

Policy	Garden Apportionment for council flats under Right To Buy
Users of Policy	CBC Officers, CBH Officers
Date Adopted	July 2013
Date last Reviewed	July 2013
Review Frequency	Review after 1st year of implementation then every 3 years
Best Before Date	July 2016
Scheme Delegation	
Formation of Policy	Portfolio Holder with delegated responsibility for Housing and the financial management of the Housing Revenue Account
Amendments	Portfolio Holder with delegated responsibility for Housing and the financial management of the Housing Revenue Account
Monitoring	Strategic Housing Manager (equivalent Senior Officer) with responsibility for the Council's Landlord function
Implementation	Strategic Housing Manager (equivalent Senior Officer) with responsibility for the Council's Landlord function
Approval of	Head of Service with responsibility for Strategic Housing

1. Aims of Policy

- 1.1 The aim of the Garden Apportionment for council flats under Right to Buy Policy is to set out the circumstances in which Colchester Borough Council will allow pieces of garden to be apportioned and included with general need flats under Right to buy.
- 1.2 To ensure that these requests are dealt with in a fair and consistent way.

2. Background

- 2.1 The Council operates the Right to Buy (RTB) scheme for its tenants in line with the regulations set out in current legislation.
- 2.2 The processing of applications and management of the RTB scheme is jointly administered by Colchester Borough Council and Colchester Borough Homes
- 2.3 The Council's Strategic Housing Role includes ensuring Landlord functions are fulfilled by protecting tenants' rights and the neighbourhood they live in. Strategic Housing observes the Council's wider responsibility in safeguarding the interests of residents across the borough and the public purse.
- 2.4 On the sites owned by Colchester Borough Council, some of the blocks of flats have gardens allocated to them which are clearly defined and fenced off, in these cases the gardens would be included with the sale under right to buy. However, on other sites the blocks of flats have no clearly defined gardens.

- 2.5 In some circumstances tenants have requested to buy a piece of communal garden land when they make their Right to Buy application where the garden is not included with the tenancy and the garden has been maintained by the tenant. This excludes communal garden land that is being maintained under the council's ground maintenance contract.
- 2.6 On some sites some requests for pieces of garden land have been included and then sold with flats under Right to Buy in an adhoc way.

3 Legislation and Guidance

- 3.1 The Housing Act 1985 gave tenants the right to purchase their Council house or bungalow, or acquire the Lease of their flat, if they had been a social housing tenant for at least two years.
- 3.2 The Housing Act 2004 which came into force in January 2005 extended the term to five years therefore if the tenancy began on or after 18th January 2005, the tenant's right to buy is suspended for at least 5 years.
- 3.3 The Land Registration Act 2002 which came into force on 13 October 2003 introduced a new legal scheme to acquire registered land by adverse possession.
- 3.4 A person wishing to claim adverse possession of registered land would need to continuously occupy the land for ten years or for a period of twelve years if the land is unregistered or if the period of time of occupation is ended before 2003.
- 3.5 There are two elements a person needs to establish for a claim of adverse possession, regardless of whether the claim is in respect of registered or unregistered land. To claim title to land by adverse possession, the claimant needs to prove the following:
 - Uninterrupted "factual" possession of the land by the claimant for the requisite period of time
 - "Intention" on the part of the claimant to possess the land during that period.

4 The Policy

- 4.1 The Policy sets out how the Council will deal with applications to purchase pieces of garden land in conjunction with a right to buy application, where this has not been defined by the tenancy agreement. This excludes communal garden land that is being maintained as part of the council's ground maintenance contract as this land is not available for purchase.
- 4.2 In order to provide a fair and consistent decision making process in these cases, the council will apply principles to consider applications as follows;

- Proof that the tenant has been maintaining the piece of garden i.e. fencing, evidence of planting shrubs, vegetable plot etc
 - Proof that the tenant has legal access to the piece of garden, and whether this is shared access i.e. Via a pathway
 - Consider any management issues in relation to the piece of garden concerned such as Anti Social Behaviour and Environmental issues.
 - Consideration of individual rights against the rights of the remaining tenants.
- 4.3 When a request for a piece of garden is on a site that has not been apportioned, Colchester Borough Homes will take the opportunity to look at the site as a whole and apportion gardens accordingly. Tenants will be involved in consultation and records will be updated.
- 4.4 Once these principles have been considered a joint report by Colchester Borough Council and Colchester Borough Homes will be made to the Contract Risk and Standard Service Manager (or equivalent job role), with the responsibility for the Council's Landlord functions, for them to make a decision.

5 Appeals Procedure

- 5.1 Appeals must be received within 28 days of the date of the decision letter.
- 5.2 Where the appeal is in respect of how the policy and procedure have been applied the Strategic Housing Manager (or equivalent Senior Officer) with responsibility for the Council's Landlord Function will investigate the case and respond.
- 5.3 Appeals must set out which particular aspects of the application of the policy or procedure the appeal is based on.
- 5.3 Appeals against the decision made will be considered by the Head of Service with responsibility for the Council's Landlord function whose decision is final. Appeals against decisions will need to state what decision is being questioned e.g. Decision to apportion, Decision not to apportion, Decision on how apportionment has been undertaken.

6 Service Standards

- 6.1 Service standards will be governed by the legal requirements of the Right to Buy process. The Section 125 Notice (offer notice) which details, description of property, price, any structural defects and terms & conditions of sale, will be sent out within 12 weeks. We would need to comply with this and therefore the decision on the sale of a piece of garden land will need to fall within this timescale.

7 Monitoring and Review

- 7.1 Performance in meeting the Service Standards set out in this Policy will be monitored. Site apportionment will be recorded by Colchester Borough Homes and timescales for requests monitored through meetings.
- 7.2 A review will be conducted after the 1st year of implementation to consider whether the Policy has been effective and fair in dealing with garden apportionment
- 7.3 Future reviews will be conducted every 3 years after the conclusion of the first review to make sure the policy continues to be efficient and effective.

8 Communicating the Policy to Staff

- 8.1 Managers and staff involved in the implementation of the Policy will receive a copy of the policy.
- 8.2 The Council will provide sufficient training to enable staff to understand and comply with the Policy.
- 8.3 A copy of the Policy will be placed on the 'Hub' – the Council's central electronic communications point.
- 8.4 Any amendments to the Policy will be communicated to managers and staff involved in implementing the policy.

9 Communicating the Policy to Customers

- 9.1 A fact sheet of frequently asked questions will be put together for this policy and included with Right to Buy information for flats
- 9.2 A copy of the policy will be placed on the Council's website

10 Scheme Delegation

Formation of Policy - Portfolio Holder with delegated responsibility for Housing and the financial management of the Housing Revenue Account

Amendments - Portfolio Holder with delegated responsibility for Housing and the financial management of the Housing Revenue Account

Monitoring – Strategic Housing Manager (equivalent Senior Officer) with responsibility for the Council's Landlord function

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Approval of - Head of Service with responsibility for the Council's Landlord functions