

BROMSGROVE DISTRICT COUNCIL

CABINET

JULY 2nd 2008

NATIONAL CHANGES TO MODERNISE THE DISABLED FACILITIES GRANT PROGRAMME

Responsible Portfolio Holder	Cllr Peter Whittaker
Responsible Head of Service	Dave Hammond
Key Decision	

1. SUMMARY

- 1.1 The report sets out the package of changes that have been introduced by the Communities and Local Government (CLG) to modernise the Disabled Facilities Grant (DFG) programme and improve delivery of adaptations to the homes of disabled persons nationally.
- 1.2 This report also asks members to consider whether they wish to implement the ability to include a 'Claw Back' clause for DFGs granted over £5,000 as the new arrangements allow Local authorities the discretion to impose a limited charge on an adapted property so that if it is sold or transferred within ten years the grant can be reclaimed up to a maximum of £10,000.

2. RECOMMENDATION

- 2.1 That Members note the package of changes introduced nationally to the Disabled Facilities Programme.
- 2.2 That Members are asked to decide whether BDC implements the general consent enabling the local authority to place a limited charge on owner occupied adapted properties where the grant exceeds £5,000 and introduce a condition requiring repayment of grant of up to a maximum of £10,000 in the event of the adapted property being sold within 10 years of the grant being awarded.
- 2.3 In the event of this authority implementing a charge and repayment condition, the authority to waiver the repayment condition in accordance with the government's criteria set out in Sect 4.3 (b) of the report, be delegated to the Head of Planning and Environment in consultation with

the Strategic Housing Manager and the Private Sector Housing Team Leader.

3. BACKGROUND

3.1 The Government has carried out a national review of the Disabled Facilities Grant (DFG) programme. Closely linked with the CLG's National Strategy for Housing in an Ageing Society the review sets out to improve programme delivery of DFGs, modernise the process, reduce the complexity of the system and reflect the continued pressure on funding.

3.2 The package of changes which came into force on the 22nd May 2008 makes the following changes:

3.3 **Funding** - Given the existing pressures on the DFG budget nationally and in recognition of the important role that DFGs play in maintaining the independence of disabled and older people, the National DFG budget is increasing by 20 per cent, taking the annual budget up to £146 million in 2008-09. The budget increases to £156 million in 2009-10 and then to £166 million in 2010-11.

The allocation to Bromsgrove District has been increased from £281,000 in 2007/8 to £310,000 for 2008/9.

3.4 **Maximum grant limit to be raised to £30,000** - The maximum amount of grant available for an individual mandatory DFG increases from £25,000 to £30,000., the aim being to help an increasing number of people with complex cases for which the current ceiling of £25k is not high enough to meet the full costs of the required adaptations. This rise in grant also addresses the increased costs of carrying out the relevant works and will also benefit families with children for whom adaptations tend to be most costly.

A number of locally received referrals for DFG, especially for the adaptation of homes for disabled children can exceed the current £25,000 ceiling.

3.5 **Financial test of resources – improvements to the means test** - DFG applicants claiming Council Tax Benefit, Housing Benefit and Tax Credits for those on low incomes will no longer be required to provide any further financial information in addition to these benefits. In addition those people in receipt of Working Tax Credit and Child Tax Credit will no longer have these payments counted as income in the DFG means test. This passporting approach is seen as a first step to improving the means test to simplify and speed up the assessment process.

Welcomed by the officers as a method of simplifying the means testing process increasing speed of delivery.

- 3.6 **Property charges** - Local authorities are now provided with the discretion to impose a limited charge on the adapted property, if it is sold within ten years. The general consent will enable local authorities to implement a repayment condition on adapted properties of owner occupiers, where the cost of the DFG exceeds £5,000, limited to a maximum charge of £10,000.

Local authorities are allowed complete discretion as to how they administer charges on adapted properties. The CLG accepts that Local authorities are best placed to determine, where the placement of a charge may cause hardship or where due to the sensitivities of a case, the charge should be waived.

It is expected that through the introduction of charges local authorities will be able to recycle these funds in the DFG programme when the adapted property is sold (providing this occurs within ten years).

More detailed review of possible implementation in the Bromsgrove District is set out under section 4.0 of the report (below) for Members consideration.

- 3.7 **Access to Garden** - Whilst the DFG can currently be used to fund access to gardens, the existing legislation has not been clear on the provision of works to enable access to gardens as a specific purpose for grant. The legislation has therefore now been changed making access to gardens a specific criterion for entitlement for the Disabled Facilities Grant, where this is reasonable and practicable. Given the overall need to reduce the bureaucratic nature of the DFG programme, the CLG have deliberately avoided a tightly prescribed set of circumstances in which access should be funded.

Welcomed by the officers in simplifying the assessment process.

- 3.8 **Social Housing Grant funding for adaptations to transfer to DFG**
In past years a small element of adaptation work on RSL owned stock has been carried out by RSLs with Social Housing Grant (SHG) agreed with the Housing Corporation. Nationally, the funding spent on adaptations within SHG amounted to £1.5 million annually. This will now form part of the overall DFG baseline allocated to local authorities.

In past years some RSLs in the district have been successful in gaining Housing Corporation grant for schemes to upgrade homes as part of a modernisation scheme.

- 3.9 **Removal of the 60:40 funding split** - Currently, 60 per cent of the funding for DFGs comes from specific Communities and Local Government grants, and local authorities are required to find the remaining 40 percent from their own resources.

From 2008-09 the DFG funding split of 60:40 no longer applies. Local authorities will receive a DFG allocation without a specified requirement to match this funding. This increased flexibility aims to allow local authorities to design services which fit with local delivery arrangements and the needs of individuals. Communities and Local Government considers that, given the importance of providing adaptations, and the beneficial, preventative impact these have on other budgets, such as social care, local authorities will continue to prioritise this area for funding.

The CLG is aware that many authorities currently contribute funding towards the DFG beyond the 40 per cent level (as does BDC), to reflect the need they have identified. The CLG does not expect this change to have any negative impact on this practice and fully expect local authorities to be able to bring together other resources more transparently and coherently.

BDC has consistently budgeted additional funding for DFGs in excess of the requirement to match government grant by 40%. From 2008/9 the government grant of £310,000 can be claimed up to 100% without the need to match fund. However there is a clear expectation that authorities will continue to fund the DFG programme from their own resources at a similar level prior to this change being introduced. The total approved budget for 2008/9 (including the CLG Grant of £310,000) is £663,000.

- 3.10 **Relaxing the DFG operational ring fence** - From 2008-09 the scope for use of DFG funding will be widened. Initially, the ring-fence will remain, but its scope will be widened to support any local authority expenditure incurred under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (RRO). This will enable authorities to use specific DFG funding for wider purposes, which may be more appropriate for individuals than current DFG arrangements allow.

Creating greater flexibility will allow the DFG to be used for associated purposes, such as moving home, where this is a more appropriate solution, or funding could be pooled to purchase portable extensions which are suitable for re-use, through improved procurement models.

The removal of the restrictive ring-fence on the funding is designed to help improve delivery and reduce the bureaucracy involved in the DFG application process helping to speed up the process and enable local

authorities to develop a simplified system which could deliver small-scale adaptations more quickly, for example by offering a service which rapidly deals with inaccessible housing or the need for quick discharge of people from hospital.

Welcomed by the officers to enable more effective and cost saving solutions to clients needs to be considered.

- 3.11 **Removal of the funding ring fence** - It is proposed that, from 2010-11, the DFG allocation will be paid to local authorities as an un-ring fenced payment, through a determination under section 31 Local Government Act 2003.

This in affect means that DFG funding could be pooled with resources from a number of other programmes. It will then be for local authorities to determine, against local priorities, how they best use these funds. As part of this move, local authorities will be given a two year settlement from 2009-10 (moving to three in the following spending cycle).

Concern is expressed by the officers that currently ring fenced funding for DFGs could be lost to other competing priorities. There is a suggestion that research should be carried out across the South Housing Market Area to underpin the considerable needs from the ageing population in the area for home adaptation in order to ensure that DFGs are well established as a priority in the future.

4. CONSIDERATION OF THE ABILITY TO INTRODUCE PROPERTY CHARGES ON PROPERTIES ADAPTED WITH GRANT FROM BDC

- 4.1 Currently the granting of Mandatory DFGs for the adaptation of private homes for disabled persons is free from any condition requiring the owner to pay back grant in the event of the property being sold in the future. However, the Council does impose a condition when giving Discretionary Home Repair Assistance and Renovation grants if the property is sold within 10 years that is tracked by a charge being made on registered properties through the Land Registry and unregistered properties through the local search process.
- 4.2 The new changes set out in Sect 3 of the report above, allow a local authority, to place a limited charge against an adapted property. The placement of charges is at the discretion of each local authority and should be determined on a case by case basis reflecting the individual circumstances of each applicant. The CLG accepts that Local authorities are best placed to determine, where the placement of a charge may cause hardship or where due to the sensitivities of a case, the charge should be waived.

4.3 When approving an application for a DFG exceeding £5,000; and where the applicant (“the recipient”) has a qualifying owner’s interest in the premises on which the relevant works are to be carried out, the local housing authority may now impose the following conditions:

- The local housing authority may demand the repayment by the recipient of such part of the grant that exceeds £5,000 (but may not demand an amount in excess of £10,000) if—
 - (a) the recipient disposes (whether by sale, assignment, transfer or otherwise) of the premises in respect of which the grant was given within 10 years of the certified date; and
 - (b) the local housing authority, having considered:
 - (i) the extent to which the recipient of the grant would suffer financial hardship were he to be required to repay all or any of the grant;
 - (ii) whether the disposal of the premises is to enable the recipient of the grant to take up employment, or to change the location of his employment;
 - (iii) whether the disposal is made for reasons connected with the physical or mental health or well being of the recipient of the grant or of a disabled occupant of the premises; and
 - (iv) whether the disposal is made to enable the recipient of the grant to live with, or near, any person who is disabled or infirm and in need of care, which the recipient of the grant is intending to provide, or who is intending to provide care of which the recipient of the grant is in need by reason of disability or infirmity,

is satisfied that it is reasonable in all the circumstances to require the repayment.

4.4 The Council currently does not hold data upon the proportion of already adapted private homes that have been sold within 10 years, so it is difficult to predict the likely income if the repayment condition was implemented.

However, the ability to recover up to £10,000 of grant originally allocated would allow the Council receive some additional income, that would otherwise be unavailable, to ring fence for future re-cycling in the form of local authority grant for DFGs to help the Council meet the budget allocated over and above the Government Grant allocation.

- 4.5 Introduction of a charge on a property does involve a registration administration fee of up to £58 per grant which would form part of the grant administration costs.
- 4.6 Members are therefore being asked to decide whether to approve the introduction of a grant condition requiring repayment in the event of sale of the property within 10 years, but subject to the officers having given consideration to the criteria set out at 4.3 (b) above before requiring repayment.
- 4.7 Therefore, it is recommended that if members decide to approve the introduction of the grant condition, the decision to require repayment or waiver the condition be delegated to the Head of Planning and Environment in consultation with the Strategic Housing Manager and the Private Sector Housing Team Leader.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The financial implications of introducing a repayment condition secured by a charge against the adapted property is currently approximately £58 per grant where the property has title registered with the Land Registry. For unregistered property the costs would be substantial as in the region of £650 per grant.
- 5.2 The detail set out below in Section 6 Legal Implications provides an alternative solution (Agreement for legal charge) to securing repayment for unregistered properties at minimal cost of approximately £1.
- 5.3 The financial implications of the recommendations therefore do not exceed registered property costs of £58 per property. Full spend against the annual budget of £663,000 would generate approximately 66 DFG grants per annum of which approximately 45 would be to owner occupiers. Accordingly the additional annual cost of implementing a charge on these properties would be in the region of £2,500 pa. Therefore a break even position would be achieved if one grant (of up to £10k) was reclaimed in four years.

6. LEGAL IMPLICATIONS

- 6.1 Under the Housing Grants, Construction and Registration Act 1996: Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008, the Council has the authority to secure the repayment of the grant by taking a charge on the property in respect of which the grant has been made.

- 6.2 However, taking a charge on the property will have certain cost and other implications which should be taken into account when deciding on what form of security to take.
- 6.3 There is no doubt that the most robust way of securing the Council's interest under the repayment obligation is by way of a formal legal charge on the property, since this would prevent the property from being sold without the charge being repaid.
- 6.4 Strategic Housing would keep a database of properties affected and the date on which the repayment provisions will cease to apply in each case. Legal would then need to be instructed to remove the charge on the expiration of the repayment period.
- 6.5 However, the cost implications of securing a charge can vary depending on whether or not title to the property is registered at H M Land Registry:

Registered title:

We will need to obtain Office Copies of the Title Information Document (currently £6-£12) in order to check ownership and whether there are other charges registered which affect the property. If there are existing charges on the property it may be necessary to obtain the prior mortgagee's consent to the registration of the Council's charge and there may be a cost implication involved in obtaining that consent.

A Land Registry fee will also be payable on the registration of the charge (currently £40). As title is already registered, the Legal officers would be able to deal with the registration of the charge at the Land Registry and apart from a priority search at the Land Registry prior to completion of the legal charge (currently £6) there should be no additional cost implications to the Applicant other than those mentioned above.

Unregistered title:

The Land Registry rules provide for compulsory first registration of title of an unregistered property where a legal charge is created on that property which could cost up to £220. In addition, an open market valuation may be required which could cost around £125. In addition, the Applicant will need to instruct Solicitors/Legal Advisors to deal with the first registration application on his/her behalf. The fees for dealing with this first registration application are likely to be in the region of £300 - £400 plus VAT.

- 6.6 In conclusion, therefore, whilst the registration of a legal charge on existing registered titles would be fairly straight forward and would not involve a great deal of additional costs (approx £58), on unregistered titles the costs could be quite substantial (approx £650).
- 6.7 There is an alternative method of securing the repayment of the grant on unregistered properties which would not result in compulsory registration of title and would therefore avoid the additional expense and involvement of legal advisers for the Applicant. The alternative method is as follows:

The grant document would contain a condition requiring the Applicant to enter into a formal legal charge of the property when called upon to do so by the Council. This would then constitute an agreement for a legal charge (an equitable mortgage), which should not give rise to the requirement for first registration of title. This agreement for a legal charge can then be protected by registration of a C (iii) entry (general equitable charge) against the owner's name at the Land Charges Registry. The cost of registration of this entry is currently £1.

Any purchaser of a property with unregistered title would, prior to completion of the purchase, carry out a search at the Land Charges Registry against the owner's name and this would reveal the C (iii) entry against the property.

If a purchaser fails to carry out the search or, having carried out the search, completes the purchase with notice of the entry, the purchaser would then take the property subject to that entry and the Council's interest is therefore protected. In practice, the purchaser would require the owner to arrange for the removal of this entry before completing the purchase i.e. by paying off the grant.

The entry would remain on the Land Charges Register indefinitely until formally removed. Strategic Housing would keep a database of properties affected and the date on which the repayment provisions will cease to apply in each case. Legal would then be instructed to remove the entry on the expiration of the repayment period.

7. CONCLUDING OBSERVATIONS

- 7.1 Members are being asked to decide whether to introduce a condition requiring recipients of Disabled Facility Grant (that is in excess of £5,000) to pay back up to £10,000 of the grant when their property is sold.

This would mean that any grant of up to £5,000 would be exempt from repayment. It is also recommended that the condition would not be appropriate for repayment of grant for installation of stair lifts as after use they can be a liability on the property rather than an asset. Recipients of grant for stair lifts could however be asked to agree to allow the lift to be returned to the authority for re-cycling when no longer required.

- 7.2 In considering whether the pay back condition and charge should be implemented, members may wish to consider the following issues:
- The possible impact upon customers who may be deterred from applying for grant by the condition being implemented.
 - Whether it is cost effective, as initial pay back will be low compared with the staff and financial costs of registering the charge.
 - How many cases may potentially end up having the condition waived as a result of the owner having to sell the property for employment, health or support reasons as recommended in the CLG criteria (Sect 4.3 of the report above).
 - The impact upon customer perception of the service as a result of some cases having the pay back condition waived and other cases having it enforced at officer's discretion.
 - Whether adaptations can have a negative or positive impact upon the value of property.
- 7.3 Balanced against these points Members need to be mindful of the opportunity to potentially claw back some capital funding for re-cycling and the importance of the authority considering any value for money opportunities.

8. COUNCIL OBJECTIVES

- 8.1 The provision of Disabled Facilities Grants falls within Council Objective One Regeneration – Priority Housing and Council Objective three Sense of Community and Well being.

9. RISK MANAGEMENT

- 9.1 The main risks associated with the details included in this report are:
- The Additional cost of administering charges against adapted private dwellings not being recovered if adapted dwellings are not sold or transferred within 10 years.
- 9.2 These risks are not registered at this stage.

9.3 Currently the risk identified in the first bullet point in 8.1 is not addressed by any risk register and will be added to the risk register when reviewed.

10. CUSTOMER IMPLICATIONS

10.1 The inclusion of a condition to repay Disabled Facilities Grant on the sale of a dwelling and the information that would be supplied to applicants advising them to seek independent legal advice in respect of the charge that would be placed on their property may inevitably lead to some clients being declining the offer of DFG assistance.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 None.

12. VALUE FOR MONEY IMPLICATIONS

12.1 The recommendation to implement a repayment condition secured by a charge against the adapted dwelling offers the Council the opportunity to recover and re-cycle grant funding allocated where the adapted property is then sold.

13. OTHER IMPLICATIONS

Procurement Issues
None
Personnel Implications
There would be an additional work load for Legal Officers within Legal and Democratic Services in registering a charge on properties to which adaptation grant is being allocated.
Governance/Performance Management
None
Community Safety including Section 17 of Crime and Disorder Act 1998
None

Policy
If approved, the change of policy would be reflected in the Private Sector Housing Strategy and Policy.
Environmental
None

14. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	Yes
Executive Director - Partnerships and Projects	Yes
Executive Director - Services	Yes
Assistant Chief Executive	Yes
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	Yes
Corporate Procurement Team	Yes

15. WARDS AFFECTED

All wards

16. APPENDICES

None

17. BACKGROUND PAPERS

CLG – Disabled Facilities Grant – The Package of Changes to Modernise the Programme

Statutory Instrument 2008 no 1189 Housing, England – The Disabled Facilities Grants (Maximum Amounts and Additional Purposes)(England) Order 2008.

The Housing Grants and Regeneration act 1996: Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008.

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