



To the Members of the Borough Council

Dear Sir/Madam

You are hereby summoned to attend a Meeting of the Ashford Borough Council, to be held in the Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL on **Thursday, 20th October, 2022 at 7.00 pm.**

Yours faithfully

A handwritten signature in black ink, appearing to read 'T W Mortimer'.

T W Mortimer
Corporate Director (Law and Governance)

Agenda

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| 13. | To consider Motions of which Notice has been given pursuant to Procedure Rule 11 | 1 - 2 |
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DS
14 October 2022

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This Council notes:

1) That, as a local housing authority, Ashford Borough Council has a statutory duty under the Housing Grants, Construction and Regeneration Act 1996 (the 1996 Act) to provide adaptations for those who qualify for a Disabled Facilities Grants (DFG) including its tenants with disabilities.

2) That the courts have quite clearly stated that a Council can't use limited resources as an excuse for not meeting statutory requirements in relation to Disabled Facilities Grants (DFGs). In other words, it has to find money from *somewhere* to meet its *legal* duties in this area. These are three relevant extracts regarding this issue:

'I conclude, therefore, that, ... local housing authorities are not entitled to take resources into account in deciding whether or not to approve a DFG for section 23(1) purposes.' (R v Birmingham City Council 1998)

'To permit a local authority to avoid performing a statutory duty on the grounds that it prefers to spend the money in other ways is to downgrade a statutory duty to a discretionary power.' (R v Birmingham City Council 1998)

'...local housing authorities are obliged to approve DFGs within section 23(1) purposes whatever the resource implications of doing so may be.' (R v Birmingham City Council 1998).

3) That Ashford Borough Council has a duty to ensure that its tenants with disabilities are treated fairly and in accordance with the guidelines, which have been considered and adjudicated on by the Courts.

4) That the Council has already been made aware of a number of potential issues around DFGs by way of a question raised at the last full council in July including:

- a. That the policy approved by Cabinet in July 2014, not to carry out adaptations for disabled tenants deemed to be 'significantly' under occupying, could potentially be unlawful.
- b. That ABC engaging an Occupational Therapist (OT) and getting their opinion before 'allowing' a resident to submit a DFG application could be regarded as delaying the receipt of a valid DFG application and may be unlawful.
- c. That ABC could be putting the OT in a position of acting as a 'gatekeeper' and could be allowing the OT's opinion to override the needs given by the disabled person themselves (and the views of parents and carers) and that this may have the effect of overriding 'the primacy of the disabled persons perspective'.

- d. That ABC's new 5-year tenancy agreements could be at odds with a legal condition of disability grants where the tenant must guarantee that they will be resident in the adapted property for *at least* 5 years.
- e. That not clearly signposting or communicating the availability of DFGs to ABC (Council) tenants with disabilities, and processes for Council tenants with disabilities to apply for DFGs, on ABC's public facing website, may be unlawful. This was the case on July 18th 2022 - before the last full council and continued to be the case as at 13th October 2022.

3) That the Council must not be left in a position where it may be found to be acting unlawfully or be found by an ombudsman to be guilty of maladministration in regard to its statutory duties around DFGs.

4) That the Council has a duty to proactively address all aspects of its provision and processing of DFGs so that it avoids wasting public money and officer time on unnecessary court cases and cases brought before an ombudsman.

This Council resolves:

1) To undertake a full, thorough, and objective review into how the Council is currently addressing its statutory Disability Facilities Grants responsibilities towards its tenants with disabilities.

2) That this review is conducted in an open, objective, and honest way and with the required expertise to ensure that members, officers, and residents are completely certain of the current legal position with regards to how ABC meets its statutory DFG duties towards its tenants, and that all necessary corrective actions are identified.

3) That corrective actions for all issues identified during this review are undertaken within the shortest possible time frame and that no issues remain uncorrected by the end of 2022.

4) That above all, it will ensure that all laws and guidelines, including those which have been considered and adjudicated on by the Courts, relating to DFGs and Council tenants with disabilities are fully complied with.