



- 6.2 The council provides free access to an online exchange portal ‘Homeswapper’ where tenants can advertise and source exchange partners themselves.
- 6.3 Section 92 of the Housing Act 1985 provides a legal right for two or more social housing tenants to exchange properties where they occupy permanent, self-contained accommodation and where the consent of all landlords is given.
- 6.4 Schedule 14 of the Localism Act 2011 under Section 158 and Schedule 3 of the Housing Act 1985 under Section 92 lists the grounds under which a landlord can refuse consent for a mutual exchange to take place.
- 6.5 Some of the common refusal reasons are:
- Rent that is lawfully due has not been paid
  - An obligation under one of the existing tenancies has not been met
  - Possession proceedings have begun or are being sought
  - The incoming tenant would substantially under occupy the property or the accommodation doesn’t reasonably suit the needs of the incoming tenant.
- 6.6 The law states that a decision on an application should be notified to all parties within 42 days of a fully completed application. Failure to do so means that the council would face challenge if we were to rely on statutory grounds for refusal. It is important that there is a clear policy and procedure in place as guidance.
- 6.7 Failure to issue a decision within the 42 day period also exposes the council to the potential risk of the exchange taking place without our consent.
- 6.8 The current draft procedure was drafted pre-transformation in August 2017 and does not reflect the requirements of a policy document.
- 6.9 The new policy is aligned to the Welfare Reform Act 2012 when determining the appropriate size of accommodation. This allows us to make best use of our housing stock, preventing under-occupation and non-statutory overcrowding and does not restrict mobility or choice. It also seeks to reduce the circumstances where properties may be unaffordable due to welfare reform and to prevent future rent arrears.
- 6.10 The new policy sets out the framework for robust property inspections as part of the application consideration process.
- 6.11 Conditional consent may be given where unauthorised fixtures, fittings or alterations have been carried out within our properties and therefore could become the responsibility of the incoming tenant or where they pose a potential health and safety risk. The condition would request that the out-going tenant rectifies or pays the council to rectify any unauthorised works that they may have carried out, before the mutual exchange takes place. Granting conditional consent is intended to reduce incoming tenants’ dissatisfaction with the property and the costs the council then accumulate to making safe or making good.
- 6.12 Standard practice across the housing sector is that exchange properties are accepted on an ‘as seen’ basis; on occasions putting the incoming tenant in a

position where unforeseen repair issues become their responsibility. The new policy makes it clear that the incoming tenant has the same rights to repair as the outgoing tenant immediately upon completion of the exchange. However, if a property is left in an unacceptable condition at the point of exchange, the policy also makes it clear that the council will remedy the issues identified and seek to recharge and recover the costs from the out-going tenant. For example, this may be where the property requires a garden clearance due to rubbish left over from the out-going tenant. This is to relieve the incoming tenant of costs they might incur as a result of the out-going tenants' negligence.

## **7 Legal Implications:**

- 7.1 To comply with legislation, the council must allow social housing tenants the opportunity to exchange properties under certain circumstances.
- 7.2 Failure to complete the mutual exchange process and notify the decision of consent, consent with conditions or refusal, within 42 days means that the council would lose the ability to rely on statutory grounds for refusal.
- 7.3 The grounds under which a mutual exchange can be refused are listed under Schedule 14 of the Localism Act 2011 under Section 158 and Schedule 3 of the Housing Act 1985 under Section 92.

## **8 Financial Implications:**

- 8.1 Failure to complete the mutual exchange process and notify the decision within 42 days of a completed application means that the council could lose the ability to rely on statutory grounds for refusal. The implications are that a mutual exchange may be able to take place where rent arrears are due, unsatisfactory property conditions, unauthorised alterations or other breaches of tenancy. The council is then at risk of increased costs in relation to the above.
- 8.2 Failure to allow mutual exchanges to take place without following the new policy guidelines could create future arrears, with an increased risk of court action and associated costs.
- 8.3 There is a financial risk of not making best use of the council's housing stock, which could have a direct impact on homeless families and the need for temporary accommodation

## **9 Risk Implications:**

- 9.1 Failure to manage mutual exchanges effectively means that we may inadvertently allow mutual exchanges to take place that could have been refused, which does not demonstrate the best use of housing stock.
- 9.2 Failure to have an inspection framework could mean that health and safety issues and unsafe alterations are undetected, to the detriment of the incoming tenant.
- 9.3 These risks are significantly mitigated by having a robust policy and clear procedure in place.
- 9.4 Other Implications (including communications, security and terrorism, human resources, procurement, climate change, human rights, health and wellbeing, equality and diversity)

**10 Security and Terrorism Implication(s)**

10.1 There are no obvious implications arising from this policy.

**11 Procurement Implication(s)**

11.1 There are no procurement implications arising from this policy.

**12 Climate Change Implication(s)**

12.1 There are no climate change implications arising from this policy.

**13 Human Resources Implication(s)**

13.1 There are no human resources implications arising from this policy.

**14 Health and Wellbeing Implication(s)**

14.1 Effectively managing mutual exchange applications with reference to a clear policy and making best use of housing stock could have a positive impact of tenants health and wellbeing due to being allowed to exchange to a property that more meets their needs, particularly in terms of size or access to a garden, etc.

**15 Communication and Engagement Implication(s)**

15.1 Once the policy is agreed, leaflets and guidance on how to complete a successful mutual exchange will be produced and published.

**16 Alternative options considered and reasons for their rejection (if any):**

16.1 None.

**17 BACKGROUND PAPERS USED TO INFORM THE DECISION**

- Draft Mutual Exchange Policy
- EqlA Mutual Exchange Policy
- Corporate Report Mutual Exchange Policy.

**18 DETAILS OF ANY MEMBERS OR OFFICERS WHO HAVE DECLARED AN INTEREST IN THIS MATTER AND NATURE OF ANY SUCH INTEREST AND ANY DISPENSATIONS GRANTED**

18.1 None.

**19 ADDITIONAL CONFIDENTIAL OR EXEMPT INFORMATION CONSIDERED**

19.1 No.

Contact Officer: Kerry Clifford, Neighbourhood and Enforcement Manager

[k.clifford@welhat.gov.uk](mailto:k.clifford@welhat.gov.uk)  
01707357659

**From:** [Nick Pace](#)  
**To:** [Alison Marston](#)  
**Subject:** Exec Member Authority  
**Date:** 28 July 2020 11:41:45

---

I am happy to sign off the two items below under paragraph 18 of the Cabinet Procedure Rules within the constitution that were unanimously agreed at CHP on 14th July 2020.

Please find attached an Executive Member Decision Notice for the following:

- Mutual Exchange Policy
- Succession Policy

If I can be of any further assistance, please do not hesitate to contact me.

Regards

Nick

Cllr. Nick Pace  
Executive Member, Housing and Community  
Hollybush Ward  
Welwyn Hatfield Borough Council  
(07909) 524438

Sent from my iPad