

# Discounted Units

## Solicitor's and Financial Institution'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 is 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 (HST) (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. Unsubsidised Low Cost Home Ownership, more commonly referred to as Discounted Units, is one such mechanism by which appropriate households may be able to access the property market ladder.

These Guidance Notes are designed to assist relevant stakeholders by developing an understanding of the Discounted Unit mechanism, how it operates and what the implications are for stakeholders with an interest in them. It is recommended that these notes are read in conjunction with the Applicant's and the Developer's and Agent's Guidance Notes, available on SBC's web-site. Any additional queries or clarification should be sought directly from SBC Housing Strategy Team.

### DISCLAIMER

**Neither SBC nor the Application Processor (see The Application Process below), 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 the Authority and 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.**

## **More about Discounted Units**

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

The Discounted Unit mechanism requires developers to sell Housing Units at a price below market value. The sale price, which will be below their market value, is negotiated and agreed between the applicant and/or developer and SBC at the planning stage and prior to the issue of planning consent. They are then sold at the agreed sale price to households successfully satisfying the relevant application criterion and placed on the Successful Applicant List (see **Identification of Successful and Reserve List Applicants** below).

### **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 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. To secure on-site affordable housing provision, a S75 agreement is required (s75 of the Town & Country Planning (Scotland) Act 1997). The agreement will be registered and will constitute a Burden on the landowner's 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**

### **How are Discounted Units Purchased?**

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 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 or 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

### **Do applicants have to demonstrate that they can afford a Discounted Unit?**

No. The application process is designed to identify applicants who cannot compete for appropriate housing solutions on the open market. SBC and the Application Processor, the body which scrutinises applications submitted, assume no responsibility for ensuring the ability of applicants to afford initial or subsequent purchasing costs. It is incumbent upon applicants to seek appropriate professional advice and apply for funding mechanisms that they can afford. Financial institutions will assume the same level of responsibility for approving funding applications from Discounted Unit purchasers as they would for purchasers of property on the open market.

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

Successful Applicants will be purchasing Discounted Units subject to the same legal provisions as in any other private house purchase 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. Successful Applicants will be responsible for arranging the progression of the purchase and satisfy conveyancing requirements directly with the developer's nominated legal representative.

## **The application process**

### **Application Processor**

The relevant skills and experience of local RSLs are being acquired to fulfil the application form scrutiny 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 Developer. 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 Assessment**

The Application Processor will assess all applications received in accordance with submission conditions, with regard to application receipt deadlines and the method by which applications should be delivered, and on the basis of the criterion stated above (see **Who can apply for a Discounted Unit?**).

**This does not include an assessment of the applicant's ability to secure or service necessary funding to purchase the 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**

A list of Successful Applicants comprising one applicant for each unit available will be created, 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.

The price at which the Discounted Units should be conveyed will be stated against the unit number and the name of the Successful Applicant.

Reserve List Applicants will comprise a list of three applicants per unit offered who were adjudged by the Application 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. The Reserve Applicant List will not be disclosed to the vendor or their legal representatives, but will be utilised in instances where the Successful Applicant willingly, or otherwise, fails to satisfactorily progress the purchase of the Discounted Unit.

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.

### **Disclosure of the Successful Applicant List**

Once this list has been identified by the Application Processor and intimated to SBC's Housing Strategy Team, the Successful Applicant will be notified accordingly and advised to instruct their legal representative to progress the purchase of the Discounted Unit.

The legal representative of the Discounted Unit's vendor will likewise be issued with the Successful Applicant List. They will only be permitted to sell the Discounted Unit to the identified Successful Applicant and at the price stated.

### **Discounted Unit sales**

#### **Do purchasers of Discounted Units own the whole property?**

Yes – they will own 100% of the equity in that property. The terms of the initial sale will be the same as any standard residential property transaction with the exception that SBC will define to whom the Discounted Units will be sold (the Successful Applicant identified as a result of the application process) and the price at which it will be sold (as defined by the terms of the associated S75 agreement).

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.

#### **What recourse is there should the conveyance of a Discounted Unit not progress or be concluded within reasonable time-frames?**

SBC fully understands that there is a legitimate expectation by the Discounted Unit vendor that their initial sale will be progressed and concluded within reasonable time-frames.

Consequently, should unreasonable or irregular delays or complications arise during the conveyancing process, the vendor's legal representative should initiate contact with SBC's Housing Strategy Team. The commencement of missives should be initiated within 4 weeks of notification of Successful Applicant status. 8 weeks is considered a reasonable period within which missives should be concluded from the date of initiation. If these delays are considered to have been precipitated by the vendor and/or their legal representative, then at SBC's discretion, the name and contact details of a Reserve Applicant may be proffered to whom the Discounted Unit can be conveyed instead. Other than this change of purchaser, all other conveyancing requirements will remain the same i.e. the unit number and the agreed price

#### **What happens if the purchaser subsequently sells the Discounted Unit?**

Purchasers of Discounted Units are entitled to sell their property at any time once they have acquired title to it. However, in an attempt to re-coup some of the "contribution" conferred by discounting the initial purchase from market value, a claw-back clause is inserted into the S75 governing its subsequent sale. The claw-back is a percentage of the difference between the amount that was initially paid for the affordable unit and that achieved upon its subsequent open market sale. This difference is known as the Gross Surplus. Initially the percentage of

Gross Surplus payable is 50%, though this diminishes to 10% on a sliding scale over time. These requirements are stipulated within the terms of the S75 legal agreement.

### **What is the claw-back position beyond first re-sales?**

Although upon the Successful Applicant selling the Discounted Unit, the property will either achieve market value or be assessed at market value, subsequent sales will continue to require the payment of a percentage of the Gross Surplus in accordance with the terms of the S75's claw back clause, into perpetuity.

### **What happens to the proportion of Gross Surplus paid upon subsequent sale?**

The appropriate percentage of Gross Surplus achieved upon subsequent sale will be paid to SBC. Such payments will be placed in ring-fenced accounts to be utilised for the provision of affordable housing within the SBC authority and in accordance with relevant policy.

### **What happens if the initial Discounted Unit purchaser improves or extends the property prior to sale?**

If a Discounted Unit is materially extended in the course of ownership i.e. the habitable floor area has been increased or a garage suitable for storing a car is constructed, then the value of these improvements will require to be deducted from the calculation of gross surplus profit. This will be achieved by the vendor, at their expense, instructing a Royal Institution of Chartered Surveyors (RICS) accredited firm of Scottish Borders property valuers, as approved by SBC, to conduct an open market valuation of the property. This valuation will be required to determine a professional opinion of value of the property on the basis of character, size, location and condition had the improvements not occurred. The resultant valuation will comprise the basis of gross surplus calculation, not the amount actually achieved for the sale of the improved or extended unit.

### **Does the Discounted Unit have to be sold on the open market?**

No. The subsequent owner(s) could choose to sell the property to a pre-determined party e.g. a relative. However, the property should be valued by the vendor at market value, at their expense, by an RICS accredited firm of Scottish Borders property valuers and as approved by SBC's Housing Strategy Team. The resultant market valuation will comprise the basis of the gross surplus calculation.

## **Summary**

- **Discounted Units are sold at a pre-determined price below market value to an identified client group demonstrating appropriate housing need**
- **Purchasers of Discounted Units will have 100% of the equity in the property purchased**
- **Purchasers of Discounted Units are responsible for acquiring and servicing appropriate funding to facilitate the unit's purchase**
- **Other than pre-determining the price that should be paid and specifying the initial purchaser to whom it should be sold, the Discounted Unit should be conveyed in a normal manner in accordance with Scots Law**
- **Subsequent sales will require a percentage of Gross Surplus to be made towards the provision of affordable housing into perpetuity**

## **Contact Details**

**Developers 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  
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