

MUTUAL EXCHANGE

Policy Document





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PURPOSE & SCOPE

This policy applies to requests for mutual exchanges between Birmingham City Council tenants and between Birmingham City Council tenants, or a tenant of a Registered Social Landlord. Any applicants must possess a secure or assured tenancy for a mutual exchange request to be considered.

Out of Scope

Mutual exchanges are not permitted by law for Introductory and Demoted tenants.



CONTEXT

A mutual exchange occurs when two or more tenants agree to exchange homes with the agreement of the Council and any other landlord(s) involved.

A mutual exchange will be carried out by a Deed of Assignment except those involving a flexible tenant under the Localism Act s158, which will, if agreed, be carried out by surrender and re grant of a tenancy.

An Assignment is where a person takes over the tenancy of an existing tenant, including their tenancy agreement and the terms and conditions of their tenancy.

An assignment by way of a mutual exchange entitles tenants to carry forward some rights associated with their secure tenancy, such as retaining their years accumulated towards any Right to Buy entitlement.

However, whilst an assignment by way of a mutual exchange does not count as a succession, if a tenant was a successor before the mutual exchange took place, they will remain a successor in their new property and there will be no further right of succession for their new tenancy.

Key legislative and regulatory requirements driving this policy are the Housing Act 1985 (as amended), Localism Act 2011 and the Regulator of Social Housing's Consumer Standards, specifically the tenancy standard.

The Housing Act 1985 Section 3 and the Localism Act 2011 set out the only grounds by which the Council can refuse a mutual exchange request. These are set out in the table called grounds for refusal on page 8 & 9 of this document.



APPROACH

The Council aims to promote mutual exchanges as a way of encouraging tenant mobility, the development of sustainable communities and the best use of housing stock. All mutual exchanges will be carried out efficiently and effectively in accordance with statutory requirements.

Tenants have the right to exchange their home, anywhere in the Country, with another Council tenant or those of a Registered Provider as long as they have a secure, flexible, assured tenancy agreement.

In order to consider an application for a mutual exchange all involved parties must complete a mutual exchange form. If any of those parties rent their home from a different Council or a Registered Provider, they must also obtain their landlords written consent.

Once a fully completed mutual exchange form has been received with supporting documents, the Council has 42 days (six weeks) to refuse, give conditional consent or full consent to a proposed exchange.

If the Council fails to issue a decision letter refusing or giving conditional consent within 42 Calendar days, using one of these grounds set out in the grounds for refusing table, by law, it loses the right to withhold consent on any of the grounds in the legislation.



ROLES AND RESPONSIBILITIES

Birmingham City Council

We will subscribe to an internet based mutual exchange service, Homeswapper, to provide tenants the opportunity to register an interest in arranging a mutual exchange. This mutual exchange service is free of charge to Birmingham City Council secure tenants.

We will publicise the availability of this service to our tenants.

We will provide advice and assistance to tenants wishing to exchange. This may include tenants with support needs, those who do not speak English as a first language and others who have difficulties with written English, who are vulnerable by reason of age, disability or illness, and households with children.

We will ensure tenants seeking to mutually exchange are aware of their responsibilities to verify information about the implications for tenure, rent and service charges associated with the mutual exchange.

We will make enquiries and carry out eligibility checks before consenting to the exchange. This will include, but is not limited to, us looking at how the tenants have managed their tenancy. We will also undertake home visits to assess the condition of the property.

We will give written notification of approval or refusal of an application for mutual exchange within 42 Calendar days of receiving a completed application. A completed application means that all required parts of the application have been completed in full by all tenants.

Tenant responsibilities

Tenants are responsible for identifying a tenant/property to exchange with. Tenants can use Homeswapper, and other platforms for example, social media. We will immediately refuse any exchange where we have identified any form of financial payments being made on these platforms.

Tenants must verify information about the implications for tenure, rent and service charges associated with the mutual exchange, and consider if any financial implications are affordable based on their current income, especially with examples of fixed incomes or recipients of housing benefits.

If there are multiple parties involved, for example 3 or more tenancies involved in a chain, we must receive applications from all parties. We cannot start to process applications until all have been received by us.

Tenants must make factual applications and must agree to accept the condition of the property they are exchanging too.

Tenants are responsible for ensuring they have inspected the property and will be required to sign a disclaimer for responsibility of nonstandard fixtures within the property.

When tenants are required to provide or sign documents in relation to the exchange, we ask them to complete this as a matter of urgency, to ensure there are no unnecessary delays in the process.

Tenants are responsible for coordinating and paying for their own removal/exchange arrangements.

GROUNDS FOR CONDITIONAL CONSENT OF A MUTUAL EXCHANGE

The council may give consent on the understanding that a tenant remedies a breach of tenancy condition(s) or satisfies an obligation that needs to be performed before the move can take place. Where conditional consent is given the Council will provide a definitive outcome within the 42 Calendar days timescale.

The Council will consider mutual exchange requests from tenants with rent arrears or low levels of anti-social behaviour, subject to certain conditions as outlined below:

- If the applicant has accrued rent arrears as a direct result of benefit reductions under the Welfare Reform Act regulations, specifically following an assessment that the tenant is under-occupying their current property
- If the Council has not gained a suspended or outright possession order against the tenant as a result of these arrears
- Where an applicant has a low-level of arrears which have accrued for any other reason, consent may be granted at management discretion, subject to regular and consistent payments having been made against an agreed repayment schedule
- For low levels of ASB, the tenant has addressed or remedied the issues of concern

The onus is on the tenant to remedy the breach of tenancy condition and/or perform the obligation required of them within the timescales agreed and to the satisfaction of the Council. This will involve further enquiries being made by the Council and a re-inspection of the property. In these instances, the involved parties must not move home unless they have written permission from the Council and the Deed of Assignment has been signed.



GROUNDS FOR REFUSAL OF A MUTUAL EXCHANGE

Schedule 3 of the Housing Act 1985 sets out the grounds under which a mutual exchange can be refused. These are broadly the same as those set out in the table below:

Schedule 3 of the Housing Act 1985	Grounds for refusing consent to the exchange
Ground 1	When any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.
Ground 2	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Ground 3	The property is substantially larger than is reasonably needed by the proposed assignee.
Ground 4	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 7	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.

Section 158 of the Localism Act 2011 sets out the grounds under which a MEX can be refused:

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 3	When any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy
Ground 4 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced
Ground 6	A court order for possession or a suspended possession order has been made for either property or an application is pending before any court for a relevant order, a demotion order to be made in respect of a relevant tenant or a person residing with a relevant tenant
Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee
Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household
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

Bedroom Size and Suitability in Mutual Exchanges

When assessing a mutual exchange request, Birmingham City Council considers whether the size of the new property is appropriate for the household's needs. This includes situations where the exchange may result in either **overcrowding** or **under-occupation**.

Overcrowding: Exchanges will not normally be approved if the new property is too small for the household. However, an exception may be made for larger families who require at least four bedrooms. In such cases, we may allow the household to move into a property that is one bedroom smaller than their assessed need.

Under-occupation: We may allow an exchange where the new property has one more bedroom than the household requires, provided the home remains suitable and the move does not conflict with wider housing needs or policy priorities.

Individual Consideration: Where a mutual exchange would result in either overcrowding or under-occupation, each request will be considered on a case-by-case basis. We will consider the availability of suitable housing in the area, the specific circumstances of the households involved, and the extent to which the exchange would help to meet identified housing needs.

LEGAL ACTION

If properties are exchanged without prior written permission from the Council, the Council will take legal action against the occupier to enforce the occupier to vacate the premises.

If either party received a payment or other premium as an inducement to assign their tenancy Birmingham City Council may commence possession proceedings.

The Prevention of Social Housing Fraud Act 2013 criminalises unlawful sub-letting and gives additional powers to Local Authorities to investigate social housing tenancy fraud. Birmingham City Council is committed to taking robust action against those that seek to abuse the social housing it provides and uses a range of measures to tackle it.

RIGHT TO REVIEW

A tenant has the right to review the decision. The review will consider whether the reason for refusal is reasonably based on the Grounds for refusal set out in the Acts. The tenant must be advised to put this in writing to the Housing Manager.

The review will be carried out by the Senior Service Manager & Housing Manager and the tenants will be notified in writing of the decision.

EQUALITY AND DIVERSITY

The council recognises that its colleagues and citizens come from diverse backgrounds, with varying experiences and needs. BCC is committed to promoting equality and fairness and combating discrimination. This applies to everyone, regardless of gender, racial or ethnic background, disability, religion or belief, sexual orientation gender reassignment, age, marital or parental status. The Council treats everyone it houses, serves, and employs, fairly, and encourages others to do the same.

COMPLAINTS

We recognise on occasion that citizens may become dissatisfied with the process, and we would encourage any tenant to contact us directly to make a complaint:

- Telephone
- Online
- Face to face
- Letter
- Email

The complaints system will also be used to identify themes, trends, improvements and learning opportunities in service delivery and residents' outcomes.

Once our Complaints Policy is exhausted and if they remain dissatisfied, then they can contact the Housing Ombudsman.

MONITORING AND REVIEW

This policy will be periodically reviewed in line with our corporate timescales to ensure its effectiveness and compliance with any changes in legislation or local housing requirements. Amendments may be made as necessary.

