

## Mutual Exchange Policy

### Version Control

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V2					

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## **Introduction**

Waverley Borough Council (the Council) promotes mutual exchanges (also known as home swap) to enable tenant mobility, tenant choice and sustainable communities through the best use of housing stock.

The Council will provide clear information about mutual exchange eligibility, the process and tenants' responsibilities.

It is the tenants' responsibility to find a suitable person to exchange with. The Council will assist tenants to move by way of exchanges wherever possible, by providing clear information, encouraging tenants to register for exchanges with HomeSwapper (a national online mutual exchange service) and giving advice on local and social media advertising.

The Council abides by the statutory requirements relating to exchanges included within the Housing Acts and Localism Act.

## **Objectives**

The key objectives of the Mutual Exchange Policy are:

- To encourage tenants who want to move within or out of the borough to seek a mutual exchange
- To make application forms, advice and assistance easily available to tenants requesting a mutual exchange
- To enable tenants to self assess for mutual exchanges to avoid unsuccessful applications

- To be a member of the national tenant mobility scheme (currently HomeSwapper)
- To respond promptly to all submitted mutual exchange applications (within 42 days) providing approval to exchange, conditional approval to exchange or refusal to exchange. The reason for conditional approval or refusal will be fully explained.
- To ensure mutual exchanges are carried out legally by way of assignment or by deed of surrender and granting a new tenancy according to the relevant housing law. (Housing Act 1985 Section 91 and Localism Act 2011 Section 158.)
- To not unreasonably refuse a mutual exchange application and provide an appeal process.
- To provide incoming tenants with a copy of the mutual exchange inspection report and an up to date copy of asbestos, gas, electric safety and Energy Performance Certificates, (were applicable)

**Policy**

**Right to exchange**

All Council tenants with secure or flexible (secure) tenancy agreements have the right to exchange their property with another eligible Waverley tenant, registered non-profit social housing provider tenant or another local authority tenant.

Landlord references for both parties to the exchange will be considered prior to granting permission to move. In considering references, attention will be given to the size and type of home, tenancy type, issues of rent arrears, anti-social behaviour and breach of tenancy conditions.

### **Approval of application**

In considering applications the council must be satisfied that:

- The tenants have the right to exchange
- Both joint tenants have given consent by signing the application form
- No one is being unduly coerced or pressured into agreeing to the exchange
- No one is agreeing to the exchange for financial or material gain
- The exchange is not being used as a means to abuse the allocation policy
- All tenants understands and accepts the implications and responsibilities of agreeing to the mutual exchange

### **Reason for refusal**

The Council will not unreasonably refuse an application but must adhere to the legal requirements. Exchanges will be refused if:

- the tenant is in rent arrears and a repayment plan has not been agreed
- the home is substantially larger or smaller than required
- the home is not suitable to the needs of the proposed tenant's household eg disabled adaptations,
- the home was designed and built for a specific group of people eg physical disabled, care and support, age criteria
- the rent is considered unaffordable
- the landlord is taking any legal action for breach of tenancy including notice seeking possession, suspended possession order, possession order, injunction, tenancy demotion,

Full grounds for refusal can be found in [Section 91 Housing Act 1985 Schedule 3](#) (for secure tenants) and [Schedule 14 of the Localism Act 2011](#) (for fixed term tenants)

Consent will not be withheld for rent arrears if the tenant is exchanging with another Waverley tenant and is downsizing to a more affordable home with a repayment agreement.

### **Conditional Consent**

The Council can apply conditions before a mutual exchange can go ahead for example to clear rent arrears, repair damage to the property or stop anti-social behaviour.

The Council will ensure that any arrears outstanding are cleared or other breaches of tenancy are rectified before the exchange takes place.

Where an exception is made to this rule, by agreement of the Head of Housing Operations and the Housing Needs Manager, it may be necessary for arrears to be written off. Exception examples health and safety or safeguarding issues

### **Tenant Responsibilities**

A mutual exchange needs trust and communication between swapping tenants. It is the tenants responsibility to agree any contents (gifted items) to be left in the homes including carpets, curtains, shelves, light fittings, shed etc,

Swapping tenants are responsible for the cleaning and decoration, clearance of property, garden and outbuildings, non standard light fittings and change of door locks for an exchange.

Incoming tenants have the same right to repair as current tenants. However any repairs that were the outgoing/former tenant responsibility will pass to the new/incoming

tenants, as they agree to accept the property “as seen”. Tenants will be provided with the inspection report indicating the outgoing tenant repair responsibilities. The tenants may agree between themselves if the incoming tenant agrees to take on the repairs. Waverley will not complete repairs that are the tenants’ responsibility.

Tenants must be aware that any party in the exchange can withdraw from a potential exchange at any stage with no recourse to the other party. However once the legal paperwork has been signed the mutual exchange must proceed.

Tenant must establish their current tenancy type and proposed tenancy type if the swap is agreed and consider how any change in tenancy type and security will impact them.

### **Type of tenancy**

The Council will aim to grant tenancies that offer no less security than the incoming tenant currently has. However, a secure tenant (granted their tenancy post 1 April 2012) moving to a fixed term and/or affordable rent property will lose their security of tenure. The tenant(s) will be advised to seek independent advice regarding any potential change in their tenancy status before agreeing to move.

A mutual exchange for a secure or an assured tenancy takes place by way of deed of assignment. No new tenancy is created, the assignment changes (swaps) the names on the original tenancy. Copies of the tenancy agreement are provided to each party.

A mutual exchange for a flexible or fixed-term tenant (for more than two years) takes place by way of deed of surrender and granting a new tenancy. New tenancy agreements are provided to each party.

Assured or secure tenant (pre April 2012) will retain their tenancy status at the new home they exchange into.

The status of the 'fixed-term' or 'flexible' tenant is not protected by law. The new tenancy given is at the discretion of the new landlord. The remaining term or new term may be granted.

The Council's introductory tenants cannot exchange until they have lived in their home for more than 12 months and their introductory tenancy has been converted into a flexible (secure) tenancy. If an exchange involving an introductory tenancy would be strongly in the interests of the Council, the Head of Housing Operations has discretion to give permission to move the exchanging parties by simultaneous transfer.

Tenants wishing to swap to homes in a rural exception site (an affordable homes scheme provided for local people) must evidence a local connection to the parish. The Housing Association managing the homes has the responsibility for ensuring that the incoming tenant/s meet the local connection criteria.

### **Unauthorised Mutual Exchanges**

If a tenant does not obtain written consent the exchange is unlawful. The Council will initially ask the parties to return home as they have no legal interest in the property they are living.

If they fail to do so the Council will seek to terminate the tenancies by serving Notice to Quit on original homes and seeking possession. The parties will have lost security of tenure as are no longer occupying original home as only or principle home.

Where the Council is made aware of a tenant receiving a payment or other premium to assign their tenancy, the Council will seek possession of the property, consider tenancy fraud and seek prosecution where appropriate



## Appeal Process

If an applicant is unhappy with the decision made about an application they have the right ask for a review through the [Council's formal complaints process](#).

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