

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Housing Portfolio Holder
AUTHOR/S: Housing Advice and Options Manager

20th July 2006

MUTUAL EXCHANGES AND S106 RESTRICTIONS

Purpose

1. To propose a change to the allocations policy that will enable RSL tenants in accommodation secured under a s106 agreement to pursue the option of a mutual exchange.

Effect on Corporate Objectives

2. Quality, Accessible Services	Tenants are encouraged to pursue the option of a mutual exchange, particularly when they are unlikely to be assisted via the housing register, due to the high levels of housing need. This provides a solution that is effective for the Council and enables tenants to be proactive in choosing their future home and the ability to progress this successfully.
Village Life	As above
Sustainability	As above
Partnership	The council works in partnership with a number of RSL's to provide social housing across the district.

Background

3. All secure and assured tenants of the Council or Housing Associations are able to seek alternative accommodation via a mutual exchange if this is agreed by the respective landlord. The starting point for secure tenants is that the consent of the landlord to the right to exchange can only be withheld on specific grounds set out in Schedule 3 of the 1985 Housing Act. The 1988 Housing Act has a different regime for assured tenants seeking an exchange. The starting point there is that there is an implied term of every tenancy that the tenant shall not assign except with the consent of the landlord. Cambridge Housing Society use the statutory list of reasons from the 1985 Act and supplement this with the reason that the house/flat is subject to the s106 restriction requiring a local connection to justify withholding consent.
4. In July 2002, Cabinet agreed that the Housing Association who do not "prevent exchanges and transfers where the incoming tenant does not fulfil the local connection requirement", could be removed from the approved list. Hence the reason why the Cambridge Housing, for example, use the s106 restriction to support a refusal of consent to exchange.
5. Cambridge Housing Society has received some requests for a mutual exchange from their tenants who have found exchange partners who do not hold the appropriate local connection required by the s106 agreement. To date, such applications have been refused, however, they have been challenged by tenants on this approach, as it is felt it is restricting their ability to move freely to be nearer family or take up new employment opportunities. .

6. In some cases the Council have assisted tenants who want to move with a management move, however, this is restricting the level of choice tenants have. This is a move outside the points system of the housing register and therefore enables such tenants to move ahead of other tenants and residents in housing need.

Considerations

7. In the Council's Local Plan a qualifying person is defined as "An applicant..... who is in housing need and live in, or are employed in, or have close local connections with, the relevant village or parish or an immediately adjoining parish".
8. The cascade provisions are : "If there are no qualifying persons identified at the time a unit of affordable housing is completed or becomes available for re-occupation, the accommodation will be offered to those meeting the same qualifying criteria in relation to the following sequential preference of areas: (i) other nearby parishes; (ii) parishes elsewhere in South Cambridgeshire or (iii) parishes in adjoining local authority areas in order of geographical proximity".
9. Therefore, when allocating properties with a s106 restriction, applicants without a local connection may be offered the properties if there are no suitable applicants with such a local connection.
10. To reflect this approach, Cambridge Housing Society have proposed that tenants make a reasonable effort to seek an exchange partner with a local connection with the parish or a neighbouring parish. This should include placing a free advert in the local press or in other public places available for advertising and registering on the exchange lists held by South Cambridgeshire DC and Cambridge City Council. If these tenants have been unable to seek an exchange partner within a three-month period, they may pursue an exchange with a partner who does not hold a local connection.
11. By refusing tenants the option of a mutual exchange their rehousing options are limited and tenants have reported feeling trapped.
12. Some tenants in this position have been assisted with a management move to help resolve this, however, this restricts the level of choice these tenants have, and can give them an unfair advantage to alternative social housing, which is a scarce resource.
13. As the Council are aiming to develop further a 'housing options' approach, a mutual exchange is a key route for tenants to resolve their housing needs independently.

Options

14.
 - Option 1. To seek views, via consultation with RSL's and Parish Council's, on the potential to enable tenants to pursue the option of a mutual exchange with an exchange partner who does not hold a local connection, after a reasonable effort is made to find an exchange partner, who does hold such a connection.
 - Option 2. RSL's continue with the approach not to agree mutual exchange requests with exchange partners who do not hold a local connection, and assist those tenants affected with a management move if they wish to remain in the District boundaries. [This does not address the preferences of tenants wishing to exchange their tenancies to move outside of the district boundaries and will mean they are considered for a move outside of the points based system of the housing register which reflects housing need.]

- Option 3. RSL's continue with the approach not to agree mutual exchange requests with exchange partners who do not hold a local connection and the Council will only assist those tenants with an exceptional need to move, via a management move. [This does not address the needs of tenants wishing to exchange their tenancies to move outside of the district boundaries and will mean those who have an exceptional need to move are considered for a move outside of the points based system of the housing register which reflects housing need.]

Financial Implications

15. None

Legal Implications

16. Adherence to the legal provisions for assignment of tenancies by way of exchange set out in the 1985 and 1988 Housing Acts is required

Staffing Implications

17. None.

Risk Management Implications

18. Future developments and gaining parish approval. The result of the consultation will be considered.

Consultations

19. Discussions have taken place with the council's legal section and Cambridge Housing Society. Further consultation is required with other RSL's and the Parish Councils.

Conclusions/Summary

20. The Council's existing allocations policy restrict tenants of housing association developments exchanging their tenancies via a mutual exchange with exchange partners who do not hold a local connection. This is restricting the ability for tenants to move to their preferred area or accommodation and putting a reliance on the council to resolve this, by assisting such tenants with a management move.

Recommendations

21. It is recommended that option 1 is pursued at this stage and the Council commence consultation with RSL's and parish Council to propose that:
- a) Tenants are required to seek a mutual exchange with an exchange partner who holds the relevant connection criteria for a three-month period. Tenants will be advised that they should try to advertise in the free local press and via the exchange register held at South Cambridgeshire District Council and Cambridge City Council.
 - b) If no suitable exchange partner is found during this period, tenants may seek an exchange partner who does not fulfil the local connection criteria.

22. To report back to the Portfolio Holder the outcome of the consultation in order to make a recommendation to Cabinet if a change in policy is the best way forward.

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