

ASHFORD BOROUGH COUNCIL

COUNCIL - 21st July 2022

QUESTIONS BY MEMBERS OF WHICH NOTICE HAS BEEN GIVEN PURSUANT TO PROCEDURE RULE 10

1. Question from Councillor Michael to Councillor Bartlett, Deputy Leader

“Can the (Deputy) Leader inform Council what action will be taken to ensure the recent loss of water supply to residents does not happen again? Residents were without water for days. What due diligence does the Planning Department exercise to verify that water capacity and supply is in step with future ABC housing numbers? Here we are in the 21st century and it appears the water company is still operating as in Victorian times with unsatisfactory pipework, pumping stations and water storage facilities; and completely absent of future housing and commercial growth. The last few years has witnessed incredible population growth, and the coming years will see even more, so are stand-pipes and water shortages going to become a normal occurrence for residents not only during hot weather but other times too?”

2. Question from Councillor Michael to Councillor Bartlett, Deputy Leader

“Please will the (Deputy) Leader clarify the regulations regarding parking in electric vehicle charging bays? I ask as I was alerted to a parking ticket issued to a hybrid vehicle in another town because it was said the bays were for electric only cars. Should charging bays be used to only charge electric only vehicles, but thereafter vacated? Publication of regulations would be prudent.”

3. Question from Councillor Lyn Suddards to Councillor Bartlett, Deputy Leader and Portfolio Holder for Safety and Wellbeing

"Given the social issues facing us as a council, post pandemic, the recorded deterioration in mental health and wellbeing of the local population, particularly children and young people, the unprecedented demand on food banks, families now facing fuel poverty and the continued attack on women when walking on our streets, does the portfolio holder for Safety, Health and Wellbeing agree that it is time for the Health and Wellbeing reference group to involve other elected members, a cross party group to best serve the needs of our residents?"

4. Question from Councillor Spain to Councillor Buchanan, Portfolio Holder for Housing

A number of issues relating to Disabled Facilities Grants (DFGs) and Ashford Borough Council (ABC) and its disabled tenants have been brought to my attention (detailed below). Given the seriousness and complexity of these issues, and the statutory duties of ABC towards disabled tenants under legislation including the Housing Grants, Construction and Regeneration Act 1996, human rights legislation, and the Convention on the Rights of Persons with Disabilities (CRPD), I am asking the Leader of the Council, the following questions:

- I ask that the Leader commit to a thorough, open, and constructive investigation of all of these issues engaging an independent domain expert to advise.
- I ask the Leader to engage an acknowledged domain expert of the calibre of someone such as Michael Mandelstam so that the Council is certain that it is getting the best possible independent advice on these critically important and complex issues.
- I also ask the Leader that the investigation produces a full report into all of these issues to be brought back to the next Full Council meeting.

Further information on this question is attached

A number of issues relating to Disabled Facilities Grants (DFGs) and Ashford Borough Council (ABC) and its disabled tenants have been brought to my attention (detailed below). Given the seriousness and complexity of these issues, and the statutory duties of ABC towards disabled tenants under legislation including the Housing Grants, Construction and Regeneration Act 1996, human rights legislation, and the Convention on the Rights of Persons with Disabilities (CRPD), I am asking the Leader of the Council, Cllr Gerry Clarkson the following questions:

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- **I ask the Leader to engage an acknowledged domain expert of the calibre of someone such as Michael Mandelstam so that the Council is certain that it is getting the best possible independent advice on these critically important and complex issues.**
- **I also ask the Leader that the investigation produces a full report into all of these issues to be brought back to the next Full Council meeting.**

Issue 1 - ABC policy to not carry out adaptations for disabled tenants deemed to be 'significantly' under occupying

DFG related judgements would seem to indicate that the Council cannot make adaptations conditional in this way or to effectively block adaptations in this way.

[Key quote(s)/reference(s) for this issue]

'It is 'not lawful for persons in any tenure to be obstructed in' applying for disabled facilities grants (ODPM 2006, para 3.26)' (Community care practice and the law 4th edition, Mandelstam 2009, p439)

'But the fact that the terms of sections 23 and 24 [of the Housing Grants, Construction and Regeneration Act 1996] must be applicable to all, including owner occupiers, is a strong indication against the Defendant's position. Had the Claimant exercised her right to buy, it would not in my judgement be open to the Defendant to refuse the grant on the basis that she must sell up and move elsewhere.' (McKeown v Islington 2020, para 19)

'Moreover, the need to avoid differential treatment of owner occupiers and council tenants is reinforced by the guide provided by the Home Adaptations Consortium which was originally commissioned by the Department for Communities & Local Government in 2010... The guide is entitled *Home Adaptations for Disabled People - A Good Practice Guide* ("the Guide").' (McKeown v Islington 2020, para 20)

'Under the Equality Act 2010 a landlord cannot unreasonably withhold their consent to an adaptation or attach unreasonable conditions to any consent.' (Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England, 2022, Appendix B: The legislation, para B28)

Issue 2 - ABC is engaging an Occupational Therapist (OT) (part paid for by ABC?) and getting their opinion *before* 'allowing' a resident to submit a DFG application delaying the receipt of a valid DFG application

DFG related judgements would seem to indicate that an OT can only be involved *after* the receipt of a valid DFG application and that this and other impediments cannot be placed in front of receipt of a valid DFG application. Further, the related judgement below makes it clear that 23(1) should be applied before 24(3) and therefore before any consultation with Social Services. The above does not seem to be the case with how ABC handles an approach from a council tenant seeking a disabled adaptation.

[Key quote(s)/reference(s) for this issue]

'One has no wish to be critical of non-lawyers who have to apply this difficult and sensitive legislation not in the calm of a courtroom but in the course of a pressured day's work in the office. But one straightforward guideline is that s.23(1) and s.24(3) [of the Housing Grants, Construction and Regeneration Act 1996] should be applied sequentially. A lot of difficulty in the present case arose from decision-makers running the two together. ... What is not permissible is to decide the s.23(1) issue by reference to the s24(3) criteria.' (B v Calderdale 2004, para 29)

Issue 3 - ABC could be allowing the OT's opinion to override the needs given by the disabled person themselves (and the views of their parents and carers)

Official DFG guidance would seem to indicate that the disabled person's (and their carers) needs are paramount, the OT's opinions (only to be sought after a valid DFG application is received) are advisory only. By sending in an OT, in this case partly or completely paid for by ABC, before the receipt of a valid DFG (see legal issues with this above) this may have the effect of overriding the 'the primacy of the disabled persons perspective' (see below). An OT may well be perceived to be a figure of authority or even a gatekeeper by the disabled person and their views given a higher status than the disabled person's own expert view of their own needs.

[Key quote(s)/reference(s) for this issue]

'It has long been recognised as crucial to involve disabled people in the assessment of their own needs. This is appropriate and consistent with the policy developments across the social care and health agenda to argue for the primacy of a disabled persons' perspective above all others. This is because the disabled person is the expert on their needs and should be listened to carefully by the relevant professionals. The views of parents and carers are also important, especially if they live in the same household.'

(Home Adaptations for Disabled People - A detailed guide to related legislation, guidance and good practice, Home Adaptations Consortium, 2013, para 7.17, p41)

There is an identical quote in an earlier version: *Home Adaptations for Disabled People - A Good Practice Guide*, Department for Communities & Local Government, June 2006 Edition, para 5.3, p30.

Issue 4 - ABC's new 5 year tenancy agreements would seem to be at odds with a condition of disability grants where the tenant must guarantee that they will be resident in the adapted property for *at least* 5 years.

It would seem that no tenant under the terms of the new ABC tenancy agreement is in a position to guarantee that they will still be resident in the property in a minimum of 5 years as they will always have less than 5 years of their tenancy remaining at the time the 'grant condition period' starts. This would appear to make it impossible for disabled tenants signed up to these new ABC tenancy agreements to meet the 'intention to reside' conditions required to access Disabled Facilities Grants.

[Key quote(s)/reference(s) for this issue]

'The grant condition period is usually 5 years. However, the intention required by an owner / tenant / occupier is for the disabled person to live in the dwelling as their only or main residence for that period or for "such shorter period as his health and other relevant circumstances permit" (see section 21(2)(b), 22(2)(b) and 22A(2)(b) [of the Housing Grants, Construction and Regeneration Act 1996]). ...' (Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England, 2022, Appendix B: The legislation, para B34)

'The grant condition period starts on the date when the works are completed to the satisfaction of the housing authority ("the certified date" (section 44)).' (Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England, 2022, Appendix B: The legislation, para B36)

Issue 5 - ABC does not seem to have a disabled facilities grant policy or equivalent alternative available for disabled tenants.

Any equivalent or alternative policy (if it does exist) is legally obligated to comply with DFG legislation and be at least as good. In any case a choice should be offered, publicised and explained.

[Key quote(s)/reference(s) for this issue]

'*Offering a choice of DFG or alternative.* The local ombudsman congratulated the council on offering to its own tenants a procedure that was often better than the statutory procedure for disabled facilities grants. However applicants should still have been given the choice between the two procedures; and if the council's own procedure was to be used, then it should 'be followed smoothly and without delay' (Community care practice and the law 4th edition, Mandelstam 2009, p440)

‘When a statutory entitlement exists and a Council considers that an alternative, non-statutory scheme would be preferable, the Council should publicise and explain both in an even-handed way and should leave the choice between the two schemes to the individual beneficiaries (Hackney LBC 1995).’ (Community care practice and the law 4th edition, Mandelstam 2009, p440)

Issue 6 - The availability of DFGs to ABC (Council) tenants with disabilities, and processes for Council tenants with disabilities to apply for DFGs, does not seem to be clearly signposted or communicated on ABC’s public facing website.

Ashford Borough Council

Website Help Accessibility Sign In/Register Select Language

What are you looking for? **SEARCH** **MENU**

LANDLORDS WE NEED YOU!
We have tenants to move into your rented properties today and we can offer a flexible package of financial incentives for private sector landlords. [Visit the ABC Lettings page for more information.](#)

Apply for social housing **Rent and Garage Lookup** **Pay your Rent**

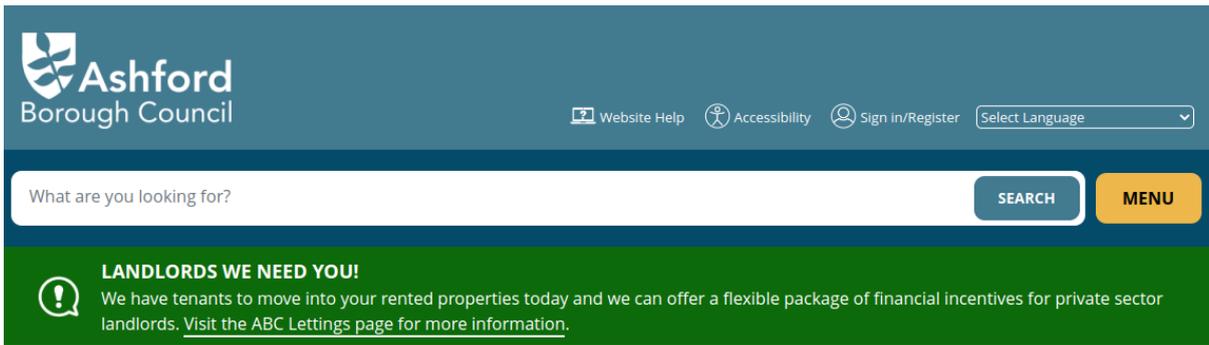
Home / Housing

Housing

<p>Council Tenant</p> <ul style="list-style-type: none"> Becoming A Council Tenant Existing Council Tenants Repairs And Maintenance 	<p>Housing Help</p> <ul style="list-style-type: none"> Homelessness - Support And Guidance Local Affordable Housing Options Afghan Refugee Resettlement Programme 	<p>Apply</p> <ul style="list-style-type: none"> Application for a Plot at Chilmington Gypsy and Traveller Site UK Entry Home Office Inspection Apply for Social Housing
<p>ABC Lettings</p> <ul style="list-style-type: none"> Landlord Services Landlord Enquiry Form Meet our Property Managers 	<p>Private Tenant</p> <ul style="list-style-type: none"> Private Rented Sector Houses in Multiple Occupation Disabled Facilities Grant 	<p>ABC Electrical Services</p> <ul style="list-style-type: none"> ABC Electrical Services Customer Testimonials Request for quote for electrical work ABC Electrical Services at Work Gallery
<p>Landlord Advice</p> <ul style="list-style-type: none"> Landlord Accreditation Scheme Houses In Multiple Occupation Private Rented Sector 	<p>Grants</p> <ul style="list-style-type: none"> Private Sector Grants Boiler Upgrade Scheme Sustainable Warmth 	<p>Housing Development and Regeneration Team</p>
<p>Garages</p> <ul style="list-style-type: none"> Rent And Garage Account Lookup 	<p>Park Homes</p> <ul style="list-style-type: none"> Mobile Homes Site Licence Fee Policy Longbeech Park Rules Shirkoak Site Rules 	<p>Advice For Gypsies And Travellers</p> <ul style="list-style-type: none"> Gypsies And Travellers Application For A Plot At Chilmington Gypsy And Traveller Site

[Login to My Ashford](#), our online portal where users can view up-to-date council tax, business rate, housing and garage rent accounts online.

Screenshot of Housing webpage (<https://www.ashford.gov.uk/housing/>) with no reference to Disability Facilities Grants (DFGs) apart from for private sector tenants - in section clearly labelled 'Private Tenant' (accessed 18 Jul 2022 13:19)



[Home](#) / [Housing](#) / [Grants](#) / [Disabled Facilities Grant](#)

Disabled Facilities Grant

If you or a member of your household are disabled and require adaptations to be made to your property because of this, then you may be eligible for a disabled facilities grant.

As far as is reasonably practicable, we ensure that all those entitled to a mandatory disabled facilities grant have the opportunity to apply for and receive this grant.

The disabled person and any partner will normally be means tested to determine how much, if anything, they must contribute to the cost of the agreed works. If the disabled person is a child, the means test is suspended. If the disabled person is a private sector tenant, both the tenant and any partner will be means tested. There is no fixed upper income or upper savings limit. Under certain circumstances applicants can be passported to a non-contributory grant.

To be considered for a disabled facilities grant you will need to have an assessment carried out by an occupational therapist, or your doctor can refer you or you can self-refer, by calling the following numbers:

- Occupational Therapists (adult) 0300 041 6161
- Occupational Therapists (children) 0300 041 1111

Alternatively you can send your details to the following email address:
Ashford&CanterburyARMS@kent.gov.uk.

Further information

The grant applicant will normally be an owner-occupier, a private sector tenant, a private sector landlord, or a housing association tenant, although applications from prospective occupiers can be considered.

Also in this section

- Private Sector Grants
- Boiler Upgrade Scheme
- Sustainable Warmth
- Private Sector Housing Assistance Policy
- Eligibility Statement of Intent

Screenshot of Disability Facilities Grant webpage (<https://www.ashford.gov.uk/housing/>) with no clear reference to Disability Facilities Grants (DFGs) being an available option for ABC (Council) tenants (accessed 18 Jul 2022 13:28).

This page does not clearly state that Council tenants can apply for DFGs and wording on this page such as this, which seems to mention most other tenures and situations *other than* council tenancy, does not help:

“The grant applicant will normally be an owner-occupier, a private sector tenant, a private sector landlord, or a housing association tenant, although applications from prospective occupiers can be considered.”

[Key quote(s)/reference(s) for this issue]

‘The local ombudsman has found maladministration when local councils fail to inform their own tenants of their right to apply for DFGs (e.g. Hackney LBC 1995; Humberside CC 1996;

Barnsley 1998, 1998a) or are not even themselves sure what the position is (Durham CC 1993; Bristol 1998)' (Community care practice and the law 4th edition, Mandelstam 2009, p441)

Issue 7 - In communications ABC has referred to limited resources in relation to disabled adaptations, and/or implied limitations of resources through raising issues around having to transfer money from one budget to another.

The legislation is clear that resources cannot be taken into account in relation to DFGs.

[Key quote(s)/reference(s) for this issue]

'I conclude, therefore, that, save to the extent that they are expressly authorised or required by the 1996 Act to have regard to resource considerations, 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)