

Agenda Item 6

**RECOMMENDED ITEM FROM
SCRUTINY COMMITTEE HELD ON
22ND JULY 2008**

216. MUTUAL EXCHANGE POLICY

The Head of Housing submitted a report detailing the proposed Mutual Exchanges of Council Properties Policy.

A lengthy debate took place regarding whether the incoming tenant should be responsible for any repairs or damage left by the previous occupiers.

Moved by Councillor T. Cook and seconded by Councillor R.A. Heffer
RECOMMENDED that (1) the Mutual Exchange Policy be accepted,

(2) the Mutual Exchange Policy be forwarded to the Executive for approval.

(Head of Housing/Head of Democratic Services)

Committee:	Scrutiny	Agenda Item No.:	9.
Date:	22 July 2008	Category	
Subject:	Mutual Exchange Policy	Status	Open
Report by:	Head of Housing		
Other Officers involved:	Patch Management Group		
Director	Chief Executive Officer		
Relevant Portfolio Holder	Housing Management		

RELEVANT CORPORATE AIMS

REGENERATION – Developing healthy, profitable and sustainable communities

The policy clarifies the Council's position when a request for a mutual exchange of Council properties by residents is received.

TARGETS

There are no specific targets in the Corporate Plan for the delivery of the policy.

VALUE FOR MONEY

Please describe how the proposals deliver value for money for the Council and its customer. – None directly

THE REPORT

The proposed Mutual Exchanges of Council policy is attached. This draft policy has been developed via the Patch management process. The policy has been reviewed by PPMG2 who had a concern that there was no reference to the tenants' responsibilities. However the policy has been updated to refer to their responsibilities as detailed in the tenancy agreement.

ISSUES FOR CONSIDERATION

To consider the enclosed draft policy, and whether to recommend this is forwarded to the Executive for approval.

IMPLICATIONS

Financial : None directly

Legal : The right to exchange is a legal right for secure tenants arising from the 1985 Housing Act

Human Resources : None directly.

RECOMMENDATIONS :

- 1. That Scrutiny Committee review and accept the Mutual Exchanges Policy**
- 2. That the Mutual Exchanges Policy is forwarded to the Executive for approval**

ATTACHMENT: **Yes – Draft Policy.**

FILE REFERENCE:

SOURCE DOCUMENT:

BOLSOVER DISTRICT COUNCIL

Mutual Exchanges

January 2008



This Policy addresses the following Corporate Aims :



The District of Bolsover Equalities Statement

The District of Bolsover is committed to equalities as an employer and in all the services provided to all sections of the community.

□ The Council believes that no person should be treated unfairly and is committed to eliminate all forms of discrimination in compliance with the Equality Strategy.

□ The Council also has due regard to eliminate racial discrimination and to proactively promote equality of opportunity and good relations between persons of different racial groups when performing its functions.

This document is available in large print and other formats from any of the Council Offices or by contacting the Chief Executives Directorate on 01246 242323. Please bear in mind we will need a few days to arrange this facility.

If you need help to read this document please do not hesitate to contact us.

Our Equality and Diversity Officer can be contacted via [Email](#) or by telephoning 01246 242407.

Minicom: 01246 242450

Fax: 01246 242423

Details of Document	
Title	Mutual Exchange(Housing)
Document type – i.e. draft or final version	Final
Location of Policy	Intranet and internet
Author of Policy	Peter Campbell
Reviewed by Director of Strategy	
Risk Assessment completed	Not applicable
Community Safety implications Please indicate any implications in relation to the Crime and Disorder Act 1998	Not applicable
Equality Impact Assessment completed.	Peter Campbell / Deborah Whallett 8 th March 2008
Approved by	Executive
Date Approved	
Policy Review Date	

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Introduction

This document sets out the policy for processing a mutual exchange request. It covers advice to tenants on potential exchange of tenancy, grounds for withholding consent, and the necessary paperwork.

Scope of the Policy

The policy covers housing stock owned or managed by Bolsover District Council. The policy applies to secure tenancies only.

Principles of the policy

Mutual Exchanges are set out in law. The relevant legislation is Section 92 of the Housing Act 1985. This gives secure tenants the right to exchange.

The Council also recognises the need to ensure all mutual exchanges are dealt with following a fair and transparent methodology. This policy attempts to show how Bolsover Council will deal with requests for mutual exchanges.

Policy Statement

a. Legal Background

Any Bolsover District Council secure tenant has the right to exchange by assignment, their tenancy with a Housing Association tenant, another tenant of Bolsover District Council or the tenant of another Council. This right is given to secure tenants by the 1985 Housing Act. (Non secure tenants do not have this right).

Tenants who are the subject of a suspended or postponed possession order are not secure tenants, and do not have the right to exchange.

Consent to exchange can only be withheld on one of the grounds listed in Schedule 3 of the Housing Act 1985. In summary these are:

- Either tenant is under Notice of Seeking Possession and legal proceedings have begun following Notice.
- The tenancy is a starter, introductory or demoted tenancy.
- Either property is specifically designed or adapted to help a disabled person or has other special features and the new tenant does not need this assistance.
- Either property is too large or too small for either tenant. When considering under-occupation the council will take account of the property currently occupied by the applicants.

In judging if a property is too small or too large for the tenant the Council will use the same eligibility criteria used in the Allocations Policy (including exceptions).

- There is evidence that the mutual exchange is not genuine.

Evidence of an exchange not being genuine would be if one tenant suggested that they would not be occupying the property after the exchange. Or if money or goods have changed hand to facilitate the exchange.

- Any other reason contained within schedule 3 of the Housing Act 1985.

In other cases the council can also make it a condition of consent that:

- Our tenant clears all outstanding rent arrears.
- The exchange will not result in any immediate breach of tenancy.
- Any existing breach of tenancy is remedied.

When a mutual exchange takes place by way of assignment all obligations and entitlements attached to the existing tenancy are assigned with it. The exception to this is the right to succession, which attaches itself to the tenant, not the tenancy. This means that if a tenant wishes to exchange with another tenant who succeeded to their tenancy, the other tenant (assignee) would have no further rights to succession (despite being assigned to a tenancy where no succession rights had taken place).

This means that if a tenant who is a successor completes an exchange they do not get extra succession right (i.e. they cannot pass the tenancy to anyone else when they die).

The 1985 Housing Act states that in all cases a decision must be taken, and the tenants informed of their application for a mutual exchange within 42 days of the application being received.

b. What to do when a tenant requests a mutual exchange

Both parties who are wishing to exchange must complete 'Application for Mutual Exchange' form. If tenancy is a joint one, both tenants must sign the form. (If the exchange is with another landlord, the tenants may also need to complete a form with the other landlord).

Within 5 working days of receiving the form, arrange for an inspection of the property.

In all cases an electrical and gas safety inspection will be arranged. This will normally be provided free of charge, but if the outgoing tenant has carried out work to either the gas or electrical supplies they will be charged for this inspection.

(This means that a chargeable electrical inspection is needed if a tenant has installed new items, such as a shower, new sockets or a light fitting).

If the inspection finds that the tenant has carried out unauthorised alterations, or damaged to the property, this is a breach of tenancy. The exchange will not be refused, but rectifying the breach of tenancy will be a condition that must be met before the exchange can go ahead.

If the safety inspection identifies a problem with the gas or electrical system, repairs will be carried out regardless of whether the exchange goes ahead. If this is not fair wear and tear, the tenant will be recharged for this work. As the tenant is then in breach of tenancy the repayment of the debt will be a condition that must be met before the exchange can go ahead.

If the exchange involves the tenant of another landlord. Within 2 days of completing the inspection, a reference request should be sent to the other tenant's landlord. The reference should ask whether the other tenant succeeded to their tenancy.

After the reference has been returned, and the inspection carried out, and certainly **no later than 35 days following receipt of the request to exchange**, we must write to our tenant and the other landlord involved to say whether or not we are giving our consent to the exchange. The Tenancy Management Officer should sign the bottom of the application form to confirm that the exchange has been agreed.

If there is no response from the landlord the tenant can be given permission to exchange, but the exchange is conditional on receiving a satisfactory reference from the assignee's landlord.

Where a tenant voluntarily moves from a property which has been adapted to suit their needs, to a property without adaptations or with adaptation that do not meet their needs, the Council will not provide priority for adaptations that have previously been provided to the tenant, at the property they have moved to.

Tenants can appeal against a decision to refuse consent by contacting the Head of Housing. This must be in writing and within 21 days of the refusal of consent. The appeal, together with any additional information will be considered by the HARP panel.

c. Processing the exchange

All mutual exchanges will be by assignment. This means that no new tenancy is created as the new tenant 'takes over' the tenancy.

All mutual exchanges will be taken through the sign up procedure and issued with a 'Sign-Up Pack'. But they should not be issued with a new tenancy agreement.

A 'Deed of assignment' must be completed. The Deed must be signed by the outgoing tenants and the incoming tenant (Assignee) in the presence of a witness. In most circumstances the Bolsover District Council Housing Officer will be the witness to the deed.

The deed of assignment will be kept on file, attached to the original tenancy agreement. The new tenant will be given a copy of the deed and original tenancy agreement.

All parties to the exchange will be required to provide written acceptance of the condition of the exchange property prior to the exchange taking place. The Council will not meet any costs resulting from the exchange, other than for repairs resulting from fair wear and tear.

The assignment of tenancy means that the incoming tenant accepts responsibility for all aspects of the tenancy as outlined within the tenancy agreement. This includes the condition of the property. This means that if the outgoing tenant has damaged the property, removed and any fixtures, or carried out unauthorised alterations these become the responsibility of the incoming tenant. The Council will not carry out any repair or replacements for these items.

If an exchange takes place without the consent of the Council, the tenants will be required to move back to their original homes. Retrospective permission will not be granted.

Responsibility for implementation

Head of Housing

More information

This policy should be read alongside the following:

- Allocation Policy (2007)
- Recharge Policy (2008)
- Succession Policy (2008)