

Mutual exchange policy

Department: Housing & Environment (housing management)

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1. Scope

Mutual exchange is where 2 or more social housing tenants swap their home. This policy outlines Ealing Council's approach to mutual exchange for its secure social housing tenancies.

2. Aims and objectives

This policy aims to comply with the Regulator of Social Housing's Tenancy Standard and cover our approach to mutual exchanges ensuring the council meets its legal and regulatory responsibilities.

3. Legislative and regulatory context

Mutual exchange is set within the legislative framework provided by:

- Housing Act 1985
- Localism Act 2011
- Landlord and Tenant Act 1985
- Equality Act 2010

1.4 of the Regulator of Social Housing's tenancy consumer standard states that 'Registered providers must support relevant tenants living in eligible housing to mutually exchange their homes'. This includes supporting tenants to exchange by providing clear and simple information about the mutual exchange process, including the associated responsibilities of the landlord and of the tenant and helping tenants to register with an online mutual exchange service.

4. Exchange schemes

To support and enable tenants to find an exchange partner, Ealing Council will subscribe to at least 1 mutual exchange provider to enable our tenants to have access to a free online exchange service. This free service will be publicised through the council's website and in housing publications.

Ealing Council presently has subscriptions with Homeswapper and House Exchange which enables our tenants to subscribe to these services for free.

The council will shortly be implementing SwapTracker which is an online platform for residents to make online applications and track their mutual exchange application.

We will retain the use of paper applications for residents who are unable to access the online application.

5. Property size

The council is committed to making the most effective use of its housing stock and seeks to avoid both under-occupation and overcrowding via mutual exchange.

On receipt of a mutual exchange application, the council will assess whether the size of the property meets the needs of the applicants.

Bedroom size eligibility is calculated using the bedroom size criteria within the allocation policy.

Consent will only be granted where the property is of the right bedroom size. Under occupation and overcrowding by one bedroom will be considered in exceptional circumstances and agreed by the neighbourhood manager.

6. Condition of property

Tenants are advised to visit the property they are exchanging with before submitting an application as the incoming tenant will be accepting the property in its current condition. Any damage or alterations caused by the outgoing tenant will become the responsibility of the incoming tenant and be repaired at their own expense.

The incoming tenant takes on responsibility for any non-standard fittings such as laminate flooring and light fittings.

The council will only carry out repairs which it is responsible for as set out in the repairs handbook.

Before an exchange is agreed, a repairs surveyor will visit the property to check the condition and inform the outgoing tenant of any repairs they need to complete before the exchange can proceed.

The council will arrange for gas and electrical checks to be carried out and ensure valid satisfactory certificates are issued before approving the exchange.

7. Consent/grounds for refusal

Consent must be granted by all landlords before an exchange can take place. The council must inform the tenant whether their application has been approved or refused within 42 days of receipt of the mutual exchange application. The 42-day period only starts when all parties involved in the exchange have submitted their applications to their landlord. For joint tenancies, both joint tenants must sign the exchange application form.

If the exchange is to be refused, the council must set out the reasons for refusal within 42 days. Failure to do this means that the exchange can proceed.

Consent cannot be unreasonably withheld. Schedule 3 of the Housing Act 1985 sets out the grounds for refusing a mutual exchange for a secure tenant.

Schedule 14 of the Localism Act 2011 sets out the grounds for refusing a mutual exchange if one of the tenants is a secure tenant (tenancy started before 1 April 2012) and they are exchanging with a tenant on a flexible/fixed term tenancy.

See appendix A for the grounds of refusal.

8. Conditional approval

The council can attach conditions to an exchange approval which the tenant needs to meet before the exchange can proceed. These include but are not limited to:

- clearing outstanding rent arrears
- repairs to be carried out
- unauthorised alterations to be remedied

The incoming tenant will sign a disclaimer confirming that they have inspected the property and are willing to accept the property as seen.

9. Assignment and regrant of tenancy

Mutual exchanges are carried out by either assignment or surrender and regrant of a tenancy. This is determined by the tenancy that each of the exchange partners have.

Where an exchange is between secure and/or assured tenants, it is carried out by deed of assignment. Where the exchange involves a flexible/fixed term tenancy, it is via surrender and regrant for both tenancies.

| Status before exchange | | Status after exchange | | Method of exchange |
|--|---------------------------------|----------------------------------|---------------------------------|-----------------------|
| Household 1 | Household 2 | Household 1 | Household 2 | |
| Secure/assured lifetime tenancy | Secure/assured lifetime tenancy | Secure/assured lifetime tenancy | Secure/assured lifetime tenancy | Deed of assignment |
| Secure lifetime tenancy (pre-1 April 2012) | Flexible/fixed term tenancy | Secure lifetime tenancy (retains | Secure lifetime tenancy | Surrender and regrant |

| | | | | |
|---|------------------------------------|------------------------------------|---------------------------------|-----------------------|
| | | security of tenure) | | |
| Secure lifetime tenancy (post 1 April 2012) | Flexible/fixed term tenancy | Flexible/fixed term tenancy | Secure lifetime tenancy | Surrender and regrant |
| Secure/assured lifetime tenancy | Fixed term affordable rent tenancy | Fixed term affordable rent tenancy | Secure/assured lifetime tenancy | Deed of assignment |

10. Governance

Ealing Council's cabinet has overall responsibility for ensuring that this policy is implemented to ensure compliance with the law.

In practical terms, the chief executive reports to cabinet to demonstrate accountability for regulatory compliance across the council and will also ensure that we are fully compliant with our landlord function with robust controls in place to keep our residents safe and to make sure our tenancies are well managed.

11. Complaints and appeals

Where the council has refused a mutual exchange, the tenant can appeal within 14 calendar days of the decision. Appeals will be considered by the head of housing management.

The tenant also has the right to make a complaint through the council's complaint process.

12. Monitoring, compliance and review

Ealing Council will measure the following areas of performance:

- number of mutual exchange applications received
- number of mutual exchange applications approved
- number of mutual exchange applications refused
- % of application decisions communicated in writing to the tenant within the 42-day statutory timescale

This policy will be reviewed every 3 years or sooner if new legislation or new regulations are introduced.

13. Diversity and inclusion

Ealing Council opposes all forms of discrimination, which cause a person to be treated unjustly including on the grounds of:

- race
- ethnic origin
- nationality
- disability
- gender
- sexuality
- age
- income
- appearance
- faith
- religious belief or non-belief
- responsibility for dependents

We are constantly looking at ways to make access to our services easier for everyone. This can include:

- providing information and responses in different ways when this will be helpful such as large print and translations
- language interpreters including British Sign Language
- arranging appointments around times of the week or periods to suit the needs of residents
- providing additional support and reasonable adjustments for residents who are vulnerable
- undertaking home visits to residents who are unable to access our offices

14. Associated policies

This policy will be implemented in conjunction with the policies that relate to the management and allocation of tenancies:

- tenancy
- allocations

Appendix A – grounds for refusal to exchange

| Schedule 3 of the Housing Act 1985 | Schedule 14 of the Localism Act 2011 | Grounds for refusing consent to the exchange |
|------------------------------------|--------------------------------------|--|
| - | Ground 1 | When any rent lawfully due from a tenant under one of the existing tenancies has not been paid |
| - | Ground 2 | When an obligation under one of the existing tenancies has been broken or not performed |
| Ground 1 | Ground 3 | A court order for possession or a suspended possession order has been made for either property |
| Ground 2 | Grounds 4 and 5 | The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced |
| Ground 3 | Ground 7 | The property is substantially larger than is reasonably needed by the proposed assignee. |
| Ground 4 | Ground 8 | The property is not reasonably suitable for the needs of the proposed assignee and their household. |
| Ground 5 | Ground 9 | The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation or the governors of a grant-aided school |
| Ground 6 | Ground 10 | The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity |

| | | |
|--------------------------------------|-----------|---|
| Ground 7 | Ground 11 | The property has been substantially adapted for occupation by a physically disabled person and, if the assignment was approved a physically disabled person would not be living there |
| Ground 8 | Ground 12 | The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil this criteria |
| Ground 9 | Ground 13 | The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special needs and, if the assignment was approved no person with those special needs would be living there |
| Ground 10 | Ground 14 | The dwelling is the subject of a management agreement whereby the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association and where the proposed assignee is not such a member nor is willing to become one |
| Additional ground (Housing Act 1985) | Ground 6 | <p>One of the following in junction orders (under section 153 of the Housing Act) is in force either against the tenant and/or the proposed person who resides with them:</p> <ul style="list-style-type: none"> • antisocial behaviour order • a demotion order • an order under ground 2 for secure tenancies • an order under ground 14 for assured tenancies. |

