

BABERGH DISTRICT COUNCIL

FROM: Head of Corporate Services

REPORT NUMBER **G201**

TO: STRATEGY COMMITTEE

DATE OF MEETING: 7 February 2008

POLICY FOR DETERMINATION OF REQUESTS FOR WAIVER OF REPAYMENT OF DISCOUNT IN RESPECT OF PROPERTIES SOLD UNDER THE 'RIGHT TO BUY'

1. PURPOSE OF REPORT

1.1 To determine the Council's approach to requests for the waiver of repayment of discount in respect of properties which have been sold under the 'Right to Buy' scheme.

2. RECOMMENDATIONS TO COUNCIL

2.1 That a policy for determination of requests for the waiver of repayment of discount in respect of properties which have been sold under the 'Right to Buy' Scheme be adopted in the form of the draft Policy contained in Appendix 1 to this Report.

2.2 That the Head of Corporate Services be delegated authority to determine requests for waiver of discount in respect of properties which have been sold under the 'Right to Buy' Scheme.

2.3 That the Licensing and Appeals Committee be delegated authority to determine non-statutory appeals in relation to matters arising under the 'Right to Buy' legislation.

3. FINANCIAL IMPLICATIONS

3.1 The waiver of repayment of discounts in whole or in part pursuant to the proposed policy would result in the Council foregoing income in respect of sums to which it would otherwise be entitled.

4. RISK MANAGEMENT

4.1 This report is most closely linked with the Council's Significant Business Risk No. 7, Financial, Performance and Risk Management. Key risks are set out below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Inconsistent decisions being made in respect of requests to waive repayment of discount	High	Critical	The adoption of a policy would ensure a consistent approach
Decisions not to waive	High	Critical	The adoption of a policy

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
repayment of the discount may be challenged by former tenants			which includes a right of appeal would reduce the likelihood of decisions being challenged by former tenants

5. KEY INFORMATION

- 5.1 Under the Right to Buy legislation when a Council tenant purchases a property they receive a discount on the market value of the property. The amount of discount received relates to the length of their tenancy and the value of the property. This may be up to 60% of the value of the property, but cannot exceed £34,000. Should a former tenant sell the property within a period of three years (five years in the case of Right to Buy applications made after 18 January 2005) following the date of purchase, the Council can demand a repayment of all or part of the discount on the sale of the property (see paragraphs 5.2 and 5.3 below).
- 5.2 In respect of Right to Buy applications made prior to 18 January 2005, the maximum discount repayable is the amount of the original discount, reduced by one third for each full year which has elapsed since the date of the Right to Buy disposal and the date of the subsequent disposal.
- 5.3 In respect of Right to Buy applications made after 18 January 2005, the discount repayable will reflect the increase or decrease in the market value of the property between the date of the Right to Buy disposal and the date of the subsequent sale. The maximum amount repayable will be calculated by applying the amount of discount received as a proportion of Right to Buy valuation, to the price paid on the subsequent sale less any part of that price which is attributable to home improvements carried out since the Right to Buy disposal. The amount will be reduced by one fifth for each full year which has elapsed since the date of the disposal.
- 5.4 The Right to Buy legislation allows the Council discretion to decide not to demand repayment of part or the entire discount. The Department of Communities and Local Government has issued guidance regarding situations where it may be appropriate to use discretionary powers and the manner in which requests for the exercise of discretion may be considered. It is for each authority to decide whether the circumstances of a case justify the exercise of the discretion allowed in the legislation.
- 5.5 In the absence of a policy, it is difficult for the Council to identify the circumstances in which consideration should be given to a waiver of the repayment requirement to achieve consistency of approach. The Council has received its first request for waiver and this has highlighted the difficulties and complexities involved with such decisions without an adopted policy.

- 5.6 The approach recommended within this report involves the consideration of each request on a case by case basis utilising the guidance issued by the DCLG as the policy base. It necessitates the acquisition of detailed financial and circumstantial evidence from the applicant. The evidence is then assessed to determine whether the applicant would not be in a financial position to move without a waiver of all or part of the discount and, that the applicant's personal circumstances are so exceptional that the move is essential. It is recommended that such decision be taken by the Head of Corporate Services who would liaise with the Head of Finance on the financial issues. Whilst there is no statutory right of appeal it would be good practice to provide such a facility and the draft Policy appended to this report contains a right of appeal to the Licensing and Appeals Committee.
- 5.7 The adoption of the Policy appended to this report will ensure that the Council has in place procedures to consider and decide requests that discretion should be exercised; and that such procedures are open, fair and transparent.
- 5.8 The Policy sets out that decisions made will be cleared with the Council's auditors, and as a precursor to this, a copy of the Policy has been given to them for comment. The outcome of this consultation will reported at today's meeting.

6. **APPENDICES**

Appendix 1. - Draft Policy for the Waiver of Repayment of 'Right to Buy' Discount.

7. **BACKGROUND PAPERS REFERRED TO:**

None.

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DRAFT RIGHT TO BUY - WAIVER OF DISCOUNT POLICY

1. INTRODUCTION

The purpose of this document is to set out the Council's policy for considering requests to waive all or part of the repayment of discount in respect of Right to Buy properties sold before the completion of the discount period.

2. THE DISCOUNT REPAYABLE

Under the Right to Buy legislation when a Council tenant purchases a property they receive a discount on the market value of the property. The amount of discount received relates to the length of their tenancy and the value of the property, but cannot exceed £34,000. Should a former tenant sell the property within a period of three years (five years in the case of Right to Buy applications made after 18 January 2005) following the date of purchase, the Council can demand a repayment of **all or part of** the discount on the sale of the property (**see paragraphs 2.1 & 2.2 below**).

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2.1 Right to Buy applications made prior to 18 January 2005

The maximum discount repayable is the amount of the original discount, reduced by one third for each full year which has elapsed since the date of the Right to Buy disposal and the date of the subsequent disposal.

2.2 Right to Buy applications made after 18 January 2005

The discount repayable will reflect the increase or decrease in the market value of the property between the date of the Right to Buy disposal and the date of the subsequent sale. The maximum amount repayable will be calculated by applying the amount of discount received as a proportion of Right to Buy valuation, to the price paid on the subsequent sale less any part of that price which is attributable to home improvements carried out since the Right to Buy disposal. The amount will be reduced by one fifth for each full year, which has elapsed since the date of the disposal

3. USE OF DISCRETIONARY POWERS TO WAIVE REPAYMENT OF DISCOUNT

3.1 Right to Buy legislation allows the Council discretion to decide not to demand repayment of part or the entire discount. The Department of Communities and Local Government has issued guidance regarding situations where it may be appropriate to use discretionary powers and the manner in which requests for the exercise of discretion may be considered. It is for each landlord body to decide whether the circumstances of a case justify the exercise of the discretion allowed in the legislation

3.2 The DCLG Guidance entitled "*Right to Buy – The use of discretionary powers on repayment of discount*", states:

It is for each landlord to decide whether the circumstances in any particular case would justify the exercise of discretion under section 155 of the Housing Act 1985 as amended. However, the Government considers that this is most likely to be justified in circumstances where repayment would lead to demonstrable personal hardship. But it may also be justified in other circumstances.

Examples of where discretion might be justified include the following. In each case it will normally be necessary to establish both the facts justifying a move, and that such a move could not take place unless part or all of the repayable discount were to be waived:

- (a) where an owner wishes to move because otherwise he or she and /or other family members (especially children) face a demonstrable threat of violence or of significant harm due to:
 - Relationship breakdowns involving actual or threatened domestic violence;
 - Racial, faith, homophobic or any other kind of harassment;
 - Extreme anti-social behaviour, such as persistent drug dealing in an adjoining or nearby property;
- (b) where the sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds;
- (c) where an early move is essential to return to employment; for instance where an individual has received a firm offer of a job in another area and would thereby be able to return to work, either:
 - After long term unemployment; or
 - After having been made redundant, when his/her skills are such that there is no prospect of getting another job locally
- (d) where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons;

It is envisaged that this power will only be used in exceptional circumstances and that landlords will have procedures in place to consider and decide requests that discretion should be exercised. The consideration process should be open, fair and transparent, bearing in mind that decisions may be subject to judicial review and/or to scrutiny by the Local Government Ombudsman or Housing Ombudsman.

It will be for landlords themselves to decide what procedures to use, and whether or not such decisions should be subject to review and, if so, by what means. Requests could be determined by means of written representations, or by a formal hearing of the parties (in which case the applicant should have the option of appearing with a representative or advisor).

Landlords will also wish to bear in mind the need for clear and objective evidence, for example, from a local police force, a doctor or psychiatrist, or an employer.

It is envisaged that former landlords will only exercise their discretion in cases where the former tenant cannot afford to repay all or part of the discount.

In most cases, a decision by a former landlord not to demand repayment will lead to a net cost to the public purse. Landlords should therefore clear decisions with their auditors. In cases where former landlords are registered social landlords (for example, where the former tenant bought under the Preserved Right to Buy), they should bear in mind that, under the Housing Corporation's regulatory code, they are required to protect public money.

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4. **POLICY**

- 4.1 The Council will only waive repayment of the whole or part of the discount in exceptional circumstances and where the circumstantial and financial criteria set out in the DCLG Guidance are clearly satisfied. **Further, that the circumstances necessitate the disposal**

of the RTB property prior to the anniversary date upon which the amount of discount shall have reduced or ceased to be repayable altogether.

4.2 The Council's Head of Corporate Services shall be entitled to request such evidence as he considers appropriate in order to assess whether the circumstantial and financial criteria set out in the DCLG Guidance are clearly satisfied.

4.3 Evidence required to assess the financial criteria will include (but is not limited to):-

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- (a) a mortgage assessment carried out by a person or body authorised by the Financial Services Authority.
- (b) a current valuation of the property (including valuation of any improvements carried out since the date of acquisition) as provided by a reputable valuer and details of the marketing price
- (c) the amount of any outstanding mortgage
- (d) the level of individual and joint savings
- (e) the value of any other assets
- (f) particulars of other properties under consideration

4.4 Evidence required to assess the circumstantial criteria will include (but is not limited to):-

- (a) a statement of reasons why repayment of the RTB discount would cause personal hardship and why the disposal of the RTB is needed before the amount of discount repayable is reduced or lapses
 - (b) the date, to the best of the applicant's knowledge, that the circumstances necessitating the move arose
 - (c) the amount of waiver of discount being sought
 - (d) verification of the circumstances necessitating the move e.g. medical evidence, police report
- 4.5 It will be the responsibility of the applicant to produce evidence in support of the application, at their own cost, to demonstrate why the Council's discretion should be exercised in the circumstances of the case. The Head of Corporate Services may decline to consider an application where full information requested by, or on his behalf, has not been provided without triggering the appeal process in 5.1.

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4.6 The Head of Corporate Services will determine applications for the waiver of repayment of discount including waiver of repayment of the discount in whole or in part.

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4.7 In determining the application, the Head of Corporate Services will consult with the Council's Head of Finance on the information supplied under 4.3 (a) – (f) along with any other relevant financial information in order to assess financial need for a waiver of any part of the discount repayment. In so doing, the amount of removal expenses together with costs and expenses of acquisition of an alternative property will be disregarded.

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4.8 Additionally, the Head of Corporate Services will consider the weight of circumstantial evidence to necessitate a move to another property and the need for that move to take place before the date upon which the amount of RTB discount will reduce or cease to be repayable altogether. Only where the Head of Corporate Services is satisfied that there is clear evidence to fulfil the criteria will he proceed to consider the extent of a waiver to repay the discount.

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- 4.9 Any waiver will **not exceed** such part of the discount as the Head of Corporate Services (in consultation with the Head of Finance) considers, on the information before him, to be required to enable the applicant to be in a financial position to acquire an alternative property to meet the applicant's circumstantial needs. **For these purposes, an alternative property may be of a lesser value than the RTB property.**
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- 4.10 The repayment of any part of the discount will not normally be waived to facilitate acquisition of a higher value or higher specification property nor where the circumstances **giving rise to the application for waiver** existed at the time the RTB was exercised.
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- 4.11 If the Head of Corporate Services determines that a waiver of repayment of discount is to be given, the decision will be subject to ratification by the auditor.
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- 4.12 The Head of Corporate Services will provide the applicant with written notification of his decision as soon as practicable. If that decision is not to waive repayment of the whole of the discount, the Head of Corporate Services will provide reasons for his decision.
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5. APPEALS

5.1 There is no statutory right for applicants to appeal against a decision regarding waiver of repayment of discount. However it is considered good practice to offer such a facility and the Council has introduced an appeal process. An applicant may within 21 days of the date of the written notification of the decision by the ~~Head of Corporate Services~~ appeal against that decision. Any request for an appeal must be made in writing to the Solicitor to the Council within the specified 21 days and state the reasons for the appeal and enclosing any additional or new material in support.

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5.2 The Council's Licensing and Appeals Committee (or Sub-Committee thereof) will determine the appeal. Applicants will be permitted to attend the appeal hearing with a representative or advisor and make verbal representations in accordance with the procedure (of which the Applicants shall receive advance notice) to be applied at the appeal. The Chairman of the Committee may decide not to allow the introduction of any new evidence which the Council has not received at least [7] working days before the date of the appeal hearing.

5.3 Any costs incurred by the applicant in connection with the appeal (including attendance at the appeal hearing) will be the responsibility of the applicant.

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5.4 The Council's internal auditor will be entitled to make representations as part of the appeal process and to appear at the appeal hearing

5.5 The Council's Licensing and Appeals Committee will determine the application in line with this policy and relevant procedure notes.

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January 2008