



POLICY

Mutual Exchange

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1. Purpose

The purpose of this policy is to:

- Set out The Royal Borough of Kingston (RBK) Council's approach to Mutual Exchanges
- Provide tenants with information on the requirements for a mutual exchange of properties
- Ensure that the criteria for an exchange are met before an exchange can be undertaken
- Set out and explain the grounds for refusing a Mutual Exchange

Scope

1.1 This policy applies to all Kingston Council's tenants who have a secure tenancy and anyone applying to become a RBK tenant via way of mutual exchange. This includes:

- A tenant of this or another local authority, or ALMO acting on the local authority's behalf;
- A tenant of a registered social housing provider (housing association)
- A tenant of a charitable housing trust

1.2 In implementing this policy RBK will:

- Comply with relevant legislation, and meet its responsibilities and duties as a landlord by complying with the Regulator for Social Housing's Regulatory Framework for Social Housing in England;

2. Legal Framework

This policy is underpinned by:

- Housing Act– 1985
- Localism Act - 2011
- RBK Housing Management Policy & Procedure - 2022
- Equality Act 2010

3. Definitions

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

It offers mobility and choice to those who may not have access to a 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.

4. Policy Statement

Kingston Council recognises that the option to exchange tenancies can be of a benefit in providing mobility to tenants
Kingston Council is committed to ensuring that the mutual exchange process is clear and easy to follow.

5. Right to Exchange

5.1 The right to exchange is dependent on the type of tenancy agreement that is held by the tenant/s wishing to go through the process.

5.2 Any RBK tenant with a secure tenancy (excluding those with introductory tenancies) has the right to apply for a mutual exchange with another local authority or registered social landlord tenant

5.3 Any RBK resident who resides within our Housing for Older People Schemes (i.e. sheltered housing accommodation) can only apply for a mutual exchange with another local authority or registered social landlord tenant who also resides in a Housing for Older People Scheme / sheltered accommodation.

5.4 RBK tenants with a demoted tenancy cannot apply for a mutual exchange

5.5 RBK tenants who are currently in the introductory period of their secure tenancies cannot apply for a mutual exchange

5.6 RBK tenants who are temporarily decanted to a temporary address cannot apply for a mutual exchange at that address but may have the right to apply for a mutual exchange at their permanent address

5.7 Leaseholders and Shared Owners cannot apply for a mutual exchange

5.8 Use in Occupation tenants cannot apply for a mutual exchange

5.9 Tenants of other social housing providers are not able to apply for a mutual exchange if they hold the following tenancies:

- Starter or Probation Tenancy
- Assured Shorthold Tenancy (AST)
- Licence
- A periodic AST as a result of a break notice being issued on a fixed term tenancy or where a new tenancy has not been signed at the end of a fixed term

6 Types of Mutual Exchanges

6.1 Mutual exchanges can be carried out in one of 2 ways:

- **Through Assignment** - This is where tenancies are swapped at the same time homes are exchanged. The incoming tenant takes on the rights and responsibilities of the outgoing tenant and both will have tenancies with a similar security of tenure. No new tenancy is created. Each tenant will sign a 'Deed of Assignment'.
- **Through surrender and re-grant** - This is used in circumstances where a mutual exchange application involves one social housing tenant with a tenancy that was granted before 1st April 2012 and one whose tenancy was granted on or after 1st April 2012 and the security of tenure is different. The tenancies are surrendered and re-granted to offer a similar security of tenure at the new property.

The Table below indicates when a Mutual Exchange by Assignment or by Surrender and re-grant takes place:

Tenant 1 (Tenure Type)	Tenant 2 (Tenure Type)	Type of Mutual Exchange	Exceptions
Secured/Assured	Secured/Assured	Via Assignment	
Secured/ Assured(pre 2012)	Secured/Assured(post 2012)	Via Surrender and Re-grant	

6.2 In circumstances where a tenant has inherited their tenancy by succession or it has been legally transferred to them by way of assignment from a family member, the succession rights follow the tenant and do not remain with the tenancy i.e. a tenant who is a successor under the original tenancy will remain a successor in their 'new' tenancy following mutual exchange, whichever method of exchange is used.

6.3 A Mutual Exchange also counts as an Assignment .

6.4 Assignment via a mutual exchange will not increase your succession rights.

6.5 Existing tenants will only be able to retain their current level of security once (not necessarily for subsequent exchanges) as any further tenancy would have commenced after 1/4/2012 and would not be bound by the same requirements under the Localism Act 2011.

Things to Note:

An RBK tenant with a secure tenancy which began before 1 April 2012 who exchanges with a fixed term council or housing association tenant from another council or housing association, should get another lifetime tenancy.

An RBK tenant with a secure tenancy which began on or after 1 April 2012 who exchanges with a fixed term council or housing association tenant from another council or housing association, could lose their lifetime tenancy.

7. Conditions for Mutual Exchanges to take place

7.1 Consent must be obtained from Kingston Council (RBK) and all other landlords before a mutual exchange can take place.

In the event that a mutual exchange occurs without our knowledge or consent, the occupants will be treated as unauthorised and legal action to repossess the property may be taken.

7.2 The applicants of a mutual exchange must be applying under their own free will, having found a suitable property match. They must not have been coerced or forced into making such an application and neither should any money or other form of recompense be offered or take place.

6.3 Schedule 3 of the Housing Act 1985 and Schedule 14 of the Localism Act 2011 sets out the only grounds on which RBK may withhold its consent to an exchange.

7.4 RBK may make its consent conditional where a tenant is in rent arrears, or in breach of another obligation of the tenancy. In such cases RBK can attach a condition requiring the tenant to fulfil the particular obligation that has been breached. Typical examples would be the following:

- Rent arrears or any other debts such as former tenant arrears, court costs or rechargeable repairs to be repaid.
- Unauthorised alterations to be remedied.
- Damage to property or poor condition to be remedied

7.5 Where the exchange is with a tenant from another landlord, RBK will only approve a mutual exchange on receipt of confirmation in writing from the other landlord that they have consented to the exchange and where a tenant has completed a RBK reference and there are no obvious grounds to refuse an exchange.

7.6 Where a tenancy is in joint names, a mutual exchange will not be approved unless both tenants have completed and signed the mutual exchange application form.

8. The Mutual Exchange

Applications for a Mutual Exchange can be done via tenancy exchange websites such as Homeswapper, House Exchange. Some sites require a registration fee.

8.1 RBK must grant or refuse the exchange within 42 days of receiving the applications from all parties to the Mutual Exchange.

8. 1 RBK will acknowledge receipt of a Mutual Exchange application within 5 days of receiving it.

8.2 Granting permission to exchange is subject to RBK Housing Management obtaining satisfactory references from the respective Housing Organisations of all the parties concerned .

8.3 Providing there are no obvious grounds for refusal on receipt of the application, we ie RBK will book an appointment with the tenant within 5 days of receiving satisfactory references for the Housing Officer or Maintenance Surveyor to inspect the property. Any unauthorised alterations or non-standard/additional fittings will be recorded and all problematic alterations will need to be removed or rectified by the tenant prior to the mutual exchange taking place.

8.4 Provided there are no grounds for refusal, consent shall be notified to all parties. Should grounds for refusal apply or conditional consent be given, this decision will also be notified in writing to both parties and any other landlords.

8.5 Both parties should be available for the assignment or surrender and re-grant of tenancy to take place and as far as reasonably possible, the surrender of tenancies should occur on the same day.

8.6 It will be agreed with the incoming tenant that RBK will complete a gas safety/electric check as close to the day of the mutual exchange as possible.

8.7. It will be made clear to both parties that they must make suitable arrangements regarding items left in the property, the garden and any outbuildings. Both parties will be reminded that RBK will not be responsible for removing any items left by the outgoing tenant.

8.8. The Housing Officer will visit the new tenant 6 weeks after they have moved into their new property to check if everything is alright.

9. Grounds for Refusal

9.1 In cases of a “like for like exchange”, RBK can only refuse consent to an exchange on the grounds set out in Schedule 3 to the Housing Act 1985. (Schedule 3 applies to secure tenants whose tenancies started prior to 1st April 2012)

9.2. Equally, in like for like assignments, breach of tenancy and rent arrears alone are not grounds for refusal, as consent to exchange can be granted subject to a condition requiring the tenant to pay the outstanding rent or remedy the breach.

9.3 In other cases, (“which are not like for like”) RBK Housing Management can only refuse consent to an exchange on the grounds set out in Schedule 14 to the Localism Act 2011. (Schedule 14 applies for all tenancies created after 1st April 2012).

9.4. Appeals must be submitted in writing to the Lead Officer - Housing Services within 15 working days of receipt of the refusal letter.

10. Timescales

10.1 42 Days Statutory Response Time following an Application.

10.2 15 Working Days for the tenant to respond to a refusal with a request to appeal

11. Equality and Diversity

11.1 The Council is committed to promoting fair and equal access to services and equal opportunities in employment, the procurement of goods and as a community leader. The Council’s policies, procedures and day to day practices have been established to promote an environment which is free from unlawful and unfair discrimination, while valuing the diversity of all people.

11.2 Discrimination on the grounds of race, nationality, ethnic origin, religion or belief, gender, marital status, sexuality, disability and age is not acceptable: the Council will take action to ensure no person using the council’s premises or services receives less favourable treatment or is disadvantaged by requirements or conditions that cannot be justified. The Council will tackle inequality, treat all people with dignity and respect and continue to work to improve services for all service users.

11.3 The legal framework for the Council’s approach is provided by the Equality Act 2010 and specifically by the Public Sector Equality Duty, under which a public authority must work consciously to eliminate discrimination, harassment, victimisation and to advance equality of opportunity and foster good relations between people with differing characteristics.

12. Monitoring and Reviewing

This policy will be reviewed in conjunction with the procedure every three years, or when legislative or regulatory changes take place that could affect it. The next review will take place by: November 2026

Revision History

Version	Date	Revision Author	Summary of Changes
1.0	20/09/2023	Patricia Yusuff	
2.0	20/10/2023	Patricia Yusuff	Addition of 'Things to note' /reciting Legal Framework
3.0	09/11/2023	Patricia Yusuff	Expansion of details under 'Things to Note'. Removal of mention of Flexible/Fixed Term Tenancies as RBK do not offer these tenancies.

Distribution

Name	Position	Date circulated

Approval

Name	Position	Date of approval

Appendix 1

Schedule 3 of the Housing Act 1985 (Grounds on which an Exchange can be refused)

Ground 1: The tenant or proposed exchange partner has a possession order outstanding against them, whether or not it has already come into force.

Ground 2: The tenant or proposed exchange partner has outstanding possession proceedings against them, or a notice of seeking possession is still in force. This only applies if one or more of possession grounds 1 - 6 apply:

- breach of tenancy conditions or rent arrears,
- nuisance or annoyance to neighbours or immoral/illegal use of the property,
- damage to property
- false application
- sale of previous exchange tenancy (or bribe)

Ground 3: The incoming tenant would substantially under occupy the property.

Ground 4: The extent of the accommodation is not reasonably suitable to the needs of the incoming tenant (this could be wider than statutory overcrowding and could include such things as layout, room size or level).

Ground 5: The property is mainly non-housing, used for non-housing purposes, or is in a cemetery, and was previously tied accommodation while the tenant was employed by the landlord or another specified body.

Ground 6: The landlord is a charity and the incoming tenant's occupation of the property would conflict with the objects of the charity (note that it is the objects of the charity, not its allocations policy, which is material).

Ground 7: The dwelling has substantially different features from ordinary dwellings, and is designed for the physically disabled, and if the exchange occurred, there would not be anyone disabled living there.

Ground 8: If an association or housing trust lets its houses only to those whose circumstances (other than financial) make it difficult for them to find accommodation, and if the exchange occurred, there would no longer be such a qualifying person living there.

Ground 9: The house is one of a group, which it is the practice of the landlord to let to those with special needs, and a social service or special facility is provided for them (e.g. sheltered housing) and, after the exchange there would not be such a person living there.

Appendix 2

Schedule 14 of the Localism Act 2011 (Grounds on which a Mutual Exchange can be refused i.e. under Section 158.

Ground 1: This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2: This ground is that an obligation under one of the existing tenancies has been broken or not performed.

Ground 3: This ground is that 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:

(1) This ground is that either of the following conditions is met.

(2) The first condition is that—

(a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and

(b) possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).

(3) The second condition is that—

(a) a notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and

(b) the notice specifies one or more of those grounds and is still in force.

Ground 5:

(1) This ground is that either of the following conditions is met.

(2) The first condition is that—

(a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and

(b) possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)

(3) The second condition is that—

- (a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
- (b) the notice specifies one or more of those grounds and is still in force.

Ground 6:

(1) This ground is that either of the following conditions is met.

(2) The first condition is that a relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant.

(3) The second condition is that an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.

(4) In this paragraph—

• a "relevant order" means—

(a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),

(b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),

(c) an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),

(d) an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998, or

(e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;

• a "demotion order" means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988;

• a "Ground 2 or 14 possession order" means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

Ground 7:

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8:

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of;

(a) the existing tenant or tenants to whom the tenancy is proposed to be granted, and

(b) the family of that tenant or those tenants.

Ground 7:

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8:

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of;

- (a) the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (b) the family of that tenant or those tenants.

Ground 9:

(1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

(2) The first condition is that the dwelling-house

(a) forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord

(i) is held mainly for purposes other than housing purposes, and

(ii) consists mainly of accommodation other than housing accommodation,
or

(b) is situated in a cemetery.

(3) The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of;

(a) the landlord under the tenancy,

(b) a local authority,

(c) a development corporation,

(d) a housing action trust,

(e) an urban development corporation, or

(f) the governors of an aided school.

Ground 10:

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11:

(1) This ground is that both of the following conditions are met.

- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that;
- (a) are substantially different from those of ordinary dwelling-houses, and
 - (b) are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling house.
- (3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12:

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.
- (3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13:

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.
- (3) The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.#
- (4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14:

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that—
- (a) the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
 - (b) at least half the members of the association are tenants of dwelling houses subject to the agreement.

(3) The second condition is that at least half the tenants of the dwelling houses are members of the association.

(4) The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.

(5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A (6) of the Housing and Regeneration Act 2008.

