

**PLYMSTOCK QUARRY S106 APPENDICES**  
**(Plan ref: 07/01094)**

**Document 2**  
**Schedule 3**  
**APPENDIX 3**

**The Clawback Review Mechanism**

The review mechanism is a computer model created in Excel and developed by Plymouth City Council with the assistance of the applicant. It will be used to track the viability of the development of Plymstock Quarry in order to determine how much additional affordable housing will be funded. (“Additional affordable housing” in this document refers to the units in excess of the 208 affordable housing units agreed at the outset of development.) The lpa and the developer will be mutually responsible for maintaining and updating the model in light of the process described in this document.

1. Dispute procedure.

In the event of a dispute between the lpa and the applicant on any element of the operation of the review mechanism, the parties will resort to a mutually acceptable independent expert to make a determination and this determination shall be binding on both parties. Where appropriate, the independent expert shall determine the liability for costs in accordance with his/her findings and it is agreed that these shall be binding on the affected party and paid at the latest within one month. The independent expert’s decision shall be delivered expeditiously and the mechanism will thereafter be adjusted in line with the expert’s findings and within one month at the latest. Should the decision not be delivered prior to the commencement of the subsequent development phase, the review shall assume the dispute position that maximises the review mechanism’s excess profit.

2. Timing of Reviews

There shall be at least four Reviews between the parties at the times detailed below, to determine the provision of additional affordable housing in subsequent phases. Each Review will take place 12 months prior to the end of the development phase that triggers the Review. Each Review will commence with a meeting with the lpa. The applicants will provide information and up to date data sufficient to fulfil the requirements of the Review process to the written satisfaction of the lpa. The outcome of the Review (involving any requirement by the applicants to purchase additional affordable housing units) shall take place expeditiously in the development phase immediately following the Review unless it is agreed otherwise by the lpa.

- Review 1 begins 12 months prior to the end of phase 1C and the provision of 570 phase 1 units.

- Review 2 begins 12 months prior to the end of phase 2C and the provision of 390 phase 2 units.
- Review 3 begins 12 months prior to the end of phase 3C and the provision of 430 phase 3 units.
- Review 4 begins 12 months prior to the end of phase 3D and the provision of 630 phase 3 units.

Each Review requires that appropriate data is collected and information is gathered by the applicants on a regular basis throughout the development and that this is made available to the lpa. If the lpa considers that the applicants have failed to provide any of the information required to complete the Review (described in Parts 3, 7 and 14 (“Market House Price Index” and “Commercial Values”) of the Appendix, written notice shall be given to the applicants and both parties agree that the lpa can then instruct an external Surveyor to provide the inputs necessary to fulfil the requirements of the Review exercise and the Surveyor shall have full cooperation from the applicants. The applicants shall be responsible for all the costs associated with the Surveyor’s work that is necessary to provide the inputs required by the lpa for determining the completion of the Review.

### 3. Annual Updates

The applicants will submit Annual Updates to the lpa. In the event that the Annual Update occurs in a year when a Review is to take place, the timing of the Annual Update can change in accordance with the written satisfaction of the lpa to coincide with the required timeframe for the Review. Each Annual Update will consist of:

- (1) An accurate spreadsheet of housing sales (described in this part of the Appendix),
- (2) An adequate assessment of project phasing (Part 7 of the Appendix),
- (3) A comprehensive update of changes to the housing mix (Part 14 of the Appendix, section on “Market House Price Index”) and
- (4) An accurate update of commercial activity (Part 14 of the Appendix, section on “Commercial Values”).

The first Annual Update shall be formally provided by the applicants to the lpa prior to the sale of the 41st unit of market housing. It shall thereafter be formally provided each year to the lpa (until the completion of the development) on the same date as the initial Annual Update (unless both parties agree to change the date). The information provided for the Annual Update shall be subject to an audit if required by the lpa. The lpa shall ensure that any commercially sensitive information supplied for the annual updates remains confidential.

The spreadsheet of housing sales for the Annual Update will be consistent with the "Hsg rev actuals" worksheet in the review mechanism. It shall include:

- (1) A mutually agreed identifier that allows each housing unit to be uniquely recognised (e.g., Unit #1, 3BR, Type A, Phase 1);
- (2) The gross square footage of each unit;
- (3) The month and year of sale of each unit;
- (4) the category of tenancy (i.e., market housing, shared ownership, New Build HomeBuy, social rented or any other category accepted by Housing Delivery of each unit;
- (5) The gross sales value of each unit;
- (6) The sales incentives associated with each unit sale;

If the applicants fail to provide any of the information required to complete the Annual Update (described in Parts 3, 7 and 12 ("Market House Price Index" and "Commercial Values"), the lpa can immediately instruct an external Surveyor to provide the inputs necessary to fulfil the requirements of the Annual Update. The applicant will be responsible for all the costs associated with the Surveyor's work that is necessary to complete the Annual Update to the satisfaction of the lpa.

#### 4. Performance

While the process of each Review will commence 12 months prior to completion of the development phase which triggers the Review, actual performance of the first 6 months' performance (of the 12 months prior to the end of the period being reviewed) will be incorporated into the review mechanism as it is made available and will contribute to the preliminary determination of affordable housing in the subsequent development phases. The information will be provided to the lpa in the same format used for the Annual Updates. This information and any other information that the lpa requires in order to ensure that the review mechanism current, must be provided to the lpa within 1 month of the completion of the first 6 month's of the 12 months prior to completion of the development phase which triggers the Review period. Forecast data for the final 6 months (of the 12 month period) shall be modelled through mutual agreement and reflect the average performance of the preceding 12 months. (In the case of the rate of house sales, this shall be based on the previous 24 months. In the event that the most recent sales period has been shorter than 24 months, the shorter period shall be used.) The forecasted data for the final 6 months (of the 12 months prior to completion of the development phase which triggers the Review) shall also contribute to purchase of affordable housing in the subsequent period. The forecasted data for the final 6 months (of the 12 months prior to completion of the development phase which triggers the Review) shall be superseded by indexed data as it becomes available. The indexed data shall be incorporated into the review mechanism and contribute to the determination of the quantum of affordable housing to be purchased in the subsequent phase.

In order to ensure that Review 1 avoids unanticipated difficulties, there will be a Preliminary Review. The timing of the Annual Update for the year that the Preliminary Review is to take place shall be changed to coincide with the Preliminary Review in accordance with the written satisfaction of the lpa. The Preliminary Review will be triggered by the disposal of the 450<sup>th</sup> housing unit. Although the results from the Preliminary Review will not require the purchase of additional affordable housing, the Preliminary Review will be progressed in the same way as the formal Reviews. The developer will provide the lpa with information and data reflecting the development upon the 450th housing unit. If the developer fails to provide any of the information required to complete the Preliminary Review, the lpa can immediately instruct an external Surveyor to provide the inputs necessary to fulfil the requirements of the Preliminary Review. The applicant shall thereafter pay the Surveyor's full costs associated with the Preliminary Review.

The review mechanism shall include forecasted data of development performance relating to future development phases. Where this forecasted data diverges from the development's actual outturn, the indexed values or updated performance assumptions shall be incorporated into the review mechanism. However, in respect of Review 4 the number of required additional affordable houses shall be based on an agreed forecast of the sale of the final 94 units of phase 3E, based upon an assumption that all 94 units will be sold at a rate reflective of the most recent 18 month's performance. The values in phase 3E shall be reflective of the previous 12 month's house price growth.

#### 5. Payments by RSL to Developer

Information detailing the structure and timing of all payments by an RSL to the applicants or developer for the purchase of affordable housing shall be provided by the applicants to the lpa on receipt of a written request from the lpa. At this time the applicants shall also provide to the lpa the relevant contract terms and dates upon which cash receipts are received from the RSL and the relevant information shall be incorporated into the review mechanism to the satisfaction of the lpa.

#### 6. Grant money for Affordable Housing

All grant money obtained by the applicants for the delivery of affordable housing shall be recognised as revenue received and incorporated by the applicants into the review mechanism. The applicants shall provide to the lpa a summary of the contract terms of any grant upon the receipt of grant monies.

#### 7. Adjusting phasing in the review mechanism

As part of the Annual Update (described in Part 3 of this Appendix), the applicants shall submit to the lpa the details of and case for any actual and expected divergences from the review mechanism's assumptions about phasing. This information, if agreed, shall be used to annually adjust the

phasing of the review mechanism. The information provided at that time by the applicants to the lpa shall answer the following questions to the satisfaction of the lpa:

(1) has the pace and timing of house construction and sales over the preceding 24 months changed from the current assumptions of the mechanism? If the answer is affirmative, what are the quantifiable changes with regard to housing development and sales quantum and timing and how should they be incorporated into the review mechanism? Also, if the answer is affirmative, what are the project phasing implications for the mechanism on the the timing and phasing of the S106 payments ?

(2) Has the pace and timing of infrastructure works over the preceding 24 months changed from the assumptions in the mechanism? If the answer is affirmative, what are the quantifiable changes with regard to development quantum and timing and how should they be incorporated into the review mechanism?

(3) Have there been any sales of plots to other house builders or commercial developers? If the answer is affirmative, what are they and how should they be incorporated into the review mechanism?

(4) Has there been any development, sales or leasing activity within the commercial element of the development? If the answer is affirmative, what are they and how should they be incorporated into the review mechanism?

If it is agreed that the information establishes that actual project phasing has or shall diverge from the assumptions in the review mechanism, the mechanism will be adjusted accordingly. If the applicants fail to provide any of the information sufficient to answer the questions in this part of the Appendix as part of the Annual Update, the lpa can instruct an external Surveyor to provide the inputs necessary to fulfil the requirements. The applicant will be responsible for all the costs associated with the Surveyor's work that is necessary to complete this part of the Annual Update.

#### 8. Sharing the cost savings for infrastructure works

Cost variations associated with changes to the infrastructure construction works shall be incorporated into the review mechanism only in the event that a revised plan has been previously agreed in writing by the lpa and there are no breaches of any of the clauses of this agreement. If the applicants are considering a revision to the application, details of how the change will be incorporated into the review mechanism will be submitted to the lpa by the applicants prior to the revision being submitted. In the event that the lpa cannot reach agreement on how such cost variations should be incorporated into the review mechanism, a jointly commissioned external quantity Surveyor will be employed to determine the financial impact of the change, utilising the existing infrastructure budget as the basis for estimating the variation. The Surveyor's report with its recommendation shall be provided to both parties. If agreed, these

variations shall be reflected in the review mechanism and detailed within the next Annual Update.

#### 9. Developer Profit

The review mechanism shall employ a maximum 20% development profit as the required threshold for the provision of additional affordable housing beyond the amount agreed at the outset of development.

#### 10. Sharing of “excess profits”

Excess profits (defined as the profits above the agreed developer’s profit of 20%) shall be shared equally between the developer and the lpa for the provision of additional affordable housing. This shall be identified at the completion of each Review to the satisfaction of the lpa.

#### 11. The purchase of affordable housing with “excess profits” shall be in accordance with the following criteria:

- The purchasing power of the lpa’s share of excess profits shall be based on the difference between the average per square foot sales value for market housing (used in the review mechanism at the time of Review) and the per square foot weighted average affordable housing sales value at the time of Review.

#### 12. The purchase arrangements for the approved affordable housing units to be provided at the outset of the development (minimum 208 units; 12.35% of total units at Plymstock Quarry) shall be in accordance with the following:

- Social rented housing shall be purchased at an average cost of £85 psf. (In the event of a substitute for this tenure or acquisition cost being agreed by the lpa to reflect current government changes there could be a different purchase arrangement and this shall be reflected in this Review mechanism to the satisfaction of the lpa).
- Shared ownership/intermediate housing/New Build Home Buy shall be purchased at 70% of the open market value.

#### 13. After the initially agreed affordable housing provision, the purchase price of socially rented housing will revert to the Matrix provided in the approved Planning Obligations and Affordable Housing SPD. However, in the cases where the applicants reach agreement with an RSL for the sale of affordable housing units to the satisfaction of the lpa, this agreement shall supersede the Matrix during the duration of that agreement.

#### 14. The tracking of cost and revenue data for the Review Mechanism shall include the following criteria:

Market house price index

- The house price index will be based on the Southwest England house price indices from the Land Registry, Halifax and Nationwide.
- The index will use data that is not seasonally adjusted.
- The index will be used as the review mechanism's basis for establishing changes in house prices.
- The index will be applied similarly to all relevant housing units. To calculate the house price level, the index's quarterly growth rate is applied to the review mechanism's preceding quarter's house price levels. In the event that adjustments are made to any of the historic house price data series, the review mechanism's index will be adjusted to reflect those changes.
- There will be a safeguard to ensure the review mechanism reflects actual house prices over the course of the development. Actual sales will be analysed at each Annual Update and compared to the indexed values generated by the review mechanism. If the mechanism's indexed value for any housing unit category (at the end of the phase which triggers the Review) diverges from average actual sales value (over the Review period) by more 10%, the relevant indexed psf value in the review mechanism will be adjusted (as part of that same year's Annual Update process) to 75% of the difference between the index and the actual value of the relevant housing category.
- When using actual sales data to compare with the review mechanism's indexed values, sales incentives will be recognised. The incentives can be audited by the lpa and the independent expert shall determine the liability for his costs, in accordance with his findings.
- In the event that the mix of housing units changes (from the review mechanism's housing mix), the new mix will be reflected in the Annual Update and be incorporated into the review mechanism at the same Annual Update or Review, whichever is relevant. In the event that changes to the mix results in a swap between house models that have already been appraised, the adjustment is straightforward. However, in the event that new housing models are introduced, they will be independently appraised by the applicant. The lpa will then need to give written agreement to the new units' relative quality and value (compared to existing units) and the appropriate price per square foot basis. In the event that the lpa is not able to supply written agreement, the lpa will resort to a third-party expert and the independent expert shall determine the liability for their costs, in accordance with their findings.
- The applicants will communicate all changes to the housing mix such that it diverges from the assumptions in the review mechanism

with regard to model type, size or number of bedrooms to the lpa as part of the Annual Updates.

#### Residential build cost index

- The BCIS All-in tender price index for the South-West will be applied to the review mechanism's initial build cost level of £107 psf on a quarterly basis.

#### Infrastructure build cost index

- The BCIS All-in tender price index for the South-West will be applied to the review mechanism's initial infrastructure build cost level on a quarterly basis.

#### S106 costs

- Any index that is applied to the costs associated with the planning obligations in the S106 will be taken from the relevant indices referred to within the S106 itself.

#### Commercial values

- There are three parts of the Plymstock Quarry development where commercial property contributes to overall viability. These are:
  - (1) The replacement units for Pomphlett Industrial Estate;
  - (2) The shops, surgery and all other commercial elements in the new local centre; and
  - (3) The accommodation planned to the north of Billicombe Green that will be predominantly B1.
- For each Annual Update (described in part 2 of this Appendix), the developer will provide the lpa with their assumptions about the value of the commercial provision for agreement. Upon agreement, these assumptions will be incorporated into the review mechanism.
- The applicants will inform the lpa about all actual sales/lettings of commercial accommodation and incorporate this information into the review mechanism. The annual update (described in part 2 of this Appendix) will include a report of activity relating to the commercial provision.

#### Land value

- In the review mechanism, the land value is £5 million excluding transaction costs)

15. Interest rate benchmark and interest costs for the Review mechanism shall be as follows

- The review mechanism's lending rate will be based on the 10-year UK government gilt bid yield plus 275 basis points.
- The rate will be updated on a quarterly basis and be applied to the capital outlay balance within the review mechanism.
- The quarterly rate for the 10-year UK government gilt bid yield will be the average bid yield for the 15<sup>th</sup> day of each of the three months in the quarter.

16. The dates for starting to index the elements of the review mechanism shall be as follows:

- December 2009 shall be the review mechanism's base period. The first month in which indices are applied to the review mechanism shall be January 2010.
- The house price index shall be applied to house prices in November 2009.

17. A Review Mechanism Manual shall be agreed in writing by the lpa prior to the commencement of development. The Manual shall contain the details about how the review mechanism will be operated from a technical perspective by the applicant and lpa.

The Manual shall describe responsibilities for the following activities and how they shall be carried out:

- The incorporation of data into the review mechanism for the indices;
- The adjustments and/or updating of the review mechanism in light of information from the Annual Updates, Reviews or other sources that indicate that a change is warranted to the review mechanism;
- The calculation of excess profits; and
- The purchasing of additional affordable housing units.

In the event that the parties cannot reach agreement on the Review Mechanism Manual, they will resort to the independent specialist on the same terms as outlined in Part 1 of this Appendix (above).