

Housing Services Mutual Exchange Policy

Department	Housing Services
Responsible Person	Director of Housing
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1. Introduction

- 1.1 The mutual exchange process provides social housing tenants with a level of choice over where they live and provides them with a digital platform to be able to find a home better suited to their needs.
- 1.2 The London Borough of Barking and Dagenham (the Council) provides support to tenants through the mutual exchange process, facilitating the swift and smooth exchange of properties where authorised, in accordance with Schedule 3 of the Housing Act 1985.

2. Purpose

- 2.1 The aim of this policy is to:
- provide both tenants and Council officers with clear guidance on the eligibility, requirements and responsibilities associated with the mutual exchange of properties.
 - set out the grounds for the refusal of a mutual exchange and associated actions.

3. Definitions

Mutual Exchange	A 'home swap' between two social housing tenants.
Secure Tenancy	A secure tenancy is a 'lifetime tenancy' which can only end if the tenant leaves or is evicted due to a breach in conditions of tenancy.
Assured (non-shorthold) Tenancy	An assured (non-shorthold) tenancy is a 'lifelong tenancy' if you live in a Housing Association property, which only ends if the tenant leaves or is evicted.
Starter Tenancy	12-month trial or probationary tenancy
Periodic Secure Tenancy	A tenancy that runs on a rolling basis with no fixed end date, granting the tenant a "lifetime" right to stay in the home.
Home Swapper	An internet based mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties/partners.

4. Legislative Framework

- 4.1 Mutual exchange is set within the legislative framework provided by:
- The Housing Act 1985
 - The Equality Act 2010
 - The Localism Act 2011
 - The Landlord and Tenant Act 1985
 - The Social Housing (Regulation) Act 2023

- Consumer standards Code of Practice – April 2024 issued by the Regulator of Social Housing under section 195(1) of the Housing and Regeneration Act 2008 (as amended)

5. Eligibility for a mutual exchange

- 5.1 Secure tenants and assured (non-shorthold) tenants have a statutory right to assign their tenancy by way of a mutual exchange under Section 92 of the Housing Act 1985 as amended.
- 5.2 The following tenancy types are not eligible to mutual exchange:
- Introductory or starter tenancies
 - Use and occupation or any other temporary tenancies
 - Demoted tenancies
 - Job tied tenancies (i.e. wardens/caretakers etc)
 - Licensees
 - Fixed-Term tenancies
 - Reside/Intermediate Market rent tenancies
 - Leaseholders
 - Shared owners
- 5.3 Tenants who are eligible to mutually exchange can do so with another eligible Council tenant, a tenant of another registered non-profit social housing provider, or any other local authority tenant within the UK.

6. The Council's Responsibilities

- 6.1 The Council subscribes to an internet based mutual exchange service which allows tenants to register their interest in a mutual exchange and find suitable exchange properties. The Council will publicise the availability of this service on its website. The mutual exchange service that the Council is subscribed to is 'Home Swapper'.
- 6.2 The Council will give notice of its decision to approve or decline a mutual exchange application within 42 calendar days of receiving a completed application.
- 6.3 The Council's decision to approve or decline an application will be given in writing. If the decision made is to decline an application, the Council will clearly state the reasons/grounds for withholding consent.
- 6.4 The Council will ensure that valid gas and electrical certificates for its property are obtained prior to approving the exchange and will arrange the necessary checks to obtain them.
- 6.5 The Council will conduct a visual inspection to assess the condition of the property, to identify any repairs that may be required, and any alterations or damage that may have been made to the property.

- 6.6 The Council will notify both the outgoing and incoming tenants of any repairs they will be responsible for or will need to be conducted after the exchange takes place. The Council may request that both the outgoing and incoming tenants formally accept their repair responsibilities by way of signing an undertaking prior to the completion of the exchange.
- 6.7 The Council, as the landlord will maintain responsibility for completing any of its repair obligations when they are reported to the Council before the exchange takes place.

7. Tenant responsibilities

- 7.1 Tenants are responsible for finding their mutual exchange partner, and for making a mutual exchange application to the Council once they have found someone they want to exchange with.
- 7.2 Outgoing tenants are required to repair any neglect, alterations, or damage that they, their household, or their visitors have made to the property and to complete any repairs that the Council consider to be the tenant's responsibility prior to the completion of the mutual exchange.
- 7.3 Incoming tenants are responsible for carrying out an inspection of the property they intend to exchange to, prior to the completion of the exchange, and for making any agreements or arrangements with the outgoing tenant regarding the condition of the property, including any fixtures and fittings that are to remain or be removed.
- 7.4 In cases where the original mutual exchange application is placed on hold, or is cancelled and reapplied for at a later date, it is the incoming tenants responsibility to reinspect the property they intend to exchange to, in order to ascertain that they are still accepting the 'as is' condition of the property prior to the completion of the exchange.
- 7.5 Incoming tenants are required to agree to accept the 'as is' condition of the property they are exchanging to.
- 7.6 Following the mutual exchange, incoming tenants will assume responsibility for any damage or alterations made to the property by the outgoing tenant and for all repairs that the Council consider to be tenant repair obligations that were not completed by the outgoing tenant.
- 7.7 If the outgoing tenant deliberately damages the property or removes fixtures and fittings from the address (i.e. internal doors) the Council may seek to recharge the outgoing tenant to cover the cost of the damage.
- 7.8 If the incoming tenant finds that items or rubbish have been left on the premises by the outgoing tenant upon exchange, the Council will not be held liable to clear the items or to cover the cost of clearance.

- 7.9 Once an exchange has been approved, both tenants must give their landlord at least 7 days' notice of their selected mutual exchange date, to allow the Council time to prepare the necessary documentation to legally complete the mutual exchange.
- 7.10 Tenants must not move until they have received written confirmation from each landlord and signed the necessary paperwork to complete the mutual exchange. If tenants move without the Council's consent and without signing the required legal documents, the Council will treat the occupants as unauthorised occupiers and may seek possession of its property.

8. Grounds for Refusal

- 8.1 Refer to **APPENDIX A** for a full list of the statutory grounds stated in Schedule 3 of the Housing Act 1985, as amended by the Housing Act 2004 and Schedule 14 of the Localism Act 2011, to refuse a mutual exchange for tenants that hold a periodic secure tenancy.
- 8.2 The tenant will be required to ensure any rent arrears are paid in full prior to the mutual exchange taking place.
- 8.3 The Council will refuse any mutual exchange that would result in its property becoming under-occupied by more than one bedroom.
- 8.4 The Council will not allow for any overcrowding to occur in its properties through the completion of a mutual exchange.
- 8.5 The Council will refuse a mutual exchange where it has reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange.
- 8.6 The Council may refuse a mutual exchange where there are significant safeguarding concerns or members of the public are put at risk.
- 8.7 The Council will refuse a mutual exchange where one or more properties have or are set to be included in the Council's regeneration programme and are therefore likely to be demolished in the foreseeable future.
- 8.8 The Council may rely on any other reasonable grounds to withhold its consent if so required.
- 8.9 Where a mutual exchange is refused the London Borough of Barking and Dagenham's tenant(s) will be notified of this in writing within 14 days of the decision and the reasons for it. The tenant is able to request an internal review of this decision, by a senior officer not involved in the original decision to refuse the mutual exchange.
- 8.10 When the review has been completed the tenant will be notified in writing of the outcome. There is no further right of review.

9. Equality Impact

- 9.1 Applying this policy consistently and sensitively will ensure that all tenants and their household members in Council owned homes who have protected characteristics and/or are deemed vulnerable for other reasons receive services that are based on a recognition of their vulnerability. The Council will make all appropriate adjustments to the services they receive in order to mitigate any potential negative impacts on them and to ensure they receive fair and equal treatment from the Council as their landlord.

Table of Grounds for Refusal – Mutual 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 & 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 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 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 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.
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	An injunction order under section 153 of the Housing Act 1996 or an anti-social behaviour order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.