

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Housing Portfolio 03/04/07  
**AUTHOR/S:** Housing Advice and Options Manager

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### MUTUAL EXCHANGES AND S106 RESTRICTIONS

#### **Purpose**

1. To report on the outcome of the consultation relating to the proposals outlined in the Portfolio Holder report of 20<sup>th</sup> July 2006.
2. To determine whether to proceed further with a change in policy relating to Mutual Exchange where s106 restrictions apply.

#### **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.
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 is 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 has 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 is aiming to develop further a 'housing options' approach, a mutual exchange is a key route for tenants to resolve their housing needs independently.
14. A report was brought to the Housing Portfolio meeting on 20<sup>th</sup> July 2006 where it was agreed that consultation would commence 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.

### **Considerations**

15. All parish councils and local RSL's have now been consulted with and a summary of the responses is attached.
16. Out of the 16 Parish Council that responded, 11 were against the proposals and 4 were in favour of the proposals with 7 suggesting alterations to the proposals including a longer time period of 6 months to seek a mutual exchange partner with a local connection.
17. Two local RSL's have responded to the consultation including Cambridge Housing Society and Suffolk Housing Society. Both are in favour with the proposals, Cambridgeshire Housing Society having been the organisation who raised the concerns with the council initially.

## Options

18. Option 1: To recommend to Cabinet a change in the policy 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. [This will be against the views of the majority of the Parish Councils that responded to the consultation].
19. The other 2 options considered at the previous portfolio holder meeting were:
20. 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.]
21. 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.]

## Implications

22. Financial	None
Legal	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	None
Risk Management	Future developments and gaining parish approval.
Equal Opportunities	Inability for some tenants in social housing to pursue the option of a mutual exchange, however, ingoing tenants should be made fully aware of these restrictions.

## Consultations

23. Detailed consultation has been taken with Parish Council's and local RSL's. Discussions had also taken place with the Council's legal section and Cambridge Housing Society.

## Effect on Annual Priorities and Corporate Objectives

24. Affordable Homes	S106 provisions enable new developments on exception sites to be ring fenced for local people. 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.
Customer Service	As above
Northstowe and other growth areas	
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	S106 provisions enable new developments on exception sites to be ring fenced for local people.
Sustainability	
Partnership	The council works in partnership with a number of RSL's to provide social housing across the district.

## Conclusions/Summary

25. 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.
26. Half of the responding parish council's are opposed to a change to this approach due to the provisions that these properties house local people. In many cases this includes very strong opposition.
27. Alternative ways to help, may include the provision of a management move, however, this will mean people are rehoused outside of the points system which reflects housing need. This will also be more difficult to achieve when the new Choice Based Lettings scheme is in operation, where properties are openly advertised, although in exceptional circumstances this could be achieved by providing a direct let. However, this will not enable people who may wish to move outside of the district.

## Recommendations

28. In view of the comments received from Parish Council's against the proposals, it is recommended not to pursue a policy change of this nature.
29. It is recommended that Option 3 is now pursued, where the household should apply on the housing register, however, the council will try to assist with a management move if there are exceptional reasons for the household to move, outside of the normal points system.

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