

Thursday 8th August 2024**Report of the Portfolio Holder for Housing, Homelessness and Planning****Disabled Adaptations (Housing Assistance) Policy****Exempt Information**

None

Purpose

For Cabinet to approve and formally adopt the Housing Assistance Policy (Appendix A) for the delivery of mandatory and discretionary Disabled Facilities Grants (DFGs) for private sector residents, and in the interim period of not having a Council Adaptations Policy, adopt the same Policy position and foundations for Council delivery.

In addition, approve and formally adopt the Interim Policy Position Statement (IPPS) for Council adaptations in scenarios where the Council can reject, refuse, or pend permission for an adaptation request, for example where tenants are intending to purchase their property, are in arrears or facing eviction action, or are looking to move home, and the exceptional circumstances that will be used for applying discretion in these scenarios (Appendix B).

Recommendations

It is recommended that:

1. Cabinet approves and adopts the assistance provided by the Council under the draft Housing Assistance Policy (Appendix A).
2. Cabinet approves and adopts the inclusion of the various 'Discretionary Schemes'.
3. Cabinet approves and adopts the utilisation of the Policy to cover Council adaptations until such a time as a separate Policy can be submitted.
4. Cabinet approves and adopts the Interim Policy Position Statement for Council adaptations (Appendix B) for adoption.

Executive Summary

The provision of adaptations to a person's home has wide reaching benefits for the person, their family, and society. Adaptations can make a home safer and easier to get around, restoring independence, privacy, confidence, and dignity. The types of adaptations the service provides include level access showers, wash and dry toilets, ramps, widened doors, stairlifts, access to the garden, and in some instances home extensions.

The Housing Grants, Construction, and Regeneration Act, 1996 remains the primary piece of legislation pertaining to the provision of adaptations to support independent living. This Act places a statutory duty on local housing authorities for the provision of adaptations to eligible disabled applicants in certain circumstances, with timescales for approval set out in the legislation¹.

¹ The Council has a maximum of six months to approve a grant from the date of submission of a Valid Application, work thereafter should be completed within twelve months, however options for extension exist.

It is a statutory requirement for a local housing authority to have a published Housing Assistance Policy in place for the delivery of mandatory Disabled Facilities grants (DFGs) and any other discretionary assistance it offers to residents. It is also a requirement where a local housing authority places a land charge² against a property for such assistance, that this is outlined in writing and included in such a policy.

The Council does not have a Policy in place at present, and therefore is not being transparent with its citizens to the extent of the assistance it provides, nor in the terms and conditions it applies to such assistance. This Policy seeks to address these issues.

The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 gives local housing authorities greater freedoms to provide financial assistance for adaptations, essential home repairs or improvements to improve housing conditions to benefit an individual's health, wellbeing, or quality of life. Article 3 of the Act introduces a wide range of discretionary powers to allow the Council to develop different forms of assistance to meet local needs, based on the local housing conditions and the resources available to the local authority. Without a published Policy in place, the Council, and its residents are unable to take advantage of these additional freedoms afforded through the Act.

In developing this Policy, the Council has used the evidence and learning from year one of bringing the adaptations service in-house to frame the schemes included. In particular, the discretionary schemes on offer have been created considering the barriers individuals are facing when accessing funding, and funding at an appropriate level to service their needs, and the Council's financial position regarding DFG funding, which has historically been precarious with demand outstripping supply for mandatory DFGs. We therefore know that as Council, we are regrettably unable to offer the breadth of discretionary schemes that other authorities with greater levels of grant funding from government can offer their citizens.

The following is an overview of the discretionary schemes, however more detail can be found within the Policy found in Appendix A.

1. Means Testing Benefits Extension

The Policy proposes to expand the list of passporting benefit to include Council Tax Support, a means tested benefit. Residents in receipt of this benefit will not be subjected to the statutory Test of Resources.

2. Discretionary Schemes

The proposed draft Policy also includes various 'Discretionary Schemes' linked to the mandatory DFG assistance, subject to available resources. These include:

- Top up Grant (TUG) of £25,000. This is to counter the increasing build costs experienced for more extensive work. This amount is over the mandatory £30,000 threshold set by central Government in 2008, analysis on which indicates that had the mandatory threshold been increased in line with cost inflations, the grant maximum threshold would be raised to £55,000 in 2023.
- Professional Fees Grant (PFG) of up to £5,000 to cover costs of professional fees, such as Occupational Therapy (OT) costs, Architect fees etc. for grants that do not progress to approval stage. This is important given the way Staffordshire County Council operates and the need for TBC to provide and pay for OT assessments as part of the grant process, and not request money from the resident to pay for these services up front.

² A land charge for a mandatory DFG is only applied to owners' applications for works costing over £5,000 up to a maximum of £10,000. This is placed for a maximum of ten years.

- Help to Move Grant (HtMG) of up to £5,000 to support applicants to move home where the adaptation would be costly, or moving would produce a better outcome, e.g. to an adapted home or closer to existing support.
- Exceptional Circumstances Contribution Grant (ECCG) up to the cost of the eligible work where a disabled person's assessed contribution is more than the savings and/or income they have available, and they have exhausted all means of securing this funding elsewhere. This is to cover circumstances whereby people have limited savings and disposable income available to cover the cost of work under the mandatory assessed DFG, but their income through the means test shows they have a contribution towards the work to make.

Full details of these schemes, their scope and eligibility are set out within the draft Policy.

3. Service Delivery

The Policy outlines the support service the Council offers residents wishing to apply for assistance, either through a managed service where the Council will support a resident to apply for the grant and assist in getting the adaptation work completed satisfactorily, or occasions where a resident wishes to manage their own application, as they would like to use their own contractor or deliver a preferred scheme³, as the legislation allows for.

4. Consideration of Armed Forces Personnel

Under Section 343 of the Armed Forces Act 2006 (inserted by section 8 of the Armed Forces Act 2021), the Council is required to have due regard to the Armed Forces Covenant when allocating DFGs, however, the Act nor the Covenant obligates the Council to take specific actions or goes as far as to say that members receive special treatment over and above other groups of people. The Covenant, therefore, does not give an automatic entitlement for serving and ex-serving personnel to be prioritised over and above others for mandatory DFGs, especially in circumstances where those others may have a greater clinical need.

Given Members interest in the potential prioritisation of this specific cohort above others, Officers have consulted with Foundations, the government appointed body for Home Improvement Agencies and DFGs, and our consultant to frame the Armed Forces section of the Policy. They have advised against a blanket policy position and are satisfied with the wording we have included in the draft Policy. Having also extensively reviewed other local authority policies on this topic, we could not find any reference to prioritisation for this cohort in other local authority provision, and generally minimal reference in its entirety to the Covenant or Armed Forces personnel, meaning the Council's proposed Policy is advanced in its thinking when it comes to this group.

Further concerns around discrimination of people with protected characteristics under the Equality Act, 2010 are considered within this report, alongside any legal implications.

We have therefore made provision within the Policy for serving and ex-Armed Forces personnel through the following:

- Ensure that serving armed forces personnel and their families living in regular accommodation, and veterans, are not disadvantaged when compared to other citizens in the provision of public services.

³ A preferred scheme is a scheme additional to the mandatory assessed DFG scheme of eligible works, for example a resident is assessed as needing a stairlift at a cost of £5,000 but would like a ground floor extension for a bathroom instead. The cost of the mandatory assessed DFG scheme can be off set against the cost of the preferred scheme if it can be demonstrated that the preferred scheme will equally meet the disabled persons need. It will be for the resident to pay the difference in costs.

The Council will ensure, through this Policy and other available literature, that service and ex-service personnel are aware of the housing assistance and grants that maybe available to them, subject to the needs assessment, eligibility criteria, and means test applied, and will be able to access the discretionary support on offer through the Council to support any application for assistance.

- Income received through Armed Forces Independence Payments, Armed Forces Compensation Scheme or War Pensioners Mobility Support will be disregarded as income for the purposes of the statutory means test. The appropriate equivalent premiums will be applied in accordance with the regulations.
- Have considered the 'special considerations principle' for service personnel and ex-service personnel who have given the most - those that are injured or bereaved and positively have included a criterion that may give prioritisation in these limited and exceptional circumstances.

5. Prioritisation

Any prioritisation scheme adopted by the Council must be fair, equitable, and transparent and not seek to directly or indirectly discriminate. In addition, given the Council's limited resources to deliver, it must not be administratively burdensome for Officers, so as not to redirect resource into the prioritisation process over the actual delivery of grants

Therefore, when deciding upon the prioritisation scheme for Tamworth, the Council have been minded to adopt the government's own DFG Best Practice Guidance, 2022. This Guidance proposes a prioritisation system of 'standard' and 'urgent' enquiries based on clinical need as identified by an Occupational Therapist or someone with relevant training and experience. Inclusion of prioritisation for Armed Forces personnel injured because of their service has been included in addition to the prioritisation set within the Guidance, however, a blanket policy to prioritise all Armed Forces personnel has been discounted following advice, research, and importantly on grounds of potential discrimination.

What we hope to achieve through this Policy, and associated Service Development Plan, is a fairer, much faster and sustainable delivery of DFGs for all groups of people, and not one at the expense of another.

5. Legislative Terms and Conditions

The Policy finally sets out the legislative terms and conditions that will apply to the grant, ensuring that we are being transparent with residents as to the assistance on offer, and to applicants of the grant as to the terms and conditions that will apply. This does not seek to replace the legislation, and therefore the Policy should be read alongside the Housing Grants, Construction, and Regeneration Act, 1996.

Council Housing Adaptations

Adaptations to Council owned properties will be subject to a separate policy submitted to this Committee in due course.

It is proposed that while this policy is being prepared that the eligibility criteria (excluding the means test), prioritisation, terms and conditions, and discretionary schemes in operation within the Housing Assistance Policy will be transferred over to Council tenants in the interim to give us the ability to offer our own tenants the same degree of opportunity afforded to private sector residents.

We now routinely complete tenancy checks following an adaptations enquiry, to determine if the tenant can sign the requirement to stay within their current property for a period of 5

years and is conducting their tenancy and managing their property in accordance with the terms and conditions of their tenancy agreement with us. These checks cover:

- Rent arrears and any associated actions
- Tenancy type
- Unacceptable behaviour
- Right to Buy application
- Application to move home
- On any bathroom or kitchen upgrade programmes

In the short-term we have prepared an Interim Policy Position Statement (IPPS) in Appendix B to allow for us to take decisions on where we may not be able to give landlord consent for an adaptation to proceed to a Council owned property, or when we would consider delaying the decision to give an opportunity to the tenant to address any behaviours that are not aligned with their tenancy agreement. This document also importantly sets out where exceptional circumstances may exist and the process for how these will be considered, alongside how decisions made by the Council can be reviewed. This gives greater transparency to tenants on circumstances where we may not be able to assist them.

Options Considered

To not have a Policy in place is contrary to legislation and best practice guidance. This option has been discounted.

The Policy could consider a mandatory only provision of DFG. However, this would mean those residents in need of extensive adaptations due to complex needs or those in exceptional financial circumstances that fail the means test may not get the assistance they need, and their health and wellbeing would suffer.

The benefit of introducing the TUG is:

- Previously extensive adaptations in Tamworth have been completed under the splitting of grants. This is not considered good practice and impacts both the resident and service capacity due to the burden of administering multiple grants at once.
- Not all grant applications can be split given the nature of their co-dependence on one another, e.g. extensions for bathrooms and/or bedrooms, leaving residents in need and applications being cancelled due to funding shortfalls.
- Ability to place an additional land charge against the property (above and beyond the mandatory charge), this time a lifetime charge against the property being adapted for the full cost of the TUG. On sale or transfer of the property, funds will be returned into the DFG for re-use.
- Ability to means test the applicant, rather than the disabled person if different, as per the grant rules prior to any TUG being awarded.

The benefits of a HtMG are:

- Assisting someone to move to a property that is adapted, can be adapted, or may have better outcomes once adapted.
- Assisting someone to move closer to their care and support network, which may mean out of the area.

The benefits of the PFG are:

- Ability to claim grant funding towards abortive fees if someone drops out of the application process, especially important in Staffordshire due to the payment of OT assessments through the grant.

The benefits of a ECGS are:

- Support available to deliver grants to those that fail the means test but have limited savings and income to be able to service their own needs or raise capital from elsewhere.
- Ability to place an additional land charge against the property (above and beyond the mandatory charge), this time a lifetime charge against the property being adapted for the full cost of the ECCG. On sale or transfer of the property, funds will be returned into the DFG for re-use.

Eligibility for all discretionary assistance will be based on eligibility for the Mandatory DFG.

A Council Adaptions Policy requires significant input from cross Council departments, given the need to make the best use of our available stock and the different options to ensure this. To confirm this policy meets these requirements, time is required to consider options and develop this. As in interim measure, the IPPS give us a consistent and transparent way of approving, pending, rejecting, and refusing applications for assistance in the interim period.

Resource Implications

None – completed within existing budget allocations.

Budgets for the Discretionary Schemes will be set by the Service Manager annually, based on likely demand from previous years.

It is suggested that the following budgets are allocated from the main DFG budget in 2024/25⁴: Similar budget allocations will be made available through the Council adaptations budget.

TUG - £50,000
 PFG - £20,000
 HtMG - £20,000
 ECCG - £50,000

Any application for discretionary schemes will only be considered in line with budget availability, as the need to deliver mandatory DFGs in required timescales exist. The mandatory DFG and pipeline of work will be checked annually to ensure there is enough budget available to service demand.

Any underspend from these budgets will be rolled over to subsequent years if there is enough budget in the mandatory DFG available for pipeline works for the year ahead.

The Council has the sole discretion to amend, suspend, or remove discretionary schemes as the budget dictates, and monies will need to be moved back into the main DFG budget should demand from mandatory DFGs dictate.

Legal/Risk Implications Background

Having a Housing Assistance Policy is a legislative requirement.

Not having a Policy in place leaves us open to challenge and means we are not operating in a transparent way; especially should complaints escalate to the Local Government and Social Care Ombudsman, leaving the Council at greater reputational risk.

Should Member's seek to further revise the prioritisation scheme as outlined within the draft Policy to give greater weighting to Armed Forces personnel, this could lead to claims of

⁴ The budget for 2024/25 includes underspends from previous years allocations, it is likely that future year allocations towards discretionary schemes will reduce from this starting point as the backlog of work is delivered.

discrimination against people with protected characteristics under the Equality Act obligations. This is especially true given the Council's future financial budget to spend on DFG and the very real scenario where some grants will be approved and delivered more quickly than others. Specific legal advice would need to be sought to understand the implications and risk of this decision for the Council should this go ahead.

Equalities Implications

A Community Impact Assessment has been prepared for the draft Policy, as written, available in Appendix C. It is intended that this is published alongside this Policy. Should changes to the Policy be proposed, this would need to be reviewed.

The Equality Act 2010 prohibits discrimination against people with protective characteristics that are specified in Section 4. Section 29 of the Act provides that a council, in providing a service to a section of the public, must not discriminate against a person with a protected characteristic who requires the service by not providing the person with the service

As outlined above, should Member's seek to include greater prioritisation for Armed Forces personnel than that which is outlined in the draft Policy, it is believed that there may be direct discrimination risks associated with this decision. We would therefore request should this Policy again be rejected on the grounds of this inclusion that the following requirements be instigated:

- Full demographic analysis of all people waiting for adaptations since service transfer to profile the likely impact.
- Following collation of this evidential base, legal advice gained on likely issues of discrimination, and should this be deemed as acceptable by legal,
- A public consultation on the Policy and its implications, to include proactive engagement with any cohorts likely to be negatively impacted by the further changes suggested to the prioritisation scheme for certain cohorts.

Environment and Sustainability Implications (including climate change)

N/A

Background Information

N/A

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List of Background Papers

N/A

Appendices

Appendix A – Draft Housing Assistance Policy

Appendix B – Draft Interim Policy Position Statement – Council Adaptations

Appendix C - Draft Community Impact Assessment

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