

# Discounted Units

## Developer's and Agent's Guidance Notes

### **Introduction**

Affordable Housing policy is detailed in policy H1 of Scottish Borders Council's (SBC) adopted Local Plan. The policy aims to ensure that new housing development provides an appropriate range and choice of "affordable" units as well as main-stream market housing.

Supplementary Planning Guidance: Affordable Housing (SPG 10) provides additional information on this policy stating SBC's commitment to the delivery of sufficient good quality affordable housing in a variety of tenures to meet the needs and aspirations of individuals and communities in the Scottish Borders. There are a variety of means by which policy compliance can be achieved, including on-site provision. This requires a percentage of new properties or site area to be allocated for affordable housing. Further policy details can be obtained by contacting SBC's Housing Strategy Team (see contact details below) or by accessing SBC's web-site.

On-site provision of affordable housing can be delivered in a number of different ways. Registered Social Landlords (RSLs) currently supply the majority of affordable housing homes in the Scottish Borders. Most of the houses that they supply are social rented properties. Other examples of on-site provision include shared equity schemes, private below market rent and shared ownership.

There is an identified demand for a cross-spectrum of affordable housing solutions, including low cost ownership, in a variety of locations. Discounted Units are one such mechanism by which appropriate households may be able to access the property market ladder via home ownership.

It is recommended that these notes are read in conjunction with the Applicant's Guidance Notes that are issued to prospective applicants and available on SBC's web-site. Any queries or clarification should be sought directly from SBC Housing Strategy Team (see contacts below).

### **More about Discounted Units**

#### **Why are Discounted Units required?**

In terms of current policy, any residential development exceeding 4 units should, in the first instance, be considered for on-site provision. This can be achieved via a variety of delivery mechanisms, these being listed in SPG 10.

The predominant and generally preferred delivery mechanisms are those requiring partnership with RSLs, most of those producing social rented accommodation.

However, for practical reasons, RSLs have a notional minimum threshold of 4 units, below which development or acquisition is not generally viable for them.

Therefore, to fill the void for developments that would yield between 1 and 4 on-site affordable units, or in instances where RSLs cannot financially commit to delivery within appropriate time-scales, Discounted Units have been identified as a delivery mechanism by which policy requirements can be satisfied.

#### **What are Discounted Units?**

This mechanism, also known as Unsubsidised Low Cost Home Ownership, requires developers to sell some of the properties at their developments at a price below market value. The sale price is negotiated

and agreed between the developer and SBC at the planning stage and prior to the issue of planning consent. They are then sold at an agreed fixed price below their market value to households successfully satisfying the relevant application criterion and placed on the Successful Applicant List (see **Identification of Successful and Reserve List Applicants** below).

### **What governs the terms of Discounted Units provision?**

Development Contributions, of which affordable housing contributions comprises one policy, are negotiated as part of the planning application process. Where appropriate, planning consents are not released until the necessary legal agreements are entered into between the relevant parties, generally the applicant, landowner if not the applicant, and the local authority.

For affordable housing on-site provision a S75 legal agreement is required (s75 of the Town & Country Planning (Scotland) Act 1997). These agreements are registered as a burden against title thereby compelling performance of the terms of the agreement either by signatories to it, or subsequent holders of heritable title.

### **Applications for Discounted Units**

#### **Why have an application process?**

SBC recognises that it is in the interest of all signatories to S75 legal agreements to ensure, as far as is practically possible, that Discounted Units are purchased by appropriate parties demonstrating genuine housing need and an inability to compete for appropriate housing solutions on the open market.

It is further considered necessary that prospective purchasing parties are identified in a completely independent impartial manner.

Consequently, a process has been devised to mitigate against identified risks and to maximise the required outcome of Discounted Units being purchased by the target client group.

#### **Who can apply for a Discounted Unit?**

Discounted Units will be sold to a pre-defined client group who can most closely demonstrate satisfaction of, though not necessarily all, application criterion. This includes:

- First time buyers, those who have experienced a significant change in household circumstances or those demonstrating significant housing need
- The property being offered should be appropriate for the applicant's household size
- The property should comprise the household's sole residence
- Either being an existing RSL tenant within the Scottish Borders area or on a waiting list to join one for a minimum of 3 months
- Applicants with a local connection either through family, work or cultural networks
- Applicants that can demonstrate an inability to compete for appropriate housing on the open market

#### **Does any other criterion apply?**

Successful Applicants will be purchasing Discounted Units offered in accordance with exactly the same rules and protocols that apply for standard house purchases in Scotland. The only difference is that the price to be paid will be at a fixed sum below the market value of directly comparable properties.

Consequently, Successful Applicants will be responsible for arranging the progression of the purchase and satisfy conveyancing requirements directly with the developer's nominated legal representative.

### **Developer's and Agent's actions and responsibilities**

#### **Notification**

In order to provide SBC and their Application Processor partner with an opportunity to plan resource allocation, the more forewarning about the projected completion of the Discounted Units the better. As a guide, **3 months advance warning** is considered an appropriate time-frame for the advance notification of the intention to market Discounted Units.

Notification should be made either by writing to or emailing SBC's Housing Strategy Team (HST) (contact details provided below).

Notification notices are required to include:

- The development address
- The specific units to be sold as Discounted Units (unit numbers, location within development and phase of development where appropriate)
- The price at which they are to be sold. The price should reflect any indexation clauses incorporated into the associated legal agreement and the basis supporting any variation to the sale price stated should be fully substantiated
- Anticipated hand-over dates for the units
- Anticipated commencement of marketing dates
- Contact details of nominated marketing agent
- Contact details of nominated Legal representative

**NB: The agency tasked with processing applications will have competing workloads. Appropriate advance warning of the marketing of Discounted Units will allow them to allocate resources accordingly. Insufficient resource allocation for the processing of applications may result in delays for the notification of Successful Applicants and consequently the subsequent conclusion of the unit sales. It is therefore in the vendor's interests that the advance notification of intention to market requirement is observed.**

### **SBC's notification response**

Once notified, SBC will:

- Confirm the price at which the Discounted Units are to be marketed and offered
- Once price has been confirmed, SBC will supply the developer's marketing agent with application forms and applicant guidance notes
- A cut off date for the receipt of applications will also be intimated. This will, unless otherwise stated, be two weeks after the last advertisement for the Discounted Units.

**NB: No marketing of Discounted Units will be undertaken until the developer and their marketing agents have been notified in writing or email by SBC of the agreed price at which the units are to be marketed.**

### **Marketing of units**

Developers will be required to market the Discounted Units via their nominated agent.

In addition, marketing will comprise advertisement in the local press. At a minimum, this should consist of a period of 2 weeks in either The Southern Reporter and/or Berwickshire News.

Vendors may also elect to place equivalent adverts in more local publications such as The Hawick News or Peeblesshire News.

It would not be considered inappropriate for Discounted Units to be marketed in conjunction with that for the standard units at the development.

Adverts are required to include:

- a picture of the units to be sold, or examples of, and
- property description, and
- the agreed fixed price at which they will be sold, and
- clear reference to the necessity for applicants to demonstrate appropriate housing need, and
- application cut-off date – this should be between 2 weeks and 4 weeks from the last date of advertisement, and
- further details to be obtained from vendor and/or Scottish Borders Council's Housing Strategy Team and/or Scottish Borders Council's web-site

**NB: No reference should be made to the Application Processor (Eildon Housing Association (EHA) or Berwickshire Housing Association (BHA)) to discourage direct contact from enquirers.**

Upon contact by enquirers, the vendor's marketing agent will supply enquirers with:

- Marketing material for the Discounted Units being offered. These will include, at a minimum, the unit numbers being offered, the agreed price at which they will be sold and specifications of the properties.
- Application forms (as supplied by SBC)
- Guidance notes (as supplied by SBC)

### **Enquiries**

It is anticipated that the marketing of Discounted Units may generate significant levels of enquiry. The applicant's guidance notes have been produced to pre-empt as many such queries as possible. However, it is recognised that there are still likely to be supplementary questions that some prospective applicants may have.

In an effort to both minimise work for the vendor's marketing agents, as well as to provide continuity of advice proffered, it is necessary that applicants are not given any advice upon initial contact with the agent, but are issued with the documents itemised above.

**NB: Any further or subsequent queries should not be handled by the developer, agent or Application Processor (EHA or BHA) but directed to SBC Housing Strategy Team (see contact details below).**

### **The application process**

#### **Application Processor**

The relevant skills and experience of local RSLs are being acquired to fulfil this function. Aside from their extensive expertise in this field, they are also completely divorced from any other aspect of the process and therefore comprise an independent and impartial application scrutiny body.

Clearly, the Application Processor requires to be remunerated for this service and, where stipulated in the associated legal agreement, these costs will be borne by the signatory to the agreement, or subsequent heritable title holder.

It is anticipated that the response and enquiry rate elicited by marketing Discounted Units will vary significantly dependent upon the price, character, style and location of the units offered within the context of prevailing economic conditions.

#### **Application submissions**

Applications to purchase a Discounted Unit will require to be submitted to the Application Processor directly and will require to be received within stated deadlines. The application submission deadlines will require to be published in advertisements for the units as well as appended to application forms and guidance notes.

**Applications will require to be delivered to the Application Processor by recorded delivery. Any applications received other than by recorded delivery may not be accepted for consideration. Hand delivered applications will not be accepted under any circumstances.**

One reason for this condition is in order to avoid scenarios whereby applicants queue at the Application Processor's address. It is considered that this outcome could create potential for public disorder and inconvenience for the delivery of the Processor's core business.

However, more fundamentally, by restricting contact between applicants and the processor, the independence of the processor is protected and preserved.

Consequently, there will be no advantage afforded by making early application submissions. Provided that submitted within stated deadlines, there will be no cognisance taken or priority attached to early application submissions.

## **Application Assessment**

The Application Processor will assess all applications received in accordance with submission conditions and on the basis of the criterion stated above (see **Who can apply for a Discounted Unit?**). Any employee of the organisations from which the processing body is derived will be required to make full declarations of that interest in their application form.

## **Identification of Successful and Reserve List Applicants**

The intention is to draw up a list of Successful Applicants comprising one applicant for each unit available, these applicants being those identified by the processing body as best satisfying application criterion. In instances where there is more than one Discounted Unit offered, the unit number will be intimated against the name of the Successful Applicant.

Reserve List Applicants will comprise a list of three applicants per unit offered who were adjudged by the processor as comprising the next best applicants in terms of the qualifying criterion. Again, the unit numbers will be identified for each Reserve List Applicant.

In instances where there are more applicants of equal merit identified than there are Discounted Units available, Successful and Reserve List Applicants will be identified via a random selection process. The developer and/or their agent will be welcome to witness this process in order to satisfy themselves of the impartiality of the selection process.

## **Notification of Successful and Reserve List Applicants**

The Application Processor will notify SBC Housing Strategy Team of these lists.

The Successful Applicant List will then be forwarded to the developer and their nominated solicitor. The number of the unit for which each Successful Applicant has been identified will be intimated along with confirmation of the agreed price at which they should be sold. The developer and their legal representatives will be advised that they are to exclusively convey the Discounted Units indicated on the list to the Successful Applicants identified for each one.

SBC Housing Strategy Team will also notify the applicants of their status on these lists providing the contact details of the vendor's legal representative to the Successful Applicants.

It is not envisaged that unsuccessful applicants will be notified of their non-inclusion on either list.

## **Discounted Unit conveyance**

Other than stipulating the price at which Discounted Units are marketed and sold, and identifying the parties to whom they should be sold, the conveyance of these properties should be in accordance with normal Scots Law protocols.

However, should any unreasonable delays or conditions of purchase occur with the conveyancing process, and it can be transparently demonstrated that such delays are not the result of the vendor's actions or inactions, then SBC Housing Strategy Team, upon receipt of appropriate representations, will consider nominating a Reserve List Applicant with whom the vendor can enter into negotiations to sell the Discounted Unit. Other than this change of purchaser, all other conveyancing requirements will remain the same i.e. the unit number and the agreed price.

## **DISCLAIMER**

**Neither SBC nor the Application Processor (see The Application Process) shall bear any responsibility or liability whatsoever for any aspect of the sale transaction or for the subject of that transaction. The sole role of SBC and the Application Processor shall be to direct that the conveyance of the specified property be sold at the agreed price to an identified party. It shall be the sole responsibility of the individual parties to that sale transaction to ensure their own legal rights and responsibilities in respect of that transaction are protected and met respectively.**

## **Contact Details**

**Developer's and/or their agents should not contact the Application Processor to clarify any queries. Any supplementary queries or requirements for clarification should be directed to SBC Housing Strategy Team.**

**For further details of the Discounted Unit process, please contact:**

Scottish Borders Council  
Housing Strategy Team  
Department of Social Work  
Council Headquarters  
Newtown St Boswells  
Melrose  
Scottish Borders  
TD6 0SA

Tel: 01835 825169

Email: [Housing Strategy](#)

## Action Summary

<b>Group</b>	<b>Time</b>	<b>Required actions</b>
<b>Developer</b>	3 months prior to marketing	Notification to SBC HST containing: <ul style="list-style-type: none"> <li>• Development address</li> <li>• Discounted Unit numbers</li> <li>• Discounted Unit price</li> <li>• Anticipated handover dates</li> <li>• Anticipated marketing commencement date</li> <li>• Marketing agent contact details</li> <li>• Legal representative contact details</li> </ul>
<b>SBC HST</b>	Within 10 working days of Notification receipt	Confirm notification receipt and Discounted Unit price. Advise Application Processor of anticipated marketing
<b>SBC HST</b>		Issue to developer and marketing agent: <ul style="list-style-type: none"> <li>• Application forms</li> <li>• Guidance notes</li> <li>• Confirmation of application form receipt deadline (ordinarily 2 weeks after last Discounted Unit advertisement date)</li> </ul>
<b>Developer/ Marketing Agent</b>	At developer's discretion. Developers should be aware that, in addition to normal conveyancing time periods, application processing will add to projected time scales for the conclusion of sales.	Advertise Discounted Units in local press – minimum 2 weeks run. Advertisements include (at minimum): <ul style="list-style-type: none"> <li>• a picture of the units to be sold, or examples of, and</li> <li>• property description, and</li> <li>• the agreed fixed price at which they will be sold, and</li> <li>• clear reference to the necessity for applicants to demonstrate appropriate housing need, and</li> <li>• application cut-off date – this should be between 2 weeks and 4 weeks from the last date of advertisement, and</li> <li>• further details to be obtained from vendor and/or Scottish Borders Council's Housing Strategy Team and/or Scottish Borders Council's web-site</li> </ul>
<b>Marketing agent</b>	Upon enquiry	Issue to parties making Discounted Unit enquiries: <ul style="list-style-type: none"> <li>• Sales schedules – unit numbers, price, specification and accommodation</li> <li>• Application forms</li> <li>• Guidance notes</li> <li>• Advise application submission deadline</li> <li>• <b>Additional queries – refer to SBC HST</b></li> </ul>
<b>Application Processor</b>	Upon application Deadline	Collate and process applications to identify: <ul style="list-style-type: none"> <li>• Successful Applicant List</li> <li>• Reserve Applicant List</li> </ul>
<b>Application Processor</b>	Upon List I.D. (say) 4 weeks from deadline	Issue Successful Application and Reserve List to SBC HST
<b>SBC HST</b>	Within 10 working days of Successful Applicant and Reserve Applicant List receipt	Notify: <ul style="list-style-type: none"> <li>• Successful and Reserve List Applicants of status</li> <li>• Advise Successful List Applicants to instruct their legal representative to progress purchase</li> <li>• Developer and their legal representative of Successful Applicant List</li> </ul>
<b>Developer's Legal representative</b>	Upon contact from Successful Applicant's legal representative	Proceed with normal conveyancing protocols at Discounted Price for units stated <b>exclusively</b> with Successful Applicants

