

Mutual Exchange Policy

Stevenage Borough Council

2024 - 2026

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1. Purpose

1.1 Purpose of the Mutual Exchange Policy

This policy sets out our approach to mutual exchange for our tenants. We recognise that our customers' needs can change which will result in a need to move home. The option of exchanging homes is often the easiest and quickest way to move, and this policy outlines the process. Stevenage Borough Council (the Council) will actively encourage mutual exchanges as an effective way of increasing tenant mobility and are subscribed to the Homeswapper and House Exchange national schemes to facilitate exchanges.

1.2 The aim of the Mutual Exchange Policy

The aim of this policy is to ensure that all mutual exchange applications are dealt with consistently, fairly and in accordance with legislation.

The specific objectives of the Mutual Exchange Policy are to:

- Provide staff and tenants with a clear framework for undertaking a mutual exchange.
- Ensure staff and tenants understand the implications of mutual exchange as well as their obligations and responsibilities throughout the process.
- Set out the grounds for refusing a mutual exchange.
- Create opportunities for customers to exchange their home when it is no longer suitable for their circumstances or their needs.
- Provide tenants with the support and information needed to complete applications for mutual exchange.
- Ensure regulatory and legal compliance.
- To ensure effective use of the Council's housing stock by enabling tenants to move to accommodation suitable for their needs. This will help:
 - Address over-crowding and under-occupation in the Council's existing stock.
 - Address needs for adaptations and help release adapted homes.
 - Relieve pressure on the Council's Housing Register.
 - Relieve pressure on health and care services.

2. Scope

A mutual exchange is when two or more social housing tenants swap homes with the permission of their landlord.

It offers mobility and choice to those who may not have access to the housing needs register or sufficient priority to move quickly through the normal allocation process. It can also help in situations where tenants need to move to a completely different area or to a different size property.

This policy covers all homes within the Council's housing stock and tenants on a secure tenancy. Those tenants on an introductory tenancy, demoted tenancy, or a license agreement, are not eligible to exchange.

2.1 Role and Responsibilities

- Resident Services Manager - Responsible for reviewing the policy, discretionary approvals, and review appeal decisions with final approval from Head of Service or Assistant Director Housing and Neighbourhoods.
- Housing Business Support Manager - Responsible for the implementation and overseeing the operational delivery of this policy, and the management of the Housing Business Support Team in processing mutual exchange applications.
- Senior Housing Officer - Responsible for second sign off in the processing of mutual exchange applications.
- Housing Business Support Officer - Responsible for the receiving and processing mutual exchange applications using Homeswapper.
- Lettings and Allocation Officers - Responsible for supporting the Housing Business Support Officers in transferring a tenancy to an assigned tenant, ensuring tenancy records are updated on our housing management systems and any appropriate documents are properly completed and signed.
- Customer Contact Centre - Responsible for receiving and dealing with general enquiries about mutual exchanges applications and transferring tenants to Housing Officers for further information and support.
- Housing Officers – Responsible for mutual exchange inspections, first sign off and arranging and completing signing processes with the tenants once a swap has been agreed.

3. Legal Framework

3.1 Relevant Legislation

The following legislation relates to the Mutual Exchange Policy and we are committed to applying the terms within this document.

- Social Housing (Regulations) Act 2023
- Housing Act 1985
- Housing Act 1996
- Localism Act 2011
- Data Protection Act 2018

4. Equalities

Under the Equality Act 2010 the Council has a legal duty to fulfil the requirements of the Public Sector Equality Duty (PSED). Through this duty, the council will carry out its functions in a way that:

- a) Removes discrimination, harassment, victimisation and any other conduct that is unlawful under the Equality Act 2010.
- b) Promotes equal opportunities between people who have a protected characteristic(s) and those who don't.
- c) Encourages good relations between people who have a protected characteristic(s) and those who don't.

Further information on the Council's fulfilment of the PSED is set out in the Equality, Diversity and Inclusion (EDI) Policy 2022 which is applicable to all employees of the Council, councillors and contractors or suppliers who provide services on behalf of the Council.

5. Data Protection

The Council regards respect for the privacy of individuals and the lawful and careful treatment of personal information as very important to its successful operations and to maintaining confidence between the Council and those with whom it carries out business. The Council will ensure that it treats personal information lawfully and proportionately as set out in the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

The Council's principal aim is to ensure that all personal data processing carried out by the Council, or on its behalf, complies with the seven data protection principles and other key legislative requirements. For further information on the Council's approach to handling information, please see [the Data Protection Act web page](#) at www.stevenage.gov.uk

6. Policy

6.1 Our Legal Position

The Housing Act 1985 and Localism Act 2011 outline the framework within which Mutual Exchange schemes must operate.

Section 92 of the Housing Act 1985:

- Grants tenants with lifetime secure tenancies the right to exchange their social homes with other tenants. To carry out an exchange, tenants must transfer their tenancies by Assignment.
- Requires Landlords to provide a written decision within 42-days of receiving completed applications from all exchange partners;
- Sets out the grounds (Schedule 3 of the Act) based on which, landlords can refuse applications for Mutual Exchange; and
- Allows landlords to give consent to a Mutual Exchange to go ahead subject to certain conditions being met such as, payment of rent arrears.

Sections 158 of the Localism Act 2011 sets out additional provisions including:

- Protection of security of tenure for lifetime tenancies that predate 1 April 2012. This allows tenants to keep similar security of tenure when exchanging with tenants who are on flexible or fixed term tenancies. Tenancies can be transferred by way of Surrender and Re-grant;
- Grounds on which landlords may refuse an application for Mutual Exchange where Section 158 applies;
- Tenants' right to enforce decisions via County Court injunction if landlords fail to provide written decisions within 42-days of receiving completed applications for Mutual Exchange and
- Landlords may not use the grounds for refusal of a Mutual Exchange application if they fail to provide a written decision within 42-days of receiving such an application.

Tenancy Standard, Regulator of Social Housing

The Council will endeavour to meet the standards set out in the Tenancy Standard by:

- Offering a Mutual Exchange service which allows tenants to easily access details of all (or the greatest practicable number of) available matches without payment of a fee,
- Taking steps to publicise the availability of the Mutual Exchange service(s) the Council offers to tenants, and
- Providing support for accessing Mutual Exchange service(s) to tenants who may otherwise be unable to use them.
- Registered providers must offer tenants seeking to mutually exchange information about the implications for tenure, rent and service charges.

6.2 Our Approach

We will consider applications for mutual exchange between our tenants or with tenants of another social housing provider. Exchanges can be two way or may involve multiple swaps in a chain. There are no limits to the number of times a tenant may exchange, and tenants can apply to exchange again at any time after swapping homes.

Mutual exchange schemes are tenant-led. Those seeking to exchange are responsible for finding their own potential exchange partners, carry out checks to the property they would like to move to and make the arrangements for the actual move.

The Council will also provide support to tenants who are unable to manage independently with using any mutual exchange service the Council provides. Support will be based on individual need and on a case-by-case basis. This may include:

- Access to a computer or the internet.
- Explaining how the mutual exchange service works.
- Assistance and support to navigate the online mutual exchange service.
- Registering and searching for matches on behalf of a tenant.

Who Can Exchange – Qualifying Tenants

Tenants qualify for mutual exchanges if their tenancy gives them a statutory or contractual right to exchange. The right to assign a tenancy is given to secure tenants by statute and to assured tenants by contract, but only for the purposes of an exchange.

Tenants on the above tenancies have a statutory right to exchange with another secure or assured tenant whose landlord is:

- A local authority
- A registered housing association or housing trust

Tenants will not qualify for a mutual exchange if they do not have a statutory or contractual right to exchange. This includes tenants on a:

- Starter tenancy
- Intermediate market rent tenancy
- Periodic assured shorthold tenancy
- Fixed term assured shorthold tenancy where the initial fixed term was less than two years
- Demoted tenancy
- Licence agreement

Written consent must be provided by both landlords for an exchange to be completed.

Our responsibilities and requirements

We have subscribed to an internet based mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties. We will publicise the availability of this service on our website and through resident publications.

We will give notice of our decision to approve or decline an application to exchange within 42 calendar days of receiving a completed application. Reasons for not giving consent are set out in legislation, as is the 42-day requirement. Our decision will be given in writing and will state the reasons for withholding consent where an application is declined.

We will ensure our property has valid gas and electrical certificates before approving the exchange and will arrange for the necessary checks to obtain them. We won't allow the mutual exchange to proceed until any required works have been completed and the valid gas and electrical certificates are obtained.

We will inspect the condition of the property to identify any repairs that may be needed and any damage or alterations that may have been made. We notify both the outgoing and incoming tenant of any repairs that they will be responsible for or that need to be carried out before or after the move takes place.

We will maintain responsibility for any landlord repair obligations, and will complete any repairs that are our responsibility when they are reported to us, before the exchange takes place, unless the surveyor advises in their report that the repairs can be carried out once the new tenant has moved in.

We will require the outgoing tenant to repair any damage, neglect or alterations that they, their household or their visitors have made to the property and to complete any repairs that we consider to be their responsibility. These should be completed before the exchange.

We may carry out repairs that are not our responsibility in exceptional circumstances for example, where there is a health and safety risk and will recharge the outgoing tenant for all costs of the work carried out.

Following a mutual exchange, we will continue to meet all of our repair and maintenance obligations for the property in line with the law and the tenancy agreement.

Tenant responsibilities

Tenants are responsible for finding an exchange partner, and for making an application to us when they have found someone they want to exchange with.

Incoming tenants agree to accept the condition of the property they are exchanging to. They are responsible for carrying out their own inspection of the property prior to the

exchange, and for making any agreements or arrangements regarding the condition of the property with the outgoing tenant.

Following the exchange, incoming tenants will assume responsibility for any damage or alterations made to the property by the outgoing tenant and for all repairs that we consider to be the tenant's responsibility that were not completed by the outgoing tenant. This includes internal decoration or minor repairs needed, cleaning and refuse disposal.

Tenants must not move until they have received written confirmation from each landlord and signed the necessary paperwork to complete the exchange. If tenants move without our consent and without signing the required legal documents, we will treat the occupants as unauthorised occupiers and may seek possession of our property.

Method of exchange and tenancies granted during an exchange

Mutual exchanges are carried out either by assignment or surrender and re-grant of tenancies. This is determined by the tenancy that each of the exchange partners have. We will always advise our tenants of the type of tenancy they will receive in the exchange when we approve their application.

We will grant tenants that have a secure tenancy since 12 April 2012, a tenancy with no less security than when they moved to a Council home. This will not apply if they choose to move to a property that is let at an affordable rent. In these cases, we will grant them a secure tenancy set at an affordable rent.

Where an exchange takes place between an assured shorthold fixed term tenant and an assured periodic or secure tenant, the exchange will be by way of surrender and re-grant. This means that each tenant will surrender their existing tenancy and be granted the new appropriate tenancy. In all other cases, the exchange will take place by way of assignment. If one tenancy is not assigned, the other cannot be assigned.

The right to exchange by assignment can be enforced against the landlord by the tenant. One landlord cannot enforce the right against another landlord. If the other landlord refuses to assign the tenancy without good reason, the Council has no direct recourse.

Refusal Reasons

We may rely on any of the statutory grounds stated in schedule 3 of the Housing Act 1985 to refuse an exchange for tenants that hold a periodic secure tenancy. (Appendix 1) Where our tenant holds a secure tenancy, we will usually make it a condition of granting permission for the exchange that any arrears are paid before the exchange takes place or any tenancy breaches are rectified before the mutual exchange can take place. Under certain circumstances, such as where there may be domestic abuse, we

may agree that arrears can be repaid after the exchange has taken place. This will be considered on a case-by-case basis.

We may rely on any of the statutory grounds stated in schedule 14 of the Localism Act 2011 to refuse an exchange in cases where either tenant holds an assured tenancy or an assured shorthold fixed term tenancy of two years or more (social or affordable rent).

Where grounds for refusal relates to an adapted property, we will only reasonably withhold consent where the incoming tenant or a member of the household has no need or requirement, and the adaptations are complex. A single and common adaptation will not prevent an exchange from taking place.

We will not withhold consent where the incoming tenant or a member of their household requires adaptations, however it will be made a requirement that the assessment and funding is approved under the Aids and Adaptations Policy prior to the exchange being agreed.

We will refuse any exchange that would result in our property becoming under-occupied by more than one bedroom or over occupied in accordance with our Allocation Policy.

We will refuse an exchange where we have reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange.

We will refuse an exchange where the accommodation has been provided as supported or older persons housing and the prospective tenant does not qualify.

We will rely on any other reasonable grounds to withhold our consent where allowing the exchange would put us in breach of any covenant, restriction or planning obligation. This would apply in cases where the exchange would conflict with any relevant planning restrictions or the purpose for which the tenancy was initially granted.

Examples are where:

- A local connection is required.
- The incoming tenant must meet the necessary criteria by completion of a risk and needs assessment for age designated schemes.
- Tenants must have specific support needs to meet the intended purpose of the housing.

Before deciding on whether to give or withhold consent, we will inspect the tenant's property to check for any damage or breach of tenancy which could give grounds to refuse the application. We may grant consent on condition that any rent arrears are cleared, or any breach of tenancy is rectified. We will write to the tenant setting out the conditions.

Discretion

There may be reasonable grounds for the Council to refuse a mutual exchange application. The Council cannot legally refuse a mutual exchange for rent arrears unless grounds of Schedule 14 of the Localism Act 2011 apply. Rent arrears will usually be made a condition for approval.

This may apply, if a tenant is in rent arrears and / or are affected by changes to housing benefit / universal credit and the mutual exchange may help the tenant to reduce rental outgoings (example if they are downsizing). This will help prevent further debt and enable the tenant to begin reducing their rent arrears.

The Resident Services Manager may approve a mutual exchange where the household does not meet the criteria set out in the Mutual Exchange Policy. This will only be considered where there are extenuating circumstances, and it is considered that the exchange would benefit the health and well-being of the tenant or a member of their household.

To consider such requests, the Housing Officer must provide a written report covering the reasons for referral to the Resident Services Manager. Any request must include supporting evidence: this evidence can be provided by the applicant, by the Housing Officer or sourced from a third party. A record will be kept on the number of referrals and decisions taken for audit purposes. There is no further right to appeal. However, if the applicant remains unsatisfied with the decision, they can follow the Council's complaints process.

Review of Decision and Complaints

Any person who is not satisfied with the manner in which the council or its contractor(s) has dealt with the service they have received regarding their mutual exchange application, has the right to have their case investigated via the council's complaint procedure.

Any person who has had their request for a mutual exchange refused may request that the decision be reviewed by using the council's complaints procedure.

7. Consultation

This policy has been developed in consultation with key staff within the Council. Government has directed the legal perspective of the policy, but key related stakeholders have also influenced how the Council intends to implement and manage the policy particularly in relation to discretion that is applied.

This policy will be consulted on with tenants who are registered on Homeswapper or have undertaken a mutual exchange in the last 12 months prior to key officer decision.

8. Monitoring and Review

The Council will monitor mutual exchanges to ensure the correct application of the policy.

The Council will monitor the length of time taken to inform a decision to ensure that the 42-day statutory deadline is met. Add to operational KPI's.

This policy and the related procedure will be reviewed in full every two years or when there are changes in legislation to ensure they are still relevant and to incorporate change to legislation or best practice.

9. References and Resources

- Equalities Act 2010
- Human Rights Act 1998
- Welfare Reform Act 2012
- Regulator of Social Housing: Tenancy Standard
- Allocation Policy
- Repairs Policy
- Mutual Exchange Procedure
- Complaints Policy
- Equality & Diversity Policy
- Tenancy Policy
- Data Protection Policy
- Safeguarding Policy
- Reasonable Adjustments Policy
- Vulnerabilities Policy
- Aids and Adaptations Policy

10. Abbreviations and Definitions

EDI	Equality, Diversity and Inclusion
GDPR	General Data Protection Regulation
PSED	Public Sector Equality Duty

We have defined the following terms we use throughout the Policy:

- A mutual exchange is where two or more social housing tenants swap homes by exchanging tenancies with each other. Mutual exchanges can take place

between tenants of the same or different landlords but can only be carried out where both landlords give written consent to the exchange. Tenants take on the full rights and obligations of their 'new' tenancy, including the rent. Not all tenants are eligible for mutual exchange and there are certain circumstances in which a landlord may refuse an exchange.

- Assignment is the transfer of a tenancy from one person to another. When a tenancy is assigned, the rights and responsibilities of the tenancy are transferred from the original tenant to Mutual Exchange to the new tenant. If a tenancy is assigned during a mutual exchange, the tenants take on each other's tenancies.
- Surrender and re-grant is another method of exchanging tenancies, where both tenants surrender their current tenancies and are awarded new tenancies, not necessarily on the same conditions.

11. Appendices

Appendix 01: Grounds for Refusals

Appendix 02: Equality Impact Assessment

12. Version History

Date	Outlined Amendments	Author
April 2024	Updated the template and reassessed policy in line with current legislation	Amanda Rogers
June 2024	Updated with KLS changes	Karen Long
July 2024	Updates with KC changes	Kerry Clifford

Appendix 01: Grounds for Refusals

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 & 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 more extensive than is reasonably required by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to 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 objectives of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the assignment went ahead 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 these 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 to go ahead no person with those special needs would be living there.

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the exchange
Ground 10	Ground 14	The dwelling is the subject of a management agreement where 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 also that the proposed assignee is not such a member nor is willing to become one
Additional Ground (Housing Act 2004)	Ground 6	<p>Any of the following are in force, or an application is pending either against the tenant, the proposed assignee or a person who resides with either of them:</p> <ul style="list-style-type: none"> • an injunction order under section 153 of the Housing Act 1996 • an anti-social behaviour order • a Demotion Order or • a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies