



Colchester
City Council

Garden Apportionment Policy

Council flats under Right to Buy

Updated August 2025

Title	Garden Apportionment for Council flats under Right to Buy
Users of Policy	Colchester City Council and Colchester Borough Homes staff
Date Adopted	June 2013
Date last Reviewed	August 2025
Review Frequency	Every 3 years
Best Before Date	31 August 2028
Scheme of Delegation	
Formation of Policy	Portfolio Holder(s) with delegated responsibility for the operation of the Right to Buy Scheme.
Amendments	Portfolio Holder(s) with delegated responsibility for the operation of the Right to Buy Scheme.
Monitoring	Housing Client Co-ordinator
Implementation	Housing Client Co-ordinator
Approval of requests	Strategic Client for Asset Management

1. Aims of Policy

- 1.1 The aim of the Garden Apportionment Policy is to set out the circumstances in which Colchester City Council will allow pieces of garden to be apportioned and included with general needs 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 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 the Colchester City 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. The Housing Client Team observes the Council's wider responsibility in safeguarding the interests of residents across the City and the public purse.
- 2.4 On the sites owned by Colchester City 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.
- 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 ad hoc way.

3. Legislation and Guidance

- 3.1 The Right to Buy scheme was introduced by the Housing Act 1980 and amended by 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 made further changes to the Right to Buy scheme: extending the term from two to five years. This has been amended by The Deregulation Act 2015 section 28 to at least 3 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:
 - i. Uninterrupted “factual” possession of the land by the claimant for the requisite period of time.
 - ii. “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 would not include pieces of communal garden land that is maintained by the council through the grounds maintenance programme.
- 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 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
 - 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 informed via consultation and records will be updated.

- 4.4 Once these principles have been considered a joint report by Colchester City Council and Colchester Borough Homes will be made to the Strategic Client for Asset Management 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 a Senior Officer 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.
- 5.4 Appeals against decisions will be considered by the Strategic Housing and Assurance Manager 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 Right to Buy legislation timescales. The Section 125 Notice (offer notice) which details, description of property, price, any structural defects and terms and conditions of sale, will be sent out within 12 weeks. See procedural flow chart for process timescales (appendix 1).

7. Monitoring and Review

- 7.1 Performance in meeting the Service Standards set out in this Policy will be monitored.
- 7.2 Future reviews will be conducted every 3 years to make sure the policy continues to reflect current legislation, working practices and 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 and Colchester Borough Homes will provide sufficient training to enable staff to understand and comply with the policy.
- 8.3 A copy of the Policy will be stored on the Council's document retention site.

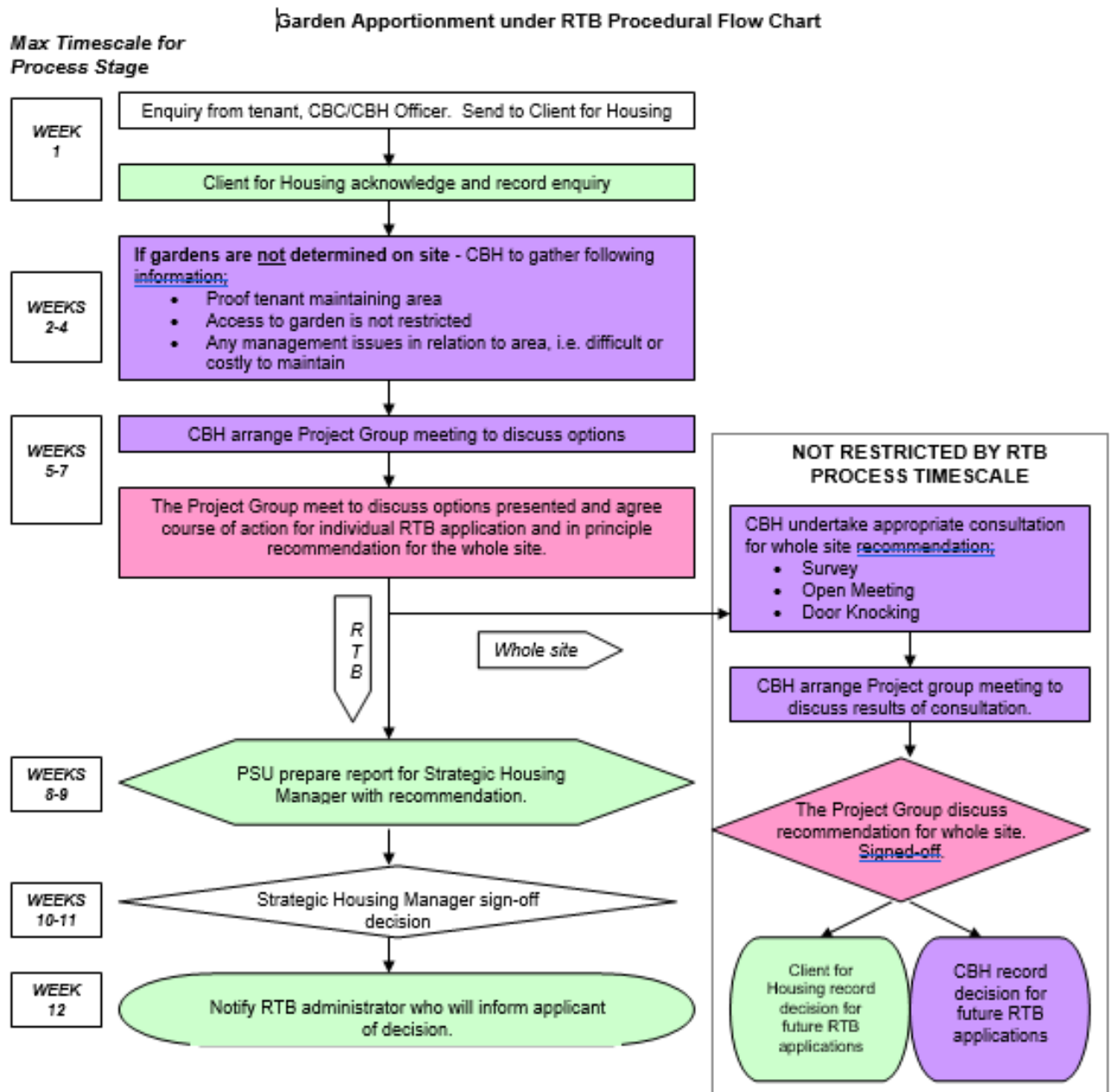
9. Communicating the Policy to Customers

- 9.1 The policy will be published on the Council's website.

10. Appendices

10.1 Appendix 1 Procedural flow chart

Appendix 1 Procedural flow chart



KEY

Colour identifies service/group or individual

Client for Housing

CBH

CCC & CBH Project Group

General

Lozenge shape identifies action

Process

Preparation

Decision

Terminator/Outcome