resort which would only fall to be considered after the exhaustion of a comprehensive hierarchy of regulatory and statutory protections administered by the RSH, including ongoing regulatory oversight, informal intervention tools, the statutory moratorium under section 145 of the HRA 2008, and the housing administration regime under the HPA 2016. No housing administration order has ever been made, and there are no known cases in which a MEC has been triggered on account of a RP becoming insolvent. Mr Pinnock's suggestion that the regulatory framework may or may not assist in preparing the ground for a distressed disposal understates the extent to which the statutory regime is specifically designed to achieve precisely that outcome.

(c) **The assurance drawn by lenders, rating agencies and third parties from the Regulatory Framework and the assessment of risk**. Mr Pinnock's argument at paragraph 6.1.5 and, more generally, at paragraph 6.2 of his Proof of Evidence — that lenders' insistence upon the MEC demonstrates that the moratorium period should be assessed distinctly from the Regulatory Framework proceeds from a fundamental misunderstanding.

  (i) Mortgagees require the MEC not because they lack confidence in the Regulatory Framework, but because RPs and their lenders are not parties to the relevant originating section 106 agreement and the resulting MEC then protects these non-parties from being bound by obligations they never contracted to accept and which, if accepted, would prevent the intended primary purpose of the MEC through restricting the mortgagee’s ability to sell free;

  (ii) The Regulatory Framework is the very foundation upon which the sector's access to approximately £138.1 billion of private finance has been built.

  (iii) The RSH's own written evidence to the House of Lords Industry and Regulators Committee confirms that the strength of the regulatory framework is key for investor confidence, and that credit rating agencies take account of the regulatory framework in their credit ratings of PRPs.

  (iv) The importance and effectiveness of the Regulatory Framework has also been recognised by the Courts in the Westminster City Council case, in which HHJ Hodge KC referred to the observations in the article "Safe as Houses? Insolvency in the social housing sector" published by Nicholas Levy, a partner at Trowers & Hamlins LLP in October 2024 (see Appendix 4) - that the sector has historically been very stable and that the variety of tools available to the RSH mitigates the risk of financial adversity. Of note is the article's observation that, notwithstanding the housing administration regime having been in place since the HPA 2016 came into force, there has not been a single housing administration order made, reflecting the stability of the sector and the effectiveness of the RSH's regulatory tools.

(v) These points are directly relevant to Mr Pinnock's reliance at section 6.2 of his Proof of Evidence upon the House of Commons Levelling Up, Housing and Communities Committee report in support of his contention that the risk of RP default "cannot properly be said to be a 'non-issue'". The credit rating agency evidence — drawn from S&P Global Ratings, Moody's Investors Service and Fitch Ratings (see Appendicies 6, 7, 8 and 9), each of which post-dates the House of Commons Levelling Up, Housing and Communities Committee report — consistently reflects the agencies' assessment that the combination of the regulatory framework, the RSH's intervention powers and the expectation of government support renders the risk of a RP default extremely remote. The LUHC Committee's report, and the historical examples of RP financial distress it cites, must be assessed in that context.

(d) **Standard approaches to moratorium period.**

(i) Mr Pinnock places reliance upon the Church Lane Decision, in which the Inspector upheld the Council's position on the moratorium period and concluded that a five-month period would be appropriate.

(ii) However, the weight to be attached to that decision is limited: the Inspector did not have the benefit of the body of evidence now before this Inquiry, including the evidence of Mr Baird (who sets out nineteen examples of section 106 agreements concluded within the last eighteen months, each containing a moratorium period of three months or less), the evidence of Mr Sutcliffe (who confirms that a three-month moratorium period is the established industry standard), the evidence of Mr Bullivent (whose Proof of Evidence sets out the results of two engagement exercises with RPs operating within the Council's area, in which the overwhelming majority of respondents confirmed that a three-month moratorium period is the industry standard and cited the Council's five-month moratorium period as a significant barrier to engagement, and whose Appendix 4 identifies a number of local planning authorities in the South East of England that have accepted a three-month moratorium period in mortgagee exclusion clauses for schemes of over 50 units within the last 24 months), and my own Proof of Evidence (which sets out in detail the standard mortgagee exclusion clauses published by the NHF's PFWG and the GLA, both of which specify a three-month moratorium period).

(iii) The three-month moratorium period can be traced back at least to the Law Society's model section 106 agreement of 2006, prepared in conjunction with the DCLG and the Council of Mortgage Lenders. Mr Pinnock has adduced no evidence to demonstrate that a three-month moratorium period is not the standard approach.

(e) **The South Oxhey precedent**. The Council's attempt to distinguish the South Oxhey regeneration scheme — in which it accepted a three-month moratorium period in respect of 65 affordable homes — on the basis of its familiarity with the initial registered provider does not withstand scrutiny.

(i) The factors relied upon by the Council in its Committee Report — namely, its existing contractual relationship with the Home Group and its intimate knowledge of the scheme — are relevant to the Council's confidence in securing the Home Group's participation in the initial delivery of the affordable housing.

(ii) Those factors are not relevant to the operation of the MEC, which is concerned with an entirely different scenario: the consequences of the Home Group (or any successor RP) experiencing significant financial difficulties such that a mortgagee is compelled to enforce its security — a scenario which, by definition, presupposes that the Regulatory Framework has failed to prevent the RP's default and that the initial RP's involvement has come to an end.

(iii) The identity of the initial RP, and the Council's prior relationship with it, are wholly irrelevant to the question of whether a mortgagee can, using reasonable endeavours, can procure a successor RP to acquire the affordable housing units within the moratorium period.

(iv) It is therefore difficult to understand the Council's rationale as to why it is willing to accept three months in some instances but not others.

Documents referred to in this proof of evidence

8 In addition to the documents referred to in my Proof of Evidence, the following documents are referred to in this Rebuttal:

(a) Westminster City Council v Gems House Residences Chiltern Street Ltd [2025] EWHC 1789 (Ch) (22 July 2025) (Appendix 1);

(b) Westminster City Council v Gems House Residences Chiltern Street Ltd [2026] EWHC Civ 937 (21 July 2026) (Appendix 2);

(c) Inside Housing article entitled “Security Blanket” dated 15th August 2008 (Appendix 3);

(d) Article entitled “Safe as Houses? Insolvency in the social housing sector”, authored by Nicholas Levy, partner at Trowers & Hamlins LLP dated 1st October 2024 (Appendix 4);

(e) RSH’s written evidence to the House of Lords Industry and Regulators Committee Inquiry on regulators and growth (dated 19 January 2026) (Appendix 5);

(f) S&P Global Rating dated 5th November 2025 relating to [RP1] (Appendix 6);

(g) Moody’s Rating dated 16th February 2026 relating to [RP1] (Appendix 7);

(h) Fitch’s Rating dated 17th December 2025 relating to [RP1] (Appendix 8); and

(i) S&P Global Rating dated 13th August 2025 relating to [RP2] (Appendix 9).

Rebuttal

The inherent tension within section 106 agreements and the primary purpose of the mortgagee exclusion clause

9 Notwithstanding the differences in expertise and professional background between Mr Pinnock and myself, we both recognise in our Proofs of Evidence the inherent tension within s106 agreements and, in particular, Mortgage Exclusion Clauses between the opposing interests of the RP's lending bank and the local planning authority (see paragraph 42 of my Proof of Evidence and section 2.3 of Mr Pinnock's Proof of Evidence).

10 With regard to this:

(a) My understanding is that the overall aim of affordable housing obligations in s106 agreements is to secure the provision of affordable housing on-site and its maintenance as affordable housing for successive occupants in perpetuity in accordance with planning policies, whereas the MEC reflects a different competing objective.

(b) As recognised in the Westminster City Council case (see Appendicies 1 and 2), this tension revolves around the preference of any lending bank for an unqualified exclusion clause enabling the bank to recover money lent by realising security for the best possible value without delay, whilst the preference of any local planning authority is for no exclusion clause at all, to ensure that affordable housing stock is preserved.

(c) As regards these two competing purposes, the Westminster City Council case confirms that the primary purpose of the mortgagee exclusion clause in section 106 agreements is to encourage sufficient commercial lending for registered providers to acquire long leases of affordable housing units, rather than to protect affordable housing in perpetuity.

(d) When "striking the appropriate balance" between these competing priorities (as stated by Mr Pinnock at paragraphs 2.3.4 and 6.3), it is necessary to keep at the forefront of one's mind the primary purpose of the MEC and, as noted above, the Westminster City Council case confirms this to be to encourage sufficient commercial lending for registered providers, not the protection of affordable housing in perpetuity.

The role of the Regulatory Framework

11 At paragraph 3.2 of his Proof of Evidence, Mr Pinnock expressly states that he does "not claim any expertise in valuation matters or in the regulatory framework for RPs".

(a) That concession is significant, because at paragraphs 6.1.4 and 6.1.5 of his Proof of Evidence Mr Pinnock nevertheless advances arguments which are directly concerned with the operation and relevance of the Regulatory Framework.

(b) At paragraph 6.1.4, Mr Pinnock acknowledges that "*some form of regulatory oversight* (including the exercise of the functions of the RSH and/or a Housing Administrator) *may precede the distressed disposal stage*, and that this *could in theory result* in the groundwork being laid for some of the steps required in a distressed disposal — for example, by identifying alternative RPs to acquire the 300 affordable homes — but qualifies this by stating that such an outcome is "*not certain*".[1]

(c) At paragraph 6.1.5, Mr Pinnock contends that lenders themselves do not simply rely on the existence or potential operation of the regulatory regime, and that the fact that

[1] Emphases added by author

lenders are sufficiently concerned to insist upon the effective functioning of the MEC itself demonstrates that the moratorium period should be assessed on its own terms within the distressed disposal scenario, rather than on the assumption that the regulatory framework will have resolved matters before the MEC is triggered.

(d) In my opinion, Mr Pinnock's arguments on these points should be treated with caution, given:

(i) his express disclaimer of expertise in the regulatory framework upon which those arguments necessarily depend;

(ii) the real-world examples given in my Proof of Evidence of the RSH supporting RPs experiencing difficulties to find safe harbours; and

(iii) the comments made by the RSH, rating agencies and in the Westminster City Case about the effectiveness of the regulatory framework in resolving real world problem cases.

12 In the Carpenders Park Call In, I provided the Inspector with a detailed overview of the Regulatory Framework within which RPs operate, on substantially similar terms to those set out at paragraphs 17 to 40 of my Proof of Evidence. That overview addressed:

(a) the RSH's statutory objectives under the HRA 2008, including its economic regulation objective of ensuring that RPs are financially viable and properly managed, and of supporting the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing);

(b) the RSH's informal and formal powers to manage financial difficulties within RPs should they arise, including the power to publish regulatory notices, to impose regulatory requirements, to agree voluntary undertakings, and to facilitate mergers with or acquisitions by other RPs, together with the formal power (with the consent of the Secretary of State) to apply for a housing administration order under the HPA 2016; and

(c) the statutory moratorium procedure under section 145 of the HRA 2008, which is triggered upon a mortgagee giving notice of its intention to enforce security, and the housing administration process under the HPA 2016, pursuant to which a housing administrator may be appointed with the statutory objective of ensuring that the RP's social housing remains in the regulated sector.

(d) As set out at paragraphs 34 to 40 of my Proof of Evidence, in every case of serious RP financial difficulty known to me, the RSH has intervened using its regulatory tools and the RP's social housing assets have been preserved within the sector through merger with, or subsumption within, another RP, without recourse to enforcement of security by mortgagees. I am not aware of any case in which a mortgagee exclusion clause has been triggered on account of a RP becoming insolvent.

13 My Proof of Evidence for this appeal goes further than the overview I provided at the Carpenders Park Call In by setting out, at paragraph 32, the detailed procedural steps that a housing administrator appointed under the HPA 2016 would be likely to undertake in discharging its statutory obligations.

14 Those steps would be substantially analogous to those adopted by an administrator appointed under Schedule B1 to the Insolvency Act 1986 in a mainstream administration, and would be likely to include:

(a) the establishment and maintenance of a comprehensive data room containing detailed information regarding the RP's assets and liabilities (including full details of any section 106 obligations, nominations agreements and associated documents applicable to the RP's housing stock);

(b) the solicitation of non-binding offers from as wide a pool of prospective bidders as possible;

(c) a detailed review and evaluation of the non-binding offers received;

(d) the shortlisting of, and progression of discussions with, those bidders whose proposals are assessed as being most likely to achieve the statutory objectives of the housing administration. Those statutory objectives include, critically, the objective of ensuring that the RP's social housing remains in the regulated sector — that is to say, owned and managed by a private registered provider of social housing;

(e) the statutory framework under the HPA 2016 imposes a duty upon the housing administrator to pursue those very objectives, and the procedural steps that a housing administrator would be required to undertake would, in substance, encompass the same marketing and disposal steps as would be required of a mortgagee or receiver under the model mortgagee exclusion clause; and

(f) the housing administrator is an officer of the court and is obliged to achieve those objectives as quickly and as efficiently as is reasonably practicable, thereby ensuring that the process is conducted expeditiously.

Accordingly, Mr Pinnock's suggestion that the regulatory framework may or may not assist in preparing the ground for a distressed disposal understates the extent to which the statutory regime is specifically designed to achieve precisely that outcome, noting that to date the RSH has managed to secure safe harbours for financially challenged RPs without having to deploy the full statutory framework to protect the affordable housing.

The assurance drawn by lenders, rating agencies and third parties from the Regulatory Framework and the assessment of risk

15 Furthermore, Mr Pinnock's argument at paragraph 6.1.5 of his Proof of Evidence — that lenders' insistence upon the effective functioning of the MEC demonstrates that the moratorium period should be assessed on its own terms within the distressed disposal scenario — proceeds from a wrong premise for why mortgagees require the inclusion of mortgagee exclusion clauses in section 106 agreements.

(a) Mortgagees do not insist upon the MEC because they lack confidence in the Regulatory Framework or because they consider the regulatory regime to be an insufficient safeguard.

(b) Rather, mortgagees require the MEC because RPs and their lenders are typically not parties to the section 106 agreement. I understand that under the statutory enforcement framework (established by section 106(3) of the Town and Country Planning Act 1990), planning obligations are enforceable not only against the person entering into the obligation but also against any person deriving title from that person.

(c) Consequently, this creates a risk that a mortgagee or receiver, upon exercising its security rights over the RP's housing stock, could find itself bound by affordable housing obligations and other planning commitments contained in the section 106 agreement, notwithstanding that the mortgagee played no role whatsoever in negotiating those obligations and had no opportunity to agree to or influence their terms.

(d) The mortgagee exclusion clause exists to protect these non-parties from being bound by obligations they never contracted to accept. It follows that the fact that lenders insist upon the inclusion of a MEC in the section 106 agreement does not support the inference which Mr Pinnock seeks to draw from it — namely, that lenders regard the Regulatory Framework as inadequate and that the moratorium period must therefore be assessed in isolation from that framework.

(e) On the contrary, the MEC addresses a distinct and separate concern: the risk that a non-party to the section 106 agreement could become bound by its terms through the operation of section 106(3) of the 1990 Act which would, in turn, prevent the primary purpose of the MEC by restricting the ability for mortgagees to sell free.

16 Furthermore, and in any event, Mr Pinnock's implicit suggestion that the operation of the Regulatory Framework can properly be set to one side when assessing the adequacy of the moratorium period within the MEC is fundamentally misconceived for a further reason. The Regulatory Framework is not merely a parallel or incidental safeguard; it is the very foundation upon which the social housing sector's access to private finance — now standing at approximately £138.1 billion of agreed borrowing facilities — has been built.

17 As set out at paragraphs 51 to 53 of my Proof of Evidence, the sector is heavily debt-financed, with most of that debt being advanced on a secured basis, and the financial strength of RPs and the RSH's regulatory environment provides a high degree of comfort to investors.

18 The integral role of the Regulatory Framework in sustaining this funding environment is confirmed by the RSH itself. In its written evidence to the House of Lords Industry and Regulators Committee Inquiry on regulators and growth (dated 19 January 2026) (see Appendix 4), the RSH stated that:

(a) "[r]egulation of the social housing sector supports its ability to raise private finance to invest in new and existing social housing" and that "[t]he sector's ability to attract private finance is fundamental to supporting the government's target to build 1.5 million homes in the current parliament" (para. 3);

(b) the RSH further stated that its "regulation boosts lender and investor confidence which maintains a low cost of capital for the PRP sector (meaning more and better homes get built), protects the taxpayer and generates other economic benefits, as well as supporting innovation" (para. 9);

(c) the RSH's evidence also confirms that "[t]he strength of our regulatory framework is key for investor confidence", noting that "[c]redit rating agencies take account of our regulatory framework in their credit ratings of PRPs, and it is a factor that lenders and investors to the sector take account of in their pricing of debt and investment decisions", and that as a consequence "PRPs can access private finance on competitive terms and maintain a low cost of capital which supports PRPs' capacity to develop new homes" (para. 13);

(d) the RSH further records that whilst it does not guarantee the obligations of PRPs, it has "a strong record of preventing and resolving issues in PRPs when they arise" and that, as a result, PRPs have £138 billion of private finance borrowing facilities currently agreed, with total facilities having grown from £99.8 billion to £138.1 billion between September 2019 and September 2025 (para. 14);

(e) It follows that the regulatory regime which Mr Pinnock seeks to marginalise in the context of the MEC moratorium period is the same regulatory regime upon which the sector's entire funding model depends;

(f) The proposition that the Regulatory Framework should be disregarded when assessing the adequacy of the moratorium period, whilst simultaneously being relied upon (as it necessarily is) as the basis for the sector's ability to attract the private finance that funds the acquisition of affordable housing in the first place, is contradictory; and

(g) The Regulatory Framework and the funding environment it sustains are indivisible; one cannot properly assess the risks associated with the MEC moratorium period without having regard to the comprehensive system of regulatory oversight, intervention and protection that has, as the RSH's own evidence confirms, prevented the loss of social housing assets in every case of serious RP financial difficulty to date; noting that whilst the RSH has secured safe harbours for financially challenged RPs, the statutory moratorium and housing administration provisions have not been invoked and, as stated previously, I am not aware of a MEC clause having been triggered by a RP being insolvent.

19 The importance and effectiveness of the Regulatory Framework has also been recognised by the Courts. In Westminster City Council v Gems House Residences Chiltern Street Limited [2025] EWHC 1789 (Ch), HHJ Hodge KC noted (at paragraph 22) the statutory moratorium provisions under the HRA 2008 and the HPA 2016, observing that the purpose of the moratorium is to create a period of time for the RSH to seek to find a solution to a provider's viability problems, in order to protect the social housing assets and the interests of the provider's tenants. HHJ Hodge KC referred (at paragraph 24) to the observation — drawn from the article "Safe as Houses? Insolvency in the social housing sector" authored by Nicholas Levy, a partner at Trowers & Hamlins LLP in October 2024 (Appendix 4) — that the social housing sector has historically been very stable, with only a few incidences of RPs suffering financial adversity, and that the variety of tools available to the RSH to oversee and intervene in the operations of RPs mitigates part of this risk. In the Court of Appeal ([2026] EWCA Civ 937), Holgate LJ confirmed (at paragraphs 44 to 53) that the HRA 2008 formed part of the context in which the s106 agreement fell to be construed and set out in detail the statutory framework governing the RSH's regulatory powers, the moratorium provisions and the regime for the disposal of a registered provider's land during a moratorium. Whilst the Court of Appeal observed (at paragraph 73) that the statutory moratorium as it stood in 2013 provided only a limited opportunity for the RSH to protect affordable housing units, *it noted that the <u>more effective tool of a housing administration order</u> was introduced by the HPA 2016 with effect from 5 July 2018*[2]. The credit rating agency evidence set out in this rebuttal (see in particular paragraphs 23, 24 and 25), and the LUHC Committee report upon which Mr Pinnock relies, must be assessed in this context.

20 At section 6.2 of his Proof of Evidence, Mr Pinnock addresses the question of distress within the RP sector. At paragraph 6.2.2, he relies upon the LUHC Committee's report, which observed that a small number of social housing providers have become or have come very close to becoming insolvent, and that there is an increased chance that some social housing providers may encounter serious financial difficulties, potentially becoming insolvent and unable to repay loans or pay bills. At paragraph 6.2.3, Mr Pinnock draws two conclusions from this: first, that

[2] Emphasis added by author

querying whether an event of default is likely "misses the point", since the MEC is providing comfort to the mortgagee in a scenario where default has occurred; and secondly, that the risk of default "cannot properly be said to be a 'non-issue'" and is a risk that the MEC provisions are by definition there to address.

21 The LUHC Committee's report was published in March 2025. As noted above, since that date the major credit rating agencies — including S&P Global Ratings, Moody's Investors Service and Fitch Ratings — have each published credit assessments of a number of RPs operating in England. I have included four such reports as appendices to this rebuttal proof of evidence: three in connection with a large RP operating in London and the South East (RP1) (1 from each of S&P, Moody’s and Fitch)[3], and one in connection with a medium-sized RP operating nationally, including in Hertfordshire (RP2). Each of these reports post-dates the LUHC Committee's report and accordingly reflects the most current assessment by the relevant credit rating agency of the creditworthiness of the RP in question, including its assessment of the risks and protections applicable to the sector.

22 The foregoing analysis of the Regulatory Framework and its central role in sustaining the sector's funding environment is further reinforced by the assessments of the major credit rating agencies. Many of the large RPs have credit ratings from agencies including S&P Global Ratings, Moody's Investors Service and Fitch Ratings. Relevant rating agency reports are generally available through the investor relations sections of their websites. These reports comment on matters specific to the business of individual RP groups, including the geographic markets within which the RP operates, as well as the regulatory framework relevant to RPs. The credit rating agency evidence is of direct relevance not only to Mr Pinnock's argument at paragraph 6.1.5 of his Proof of Evidence — that lenders' insistence upon the MEC demonstrates that the Regulatory Framework is insufficient — but also to his reliance at section 6.2 of his Proof of Evidence upon the report of the House of Commons Levelling Up, Housing and Communities Committee (the LUHC Committee) in support of his contention that the risk of RP default "cannot properly be said to be a 'non-issue'".

23 The credit rating reports are of direct relevance to the issues before this Inquiry for the following reasons. First, each of the credit rating agencies assigns significant weight to the strength of the regulatory framework governing English RPs as a material factor in its credit assessment. S&P Global Ratings (see final paragraph of section headed “Rationale”) assesses the regulatory framework as "strong" and assigns a regulatory framework score which forms part of its overall enterprise risk profile assessment. Moody's assigns an Institutional Framework score which reflects, amongst other things, a Regulatory Framework score of "a1" and an Operating Environment score of "a2", noting that the regulator maintains strong oversight through quarterly returns, long-term business plans, annual reviews and regular programmed inspections (see section headed “Supportive Institutional Framework in England). Fitch Ratings assesses the risk profile of the RPs it rates as "Stronger", reflecting in part its assessment that the regulatory framework for English social housing is robust and that the RSH controls and strictly monitors registered providers (see paragraph headed “Responsibility to Support”, page 1). In each case, the strength of the regulatory framework is treated not as a peripheral consideration but as a central pillar of the credit assessment.

24 Secondly, each of the credit rating agencies expressly factors into its credit assessment the likelihood that the UK government would provide extraordinary support to a RP in the event of financial distress, and this assessment results in a material uplift to the RP's credit rating above

[3] Please note RP1 has ratings from each of S&P, Moody’s and Fitch on its investor section of its website and these are their latest reports; whereas RP2 only has a credit rating within S&P. It is not uncommon for larger RPs to have credit ratings from several rating agents.

its standalone credit profile. S&P Global Ratings considers that there is a "moderately high likelihood" that a RP would receive timely extraordinary government support in the case of financial distress and provides a one- (for RP2) or two-notch (for RP1) uplift from the standalone credit profile on that basis (see paragraphs headed “Government- related entity analysis”). S&P bases this view on previous instances where the RSH has mediated mergers or arranged liquidity support from other registered providers in cases of financial distress. Moody's (see Summary (on page 1) similarly factors in a "strong likelihood" of extraordinary support from the UK government, noting that extraordinary support for the sector is predominantly exercised through sector regulators whose wide-ranging powers in cases of financial distress include facilitating mergers. Fitch Ratings (again, page 1) assigns a support score reflecting "Strong Expectations" of exceptional support in the event of a RP being in financial distress, noting that the sector is highly regulated with a history of regulator intervention to prevent default, and that central and local governments provide ongoing support to the social housing sector. In each case, the credit rating agency's assessment of the likelihood of government and regulatory intervention in the event of financial distress is a positive factor which results in the RP's credit rating being higher than it would otherwise be on a standalone basis.

25 Thirdly, none of the credit rating agencies foresees a scenario in which a significant RP becomes insolvent. On the contrary, the reports consistently reflect the agencies' assessment that the combination of the regulatory framework, the RSH's intervention powers and the expectation of government support renders the risk of a RP default extremely remote. Fitch Ratings (see section headed “Precedents of Support (page 3)) expressly notes that there are very few examples of RPs falling into financial difficulties and none reaching a default, and that other registered providers could act as substitutes were a RP to default. Moody's observes (see section headed “Extraordinary Support Considerations” (page 3)) that the regulator has a strong track record of intervention in cases of mismanagement or financial stress. S&P Global Ratings notes that the RSH would intervene to try and prevent a default in the sector, based on previous records of the RSH mediating mergers or arranging liquidity support (again see paragraphs headed “Government- related entity analysis” (page 3)).

26 It is important to note that the credit ratings assigned by S&P Global Ratings, Moody's Investors Service and Fitch Ratings provide critical information to the capital markets which directly informs the pricing of debt and the assessment of credit risk by investors. The credit rating agencies' published assessments of the regulatory framework, the likelihood of government support and the overall creditworthiness of individual RPs are accordingly material factors in determining the terms upon which RPs are able to access private finance. Banks and other institutional lenders which provide finance to RPs on a bilateral or syndicated basis undertake a similar assessment of creditworthiness and risk through their internal credit committees, having regard to substantially the same factors — including the strength of the regulatory framework and the expectation of government and regulatory intervention in the event of financial distress. However, banks do not publish anything equivalent to the credit rating reports produced by the rating agencies, as they treat their proprietary risk models and credit assessments as confidential. The credit rating agency reports appended to this rebuttal accordingly represent the most transparent and publicly available evidence of the manner in which the capital markets assess the risks associated with lending to the RP sector, and the weight which those markets attach to the Regulatory Framework as a central component of that assessment.

27 It is also important to place the LUHC Committee's observations in their proper historical context. The two examples of RP financial distress cited by the LUHC Committee — Ujima Housing Association and Cosmopolitan Housing Group — are now relatively old examples and both pre-dating the introduction of housing administration regime (effective from July 2018). Ujima's financial difficulties came to light in 2007, and it was subsequently merged into London

& Quadrant Housing Trust in 2008. Cosmopolitan's difficulties were identified in 2012, and it was merged into the Sanctuary Housing group in 2013. In both cases, the RSH (or its predecessor body) intervened using its informal regulatory powers to facilitate a merger, and the social housing assets were preserved within the sector without recourse to enforcement of security by mortgagees. As set out at paragraphs 34 to 40 of my Proof of Evidence, the same pattern has been repeated in every subsequent case of serious RP financial difficulty known to me, including the more recent cases of Swan Housing Association (merged into Sanctuary Housing Association in 2023), South Yorkshire Housing Association Limited (merged into Places for People Group Limited in 2025) and Origin Housing Limited (merged into Places for People Group in 2024). In none of these cases was the housing administration regime under the HPA 2016 utilised, and I am not aware of any case in which a MEC has been triggered on account of a RP becoming insolvent.

28 In light of the foregoing, Mr Pinnock's arguments at both paragraph 6.1.5 and paragraph 6.2.3(b) of his Proof of Evidence require careful qualification. As to paragraph 6.1.5, the contention that lenders' insistence upon the MEC demonstrates a lack of confidence in the Regulatory Framework is not supported by the evidence. On the contrary, the credit rating agencies — whose assessments directly inform the pricing of debt and investment decisions across the sector — regard the Regulatory Framework as a central pillar of their credit analysis and assign material uplifts to RP credit ratings on the basis of the expectation of government and regulatory support. As to paragraph 6.2.3(b), Mr Pinnock's contention that the risk of RP default "cannot properly be said to be a 'non-issue'" must be assessed in the context of the real-world evidence now before this Inquiry: the RSH's demonstrated track record of deploying its informal regulatory tools to secure safe harbours for financially challenged RPs in every known case of serious financial difficulty; the RSH's own assessment (in its written evidence to the House of Lords Industry and Regulators Committee) that it has "a strong record of preventing and resolving issues in PRPs when they arise"; and the consistent assessment of the major credit rating agencies that the combination of the regulatory framework, the RSH's intervention powers and the expectation of government support renders the risk of a RP default extremely remote. The assessment of the real-world risk of a distressed sale scenario arising cannot properly be divorced from this comprehensive regulatory and statutory framework. The evidence of the credit rating agencies demonstrates that:

(a) third parties — including leading credit rating agencies — assign significant value to the structured regulatory environment in which RPs operate, and that this assessment directly informs the credit ratings which those agencies assign to individual RPs;

(b) RPs are able to attract more favourable funding terms from lenders and investors as a direct consequence of the credit ratings they receive, which in turn reflect the strength of the regulatory framework and the expectation of government support — thereby enabling RPs to access the private finance necessary to acquire and develop affordable housing on competitive terms;

(c) lenders, investors and credit rating agencies share a common confidence that, in the event of a RP experiencing financial difficulties, those difficulties will be resolved through the RSH's regulatory intervention — including, if necessary, facilitated mergers or acquisitions — and that the UK government will stand behind the RP sector, as it has done in every case of serious RP financial difficulty to date.

29 Accordingly, whilst the MEC provides a contractual mechanism for when and how properties subject to the s106 agreement/MEC can be sold by the relevant mortgagee in the event of a MEC being triggered, the real-world risk of that scenario materialising is, on the evidence of the credit rating agencies and the RSH's own track record, extremely remote. This conclusion is

consistent with the RSH's own written evidence to the House of Lords Industry and Regulators Committee (see Appendix 4), in which the RSH confirmed that it has "a strong record of preventing and resolving issues in PRPs when they arise" and that the strength of the regulatory framework is "key for investor confidence". The comprehensive system of regulatory oversight — from the RSH's routine reporting and engagement requirements, through the exercise of its informal intervention powers, to the formal statutory moratorium and housing administration provisions — has, to date, succeeded in preserving social housing assets within the sector in every case of serious RP financial difficulty, without recourse to enforcement of security by mortgagees.

Standard approaches to moratorium periods

30 In advancing his argument that a moratorium period longer than the market norm of 3 months is required, Mr Pinnock places reliance upon the Church Lane Decision (APP/P1940/W/22/3311477 and APP/P1940/W/22/3311479), in which the Inspector upheld the Council's position on the moratorium period and concluded that a five-month period would be appropriate. However, the weight to be attached to that decision in the present proceedings is, in my submission, limited.

31 The Inspector's treatment of the moratorium period issue at paragraph 68 of the Church Lane Decision was brief, recording only that contradictory evidence had been submitted and that the Council had set out detailed reasons why a five-month period would be necessary. The Inspector's conclusion at paragraph 70 — that he found the Council's detailed submissions on this matter compelling — was reached without the benefit of the body of evidence now before this Inquiry.

32 In particular, the Inspector in the Church Lane Decision did not have the benefit of:

(a) the evidence of Mr Baird, whose Proof of Evidence for this appeal sets out nineteen examples of section 106 agreements concluded within the last eighteen months, each of which contains a moratorium period of three months or less, and none of which contains a moratorium period in excess of three months;

(b) the evidence of Mr Sutcliffe, whose evidence confirms that a three-month moratorium period is the established industry standard, endorsed by social housing valuers in conjunction with lenders in the marketplace and also consulting the National Housing Federation and the Greater London Authority;

(c) my own Proof of Evidence, which sets out in detail the standard mortgagee exclusion clauses published by the NHF's Property Finance Working Group and the GLA, both of which specify a three-month moratorium period, and which are widely used across the sector as the minimum standard to be adopted in any section 106 agreement.

(d) the evidence of Mr Bullivent, whose Proof of Evidence (in particular sections 3 and 4 thereof) sets out the results of two engagement exercises undertaken with RPs operating within the Council's area. In November 2025, eighteen RPs were approached; of those that provided substantive responses, only one submitted an offer for the affordable housing, and that offer was expressly subject to the wording of the moratorium clause being discussed and agreed, with the RP confirming that a three-month moratorium period would be preferable given the industry standard and the adverse charging implications of a five-month clause. In May 2026, a further exercise was undertaken with seventeen RPs; of the three RPs that expressed an interest, two did so subject to a three-month moratorium period being agreed, and the third, whilst indicating that a five-month clause would not prevent it from offering, advised that it should be avoided due to the restriction to EUV-SH charging. A number of declining RPs in both exercises expressly cited the Council's five-month moratorium period as a barrier to engagement. Mr Bullivent's Appendix 4 further identifies a number of local planning authorities in the South East of England that have accepted a three-month moratorium period in mortgagee exclusion clauses for schemes of over 50 units within the last 24 months, including two — the Royal Borough of Windsor and Maidenhead and the Borough of Broxbourne — which do not appear on the PFWG tracker, thereby providing further concrete evidence that the tracker materially understates the true extent of acceptance of the three-month moratorium period;

(e) The combined weight of this evidence demonstrates that a three-month moratorium period is the established market standard and is widely accepted by local planning authorities across England and Wales.

(f) By contrast, Mr Pinnock has adduced no evidence whatsoever to demonstrate that a three-month moratorium period is not the standard approach.

33 The Council's reasoning for including a five-month moratorium period in each of those cases (i.e. the two conjoined Church Lane appeals and the Carpenders Park Call In) was on the basis that it was the Council which would bear the responsibility for marketing and disposing of the affordable housing units in the event of a distressed sale. In each case, the Council's submissions as to the inadequacy of a three-month moratorium period were founded upon this incorrect premise, with the Inspector in the Church Lane Decisions finding the Council's detailed submissions "compelling" and concluded that a five-month period would be appropriate; but that finding was reached on the basis of a timeline which assumed a role for the Council that the MEC does not confer upon it. The Inspector's acceptance of the Council's submissions must therefore be understood in that context, and the weight to be attached to the Church Lane Decision is correspondingly diminished.

34 At paragraph 6.1.3 of his Proof of Evidence for this appeal, Mr Pinnock states that "it is, in fact, most likely that a Receiver would be running the disposal process (rather than the Council)". Notwithstanding the correction of the party whose responsibility it would be to use reasonable endeavours to effect the sale of the affordable housing to another RP or the Council, Mr Pinnock still asserts that he "advised the Council in two cases where it has successfully resisted a 3-month moratorium period on appeal" (paragraph 4.1 of Mr Pinnock's Proof of Evidence).

35 If the Council were particularly concerned about the loss of affordable housing in the District, it would be open to the Council to purchase the affordable housing subject to the MEC within the 3-month moratorium period.

36 It is important to note that should a mortgagee or receiver were to fail under the model MEC to discharge its obligation to use reasonable endeavours during the three-month moratorium period — for example, by failing to take any meaningful steps to identify or engage with potential registered provider purchasers — such failure could constitute a breach of the mortgagee exclusion clause. The Council would, in those circumstances, be entitled to seek injunctive relief under section 106(5) of the Town and Country Planning Act 1990 to restrain the mortgagee or receiver from disposing of the affordable housing units on the open market in circumstances where it had not first complied with its reasonable endeavours obligation. The availability of such a remedy provides a significant and enforceable safeguard for the Council's interest in preserving the affordable housing — a safeguard which Mr Pinnock's analysis does not acknowledge and which operates irrespective of the length of the moratorium period. Indeed it is interesting to note that the when the Westminster City Case was being heard by HHJ Hodge KC in the High Court, the first defendant in that case was subject to an interim injunction

"preventing it from occupying, letting, or otherwise disposing of the affordable housing" (paragraph 4).

37 The historical context of the three-month moratorium period as the established market standard is further reinforced by the Inside Housing article referred to by HHJ Hodge KC at paragraph 19 of his judgment in Westminster City Council v Gems House Residences Chiltern Street Limited [2025] EWHC 1789 (Ch).

38 That article, published in August 2008 and authored by solicitors at Winckworth Sherwood LLP (see Appendix 5), noted that the Law Society had drawn up a model section 106 agreement providing a delay of three months in the mortgagee exclusion clause before a lender could enforce a sale of the mortgaged property without any restriction on the open market, and that this approach had been supported by the Council of Mortgage Lenders and had generally been accepted by lending banks.

39 The significance of this observation is that it demonstrates that the three-month moratorium period was already intended to be the recognised market standard by 2006 at the latest, having been embedded in the Law Society's model section 106 agreement which was itself produced in conjunction with the Department for Communities and Local Government (DCLG).

40 That model agreement was published alongside the DCLG's Planning Obligations Practice Guidance of July 2006, which was produced in response to ODPM Circular 5/05 and which expressly encouraged local planning authorities to use and publish standard heads of terms, agreements and model clauses wherever possible in the interest of speed and consistency.

41 The Law Society's model section 106 agreement, prepared by its Planning and Environmental Law Committee and commended by the DCLG for use by all local planning authorities, accordingly, incorporated a three-month moratorium period as the standard position. Whilst it is not possible to say with certainty whether a three-month moratorium period was being considered prior to 2006, it is clear that by the time the DCLG's initiative was implemented, the three-month period was seen as the recommended model form position in the model agreement prepared by the Law Society.

42 It is therefore unsurprising that this three-month period has been carried forward into the standard mortgagee exclusion clauses subsequently published by the NHF's Property Finance Working Group and by the GLA, both of which are referred to in detail in my Proof of Evidence. The NHF's standard clause, which has been in its current form since 2017 and was agreed by a group of borrowers, funders, solicitors and valuers, and the GLA's equivalent template clause, negotiated with the PFWG and supported by the G15 group of London's largest housing associations, each specify a three-month moratorium period — reflecting a common standardised approach that can be traced back at least to the Law Society's model agreement of 2006.

43 As set out in detail at paragraphs 64 and 65 of my Proof of Evidence, the PFWG maintains a publicly accessible tracker of local planning authorities across England and Wales which have accepted the standard mortgagee exclusion clause (or the GLA's equivalent template clause) without amendment. As at the date of preparation of my Proof of Evidence, the tracker recorded that approximately 78 local planning authorities had accepted the standard clause, representing approximately 23% of all local planning authorities in England and Wales. However, for the reasons set out in my Proof of Evidence, I consider that the tracker very likely materially understates the true extent of acceptance of the three-month moratorium period across the sector: it does not capture retrospective data predating its establishment in approximately late 2022/early 2023; it records only those authorities which have accepted the model clause in its

entirety without any amendment, however minor; it is dependent upon RPs and their professional advisors voluntarily notifying the PFWG of completed agreements; and the number of local planning authorities is continuing to fall as a result of local government reorganisation, such that the direction of travel is one of increasing acceptance.

44 The true proportion of local planning authorities which have accepted a three-month moratorium period — whether in the precise form of the NHF or GLA standard clause or in a substantially equivalent form — is therefore likely considerably higher than the tracker figure suggests.

45 This conclusion is further reinforced by the evidence of Savills (Giles Sutcliffe), who notes in his report that the PFWG membership maintains a record of local planning authorities which have changed their approach to the standard mortgagee exclusion clause, and that in recent years both East Cheshire District Council and York City Council — having previously resisted the standard clause — reverted to accepting the model form of wording incorporating a three-month moratorium period, with York City Council having done so within the last year. The fact that local planning authorities which had previously sought to depart from the standard three-month moratorium period have, upon being presented with the evidence as to the difference between EUV-SH and MV-STT valuations, reverted to the standard position, is a further powerful indicator that the three-month moratorium period represents the appropriate and accepted market standard.

46 The evidence of RP engagement set out in James Bullivent's Proof of Evidence has direct and material implications for the delivery of the 300 affordable homes proposed as part of the Proposed Development. As described in detail in sections 3 and 4 of Mr Bullivent's Proof of Evidence, the feedback received from RPs operating within the Council's area demonstrates that the Council's insistence upon a five-month moratorium period is a significant barrier to RP engagement, with a number of organisations declining to offer or express an interest in affordable housing opportunities within the Council's area as a direct result. The practical consequence of the Council's position is that the Appellant's ability to secure one or more RPs willing to acquire the affordable housing units would be materially impaired, placing the delivery of 300 new affordable homes at risk in circumstances where there is an acknowledged pressing and acute need for housing of all tenures within the district.

47 The feedback obtained by the Appellant is further corroborated by the evidence obtained by Burlington Developments in connection with the Carpenders Park Call In, in which the Council similarly sought to impose a five-month moratorium period. Of eleven RPs contacted by Burlington Developments, only one indicated that it would accept a moratorium period of between four and six months, and that acceptance was caveated on the basis that it was "not ideal", that the adverse charging implications are amplified as schemes increase in size, and that a three-month period was acceptable to it. The consistency of the feedback received across both the Appellant's and Burlington Developments' engagement exercises reinforces the conclusion that the Council's insistence upon a five-month moratorium period is out of step with the established market standard and would materially impair the delivery of affordable housing.

The South Oxhey precedent

48 In paragraph 6.3.3 of his Proof of Evidence Mr Pinnock acknowledges that the Council adopted a three-month moratorium period in the case of the South Oxhey regeneration scheme in 2020. However, he seeks to distinguish that case on the basis that the Council had an existing contractual relationship with the delivery partner (the Home Group (which is a registered provider)) and intimate knowledge of the scheme, which he contends mitigated the identified concern regarding the shortness of the three-month period. Mr Pinnock relies upon the Committee Report, which noted that the scheme was a multi-phase long-term project where the

three-month period was used at the outset, and that the Home Group was the established development partner with a contractual relationship with the Council. He contends that the circumstances were materially different from the present case.

49 Mr Pinnock's attempt to distinguish the South Oxhey precedent on the basis of the Council's familiarity with the identity of the initial registered provider does not withstand scrutiny. The mortgagee exclusion clause is not concerned with the identity of the registered provider which initially acquires the affordable housing units. Its purpose is to address the scenario in which the mortgagee is compelled to enforce its security following a default by the registered provider — that is, a scenario in which the initial registered provider has, by definition, failed. The clause operates to ensure that, in those circumstances, the mortgagee uses its reasonable endeavours to procure a successor registered provider or the Council to acquire the affordable housing units, thereby preserving them as affordable housing. The identity of the initial registered provider is wholly irrelevant to the operation of the clause, because the clause is triggered precisely at the point at which the initial registered provider's involvement has come to an end.

50 The Council's reasoning in the South Oxhey case in fact undermines its position in the present appeal. If the Council was satisfied in 2020 that a three-month moratorium period was adequate to secure a participating registered provider to acquire the 65 affordable homes in the context of a regeneration scheme, it is difficult to understand why a materially different conclusion should be reached in the present case. The factors relied upon by the Council to distinguish South Oxhey — namely, its contractual relationship with the Home Group and its knowledge of the scheme — would appear to relate to the Council's confidence in the initial delivery of the affordable housing, not to the operation of the mortgagee exclusion clause in a distressed sale scenario. In a distressed sale, the initial registered provider will have defaulted, and the Council's prior relationship with that provider will be of no relevance to the question of whether the mortgagee can, using reasonable endeavours, procure a successor within the moratorium period.

Affirmation

The evidence which I have prepared and provide for this appeal – PINS Appeal Ref: 6004972 – (in this proof of evidence) is true and I confirm that the opinions expressed are my true and professional opinions.

I understand that my duty as a witness is to the Inquiry and that my role is to assist the Inquiry on matters within the scope of my expertise. I also understand that my duty as a witness overrides any duty to those instructing me. I have complied with this duty in giving my evidence impartially and objectively.

This rebuttal proof of evidence is dated 4th August 2026