Local Government
OMBUDSMAN

Report

on an investigation into complaint no 10 009 338 against Northampton Borough Council

19 October 2011

The Oaks No 2, Westwood Way, Westwood Business Park, Coventry CV4 8JB

Investigation into complaint no 10 009 338 against Northampton Borough Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mrs Beech – the complainant

Report summary

Disabled facilities grant

Mrs Beech complained that the Council failed to comply with its statutory duty when dealing with an application for adaptations to their property, which they rent from a private licensor, to enable Mr Beech, who suffers a degenerative medical condition, to continue to live in the property. Although the grant for an extension appeared to meet all relevant criteria the Council felt it could not make a grant to a couple who did not have security of tenure.

Finding

Maladministration causing injustice.

Recommended remedy

That the Council should make Mr & Mrs Beech an ex gratia payment of £5,000 to compensate them for their distress and inconvenience and £250 for the time and inconvenience in bringing the complaint to the Council and to the Ombudsman; engage an independent Occupational Therapist to review Mr Beech's current needs; consider the Occupational Therapist's conclusions; provide funding for any provision identified; provide funding for respite care for Mr and Mrs Beech while any works are completed; review its procedures and provide training to ensure that staff are aware of what is appropriate for considering applications for disabled facilities grants.

Introduction

1. Mrs Beech, complained to me that the Council:

    - Failed properly to advise her on the requirements for private tenants and licensees when making an application for a disabled facilities grant (DFG);
    - Failed to correctly consider her status as a non secure tenant and licensee;
    - Failed to take account of her licensor's intention to grant her a long term secure tenancy in reaching its decision on her application;
    - Failed to review and reconsider her application for the DFG when she and Mr Beech withdrew from the housing register;
    - Applied irrelevant criteria to the assessment of her grant application such as the likely length of time the complainant may need the adaptations;
    - Delayed resolving the application.

2. Both the complainant and the Council were sent a copy of the factual part of this report in draft, prior to the addition of the conclusions. Where appropriate their comments are reflected in the text.

Legal and administrative background

Disabled facilities grants

3. The legislative provisions governing disabled facilities grants (DFGs) are contained in the Housing Grants, Construction and Regeneration Act 1996 (HGCRA 1996).

4. A DFG is defined as a grant for the provision of facilities for a disabled person in a dwelling, or in the common parts of a building containing one or more flats.[1]

5. The responsibility for the administration of DFGs lies with the local housing authority. There is a duty to consult with Adult Social Care Services on the housing adaptation needs of disabled people seeking DFGs, but it is the housing authority which must decide what action should be taken on that advice, and also whether the application is approved having regard to whether the proposed works are necessary and appropriate to meet the needs of the disabled person, and to whether it is reasonable and practicable to carry them out.[2]

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1 **Section 1 Housing Grants, Construction and Regeneration Act 1996**

2 **Housing Grants, Construction and Regeneration Act 1996, Section 24(3)(b)**

6. In deciding whether works are necessary and appropriate, the local authority must have regard to whether the works would enable the disabled person to remain living in their existing home as independently as possible, and whether the works would meet as far as possible the assessed medical and physical needs of the person.[3]

7. If in the opinion of the Council the relevant works are more or less extensive than necessary to achieve any of the purposes outlined in Section 23(1) HGCRA 1996 the Council may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to (or include) such works as are deemed necessary.[4]

8. In deciding whether works are reasonable and practicable, the local authority must have regard to the age and condition of the building or dwelling.

9. The following works are eligible for a mandatory grant:

    - works facilitating access to and from a dwelling and enjoying the use of the dwelling and the facilities and amenities within it;
    - works which make it safe for a disabled person or any other persons residing with her/him to use a building or dwelling;
    - works which make a room usable for sleeping;
    - works to provide a disabled person with a toilet and washing, bathing and showering facilities;
    - works which facilitate the preparation and cooking of food;
    - works which enable a disabled person to have full use of heating, lighting and power.[5]

10. Where a local authority is obliged to approve an application for a grant under Section 24(1) (a) of HGCRA 1996 (mandatory DFG) it may defer payment of the grant, or part of it, for a period not exceeding twelve months from the date of the application.[6] This provision was introduced to assist authorities in their financial management by giving them discretion to withhold payment of mandatory DFGs for up to twelve months. The Government envisaged "that authorities should only need to use the measure sparingly and in exceptional cases".[7]

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3 Ibid, Section 24(3)(a)
4 Ibid. Section 23(3)
5 Ibid, Section 23(1)
6 Section 36, Housing Grants, Construction and Regeneration Act 1996
7 Hansard (HL) Committee, April 18 1996 col 1667 (Lord Lucas)

11. The HGCRA 1996 provides that the Council must pay a mandatory grant if the applicant can show that he or she is:

- an owner occupier or
- a private tenant (including a licensee, i.e. someone who holds only a licence to occupy the property which by its definition does not give security of tenure) or
- a licensor with a disabled tenant or
- a local authority tenant or
- a housing association tenant.

12. The Council shall not entertain an application from a tenant unless it is accompanied by a 'tenant's certificate', the purpose of which is to confirm the tenant's intention, at the date of application, to live in the dwelling as his only or main residence for the remainder of the grant condition period (i.e. five years as per Section 44(3)(a) HGCRA 1996.

13. The tenant's application should be accompanied by an 'owner's certificate' which certifies that the owner of the property has a qualifying interest in the property and intends the disabled occupant to live in the dwelling as his only or main residence throughout the grant condition period, or for such shorter period as his health and other relevant circumstances permit. There is discretion to dispense with this requirement if the council considers it unreasonable in the circumstances.

14. By the Regulatory Reform Order (Housing Assistance) 2002, (the RRO) councils were granted discretionary powers to develop policies governing the provision of financial assistance to owner-occupiers and tenants in the private housing sector. The RRO also enabled councils to provide other means of assistance, such as helping a person move to alternative accommodation where this is considered to be a better option than repairing or adapting their existing home. However, mandatory DFGs are not included in the scope of the RRO.

Government guidance

'Delivering Housing Adaptations for disabled people – A good practice guide'

15. Government guidance in relation to DFGs issued in June 2006, states that:

> "...Where it appears to the person carrying out the assessment or the person evaluating the application for grant, that the applicant may not continue to occupy the adapted property for a period of five years or more they should consider the circumstances. If the reason for suspecting this is a prognosis of a deteriorating condition or possible imminent death of the applicant, this should not be a reason for withholding or delaying grant approval..."

the Guidance continues:

> "...in cases where major adaptations are required and it is difficult to provide a cost-effective solution in a client's existing home, then the possibility of moving elsewhere, either into a local authority or RSL dwelling or a more suitable dwelling in the private sector should be considered..."

16. The Guidance requires the consent of the client or applicant in the consideration of this option. The Guidance does not permit refusal of a mandatory DFG on the grounds that alternative accommodation would be more suitable in the opinion of the Council, where the applicant is not willing to consider the option.

Case law

17. In 1998, the High Court ruled that local housing authorities are not entitled to have regard to their financial resources in determining whether or not to approve an application for a DFG for purposes within the HGCRA1996, Section 23(1).[8] The Court held that, in making the decision to treat Section 23(1) DFGs differently from other, discretionary, DFG grants, Parliament recognised the importance of obliging local housing authorities to approve grants to disabled occupants whose application fulfilled the purposes enumerated in Section 23(1). Parliament had chosen to impose a statutory duty in relation to DFGs within Section 23(1).

18. In a previous report by the Ombudsman[9] it was held that it was maladministration to withhold a mandatory DFG which had met all the criteria.

Government advice leaflet

19. The government leaflet on DFGs which is reproduced on the Council's website states:

> "An applicant must either be the owner of the dwelling or be a tenant (including licensees..."

Investigation

Events leading to the complaint

20. Mr and Mrs Beech live in a house they have rented from a private licensor for over 20 years. Mr Beech was diagnosed with a progressively deteriorating condition and in 2009 the couple decided to apply to the Council for assistance in adapting their home. They did so with the approval of their licensor.

21. The assistance was for adaptations to enable Mr Beech to access bathing facilities within the house because the house had no stair lift and had been deemed as inappropriate for one.

Assessment of Mr and Mrs Beech and their home

22. Two Occupational Therapists assessed Mr Beech as needing an extension to the property to enable him to be cared for, washed and bathed. The Council's assessment was that the extension to the property was necessary and appropriate to meet the applicant's needs.

23. The Council's technical officer assessed the property and confirmed that the works were reasonable and practicable. With their licensor's approval Mr and Mrs Beech applied for and were granted planning permission for the extension on 6 October 2009.

Decision on the disabled facilities grant

24. The Council wrote to Mrs Beech on 22 October 2009 refusing the grant application for an extension. It approved grant works as set out in paragraphs 26 and 27 below which it says would meet the family's needs and offered alternative housing through the choice based letting scheme.

25. Following this decision the Council offered Mr and Mrs Beech council owned properties it felt could be or had been adapted to meet his needs. They turned them down as being unsuitable for the whole family's needs and this reflected their preference to remain in their current home.

26. The Council installed a stair lift to Mr and Mrs Beech's home but Mr and Mrs Beech find it difficult to use and Mrs Beech is concerned at Mr Beech's safety in turning.

27. The Council installed a wet room on the first floor of the family home but continued to refuse to provide the extension envisaged by the original DFG application.

28. In its letter to Mrs Beech's Member of Parliament dated 15 February 2010 the Council says:

> "On 25 September 2009...it was made clear [to Mrs Beech]...that it was not an option for the Council to spend approximately £30,000 of public funds to accommodate Mr Beech's needs in a privately rented property with only a short hold tenancy..."
>
> The letter continues:
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> "...the decision was made to refuse the DFG application ... after consideration of the following factors:

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8 R v Birmingham City Council ex p Taj Mohammed (1998) Times Law Reports 429, QBD

9 Report of Local Government Ombudsman into Complaint No 99/B/00012 against North Warwickshire BC

1. Mr and Mrs Beech's lack of security of tenure at the privately rented property;

2. Mr and Mrs Beech's intention to move to another property;

3. The licensor's unwillingness to enter in a commitment to extend their tenancy;

4. The necessity to accommodate Mr Beech's long term needs in a secure property;

5. The cost of public funds being spent on a privately rented property with no assurances having been given to the disabled occupant or the Council;

6. [the Council's] ability to house the family adequately in a suitable property, while offering security to the disabled occupant."

Mr and Mrs Beech's view

29. Mr and Mrs Beech say they were misled by the Council into believing they had to consider a move to a council owned property. It was not their intention to move but they felt they had to consider moving in order to get Mr Beech the facilities on the ground floor that would be the best provision to meet his needs. The current arrangements have made the property more cramped and the whole family is affected. Unfortunately in their view none of the properties offered had been sufficiently adapted and did not offer them suitable accommodation.

30. Mr and Mrs Beech believe that the Council refused the DFG on spurious grounds and that refusing it seemed at odds with the fact that DFGs were available to all tenants both private and public, and that after the five year repayment period the Council cannot recover the money from any recipient if they then move. They consider it unfair that they are being treated differently from someone who owns their own home.

The Council's view

31. The Council believes it has acted reasonably and in Mr and Mrs Beech's best interests in that it has expressed concern that they may be evicted from their home by their licensor at any time whereas in a council owned home they would have security of tenure. The Council was clear it would not spend upwards of £30,000 on the provision deemed necessary when there was little security of tenure. As it put it in a letter to me:

> "[Mrs Beech] has confirmed that she still wants an extension but without a secure tenancy agreement from her Licensor the Council will not go down this route as explained."

32. The Council also says that under the RRO (see above) it acted correctly in considering alternatives and that it refused the DFG because Mr and Mrs Beech had expressed a willingness or an intention to move into an adapted property. In the Council's view the works approved for the stair lift and wet room met the family's needs and they could further be met by re-housing.

Conclusions

33. Provided that the applicant meets the eligibility criteria (which should be achievable by a tenant's application supported by an 'owner's certificate') and the relevant works are deemed necessary in order to achieve one of the purposes outlined in s23(1) HGCRA 1996, the Council is bound to provide the applicant with a mandatory DFG subject to:

    a. the relevant assessments (including the applicant's financial resources);

    b. whether the extent of the relevant works are necessary to achieve any of the purposes outlined in s23(1) HGCRA 1996; and

    c. the age and condition of the property.

34. The Council does not claim that the adaptations required by Mrs Beech were not necessary or appropriate to meet Mr Beech's assessed needs. I am satisfied that had Mrs Beech been an owner occupier she would have received the mandatory DFG to fund the adaptations. The key to the Council's decision is twofold: the lack of security of tenure and expending money on a property Mr and Mrs Beech may not remain in beyond the grant repayment period.

35. The HGCRA 1996 only requires the tenant to provide a certificate declaring their intention to live in the home. There is no requirement to prove they have a right to do so as a secure tenant (see paragraph 12). The HGCRA 1996 contains no provision which authorises a council to refuse a DFG on the grounds that it is more cost effective to move the tenant elsewhere or because moving the tenant would provide them with greater security of tenure.

36. It is clear that Mr and Mrs Beech's intention was always to remain in this property and that alternative accommodation was only considered because the Council refused the DFG.

37. The licensor who owns Mr and Mrs Beech's home has never shown any intention of terminating their tenure of the property. In responding to a letter from me during the investigation of this complaint he said they could remain in the property as long as they needed and he was happy to allow the Council to alter his property in whatever way it felt was appropriate to meet Mr Beech's needs.

38. The licensor says he believes he has provided a record of that intention to the Council and is willing to do so again.

39. There is no evidence that the Council requested the licensor's certificate or that it ever considered its discretionary power not to seek such a certificate.

40. Had the licensor made an application for the DFG on Mr and Mrs Beech's behalf the issue of security of tenure could never have arisen, Mr and Mrs Beech would simply have had to sign a form saying they intended to remain in the property for the grant repayment period (or repay a proportion of the grant if they left).

41. The RRO gives councils the power to consider alternatives to a grant if the client is willing to pursue them, it does not affect the mandatory nature of the DFG or enable such alternatives to be imposed.

42. The Council has said that it could not justify spending the amount of money on the property when there was no security of tenure as Mr and Mrs Beech may be asked to leave at any time. This appears to miss the point entirely that under the DFG scheme an applicant need only certify an intention to remain in the property for five years and if they leave within that time they will be required to repay a proportion of the grant made to them. The Council also appears to be arguing that it is acting both to protect Mr and Mrs Beech and to protect public money. But that protection is already given in the HGCRA 1996 where Parliament has decided that if someone leaves the property within five years of the expenditure a proportion of that will need to be repaid. The Council has not shown any legal power to refuse a DFG on the grounds that the person does not own the property and may be asked to leave for lack of security of tenure, indeed the HGCRA 1996 specifically includes in its definition of a 'tenant' someone who holds a licence to occupy a property. It seems to me the Council has taken into account an issue which is therefore irrelevant to the consideration of the DFG.

43. The Council has subsequently expended public money by making adaptations to the property to meet Mr Beech's needs: it has provided a stair lift and wet room which while not as costly as an extension, constitutes a substantial investment in this same home it has argued they may be evicted from. That in my view weakens the Council's argument that there was evidence the couple intended to move or that it would be inappropriate to provide adaptations at this property.

44. In my view it was maladministration to refuse the DFG on the grounds that are not permitted under the HGRCA 1996. This has led to a delay in providing the provision originally assessed as being required to meet Mr Beech's needs which has given rise to considerable stress and anxiety and left them living in very difficult conditions, particularly for Mrs Beech in her role as carer. This is a considerable injustice.

45. To remedy the injustice arising from the maladministration identified in paragraphs 42 to 44 above the Council should:

    a. Apologise to Mr and Mrs Beech;

b. Pay £5,000 for their distress in living in unsuitable housing conditions for two years longer than necessary;

c. Engage an independent Occupational Therapist to review Mr Beech's current needs;

d. Consider the independent Occupational Therapist's review;

e. Provide the funding for any provision identified as still being required including, if still assessed as being necessary, an extension;

f. Provide the funding for any provision identified within three months of the Occupational Therapist's report;

g. Provide funding for respite care for Mr and Mrs Beech while any works (if required) are completed.

h. Pay £250 for the time and inconvenience in bringing a complaint to the Council and to me.

i. Review its procedures and provide training to ensure staff are aware of what is appropriate for DFG consideration and RRO decisions.

Dr Jane Martin **19 October 2011**
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