

**DISABLED ADAPTATIONS (CHANGES TO THE REGULATORY REFORM ORDER)**

**SOCIAL CARE, HEALTH AND WELLBEING (COUNCILLOR SUSAN ELSMORE)**

**AGENDA ITEM: 6**

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**Reason for this Report**

1. To propose the introduction of discretionary grant system that will provide an alternative to mandatory disabled facilities grants.
2. To remove the requirement for means testing for relevant disabled adaptations by amending council policies for the provision of assistance under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (the RRO).

**Background**

3. In March 2021 the then Minister for Housing and Local Government wrote to all councils announcing grant funding to support the removal of the means test for small and medium disabled adaptations. Grant funding has been made available on condition that councils make amendments to their policies to remove the means test by April 2022. This report sets out the current grant arrangements for disabled adaptations in Cardiff and proposals for change in the light of the Ministers recommendation.

***Mandatory Grants***

4. All local authorities in Wales are required to make mandatory Disabled Facility Grants (DFG's); they are issued subject to a means test and are available for essential adaptations to give disabled people better freedom of movement into and around their homes, and to give access to essential facilities within the home.
5. Currently a means test forms part of the relevant legislation unless subject to certain exemptions.
6. Although the DFG framework and mandatory aspect of the grant apply across all tenures the means test cannot be applied to Council tenants. Housing Revenue Account funding is made available for this purpose.

7. Before issuing a DFG the Council must satisfy itself that the works are necessary and appropriate to meet the needs of the disabled person and are reasonable and practicable depending on the age and condition of the property. In reaching a decision, the authority will consider whether the works:
  - are needed to provide for a care plan to be implemented which will enable the disabled occupant to remain living in their existing home as independently as possible; and
  - would meet, as far as possible, the assessed needs of the disabled person taking into account both their medical and physical needs and
  - distinguish between what are the desirable and possible legitimate aspirations of the disabled person, and what is actually needed, and for which grant support is fully justified.
8. Once the necessary conditions are fulfilled a grant must be made, subject however to application of a means test.
9. Grant applicants may receive a full grant or may be required to make a contribution towards the cost of the works. The means test is complex and follows four stages:
  - Assess how much the household needs to live on.
  - Compare this with their actual income to see if they have any 'surplus' income they could use to pay off a loan.
  - For those not in receipt of means tested benefits, calculate how big a loan they could afford to pay off using their 'surplus' income.
  - Compare the size of the loan they could afford with the cost of the work needed to see whether they qualify for a grant.
10. There are certain exemptions from the above for seriously disabled service personnel and for parents of children with disabilities.
11. The means test has been criticised for some time and in 2014 the Welsh Government commissioned *Shelter Cymru* to undertake a review of the provision of independent living adaptations within Wales. The review, published in 2015, identified, amongst other findings that "the means test is time-consuming and inequitable".

### ***Discretionary Grants***

12. Local authorities have discretionary powers to provide funding for adaptations, repairs and improvements under the *Regulatory Reform (Housing Assistance) (England and Wales) Order 2002*. This Order

states that local authorities can provide assistance in the form of a grant or loan.

13. Local Authorities use their own policies on the level and type of discretionary assistance they offer and the conditions a person must meet to qualify. Councils cannot use these discretionary powers unless they have published a policy setting out how they intend to use them. In Cardiff this is known as the Private Sector Housing Policy.
14. While mandatory and discretionary grants are funded through general fund or housing revenue account the Welsh Government have for a number of years made available the Enable Grant to fund applications for assistance that fall outside of the scope of the mandatory disabled facility fund.

### **Issues**

15. Disabled adaptations are an essential part of the Council's support for older people and those with disabilities, to assist them to remain independent at home. A timely adaptation can prevent and reduce the need for care, and they are often a requirement to facilitate hospital discharge. The benefit of providing a discretionary grant rather than a mandatory grant is that it removes the need for a means test and prevents the delay that this can cause to delivering the adaptation.

### **Current Means Testing Arrangements in Cardiff**

16. Cardiff currently provides both mandatory and discretionary grants. The current position regarding the application of a means test is as follows:

Irrespective of the total value of the work the following are **not** currently means tested:

- Council tenants
- Applications for disabled children
- Those in receipt of a means tested benefit
- Armed Forces veterans

Owner occupiers and private tenants are subject to the means test.

With respect to the type and value of work undertaken, the following are **not** subjected to a means test:

- Small works i.e., works valued at less than £1,000 for adults and £2,000 for children
- Works to only provide conversion of an existing bathroom
- Works to only provide a lift.
- Works to only provide ramped access to the property

Generally, these are individual works costing less than £5,000 in total.

All other grants, including applicants assessed as requiring more than one of the following – shower; lift; ramped access **are** subjected to a means test.

17. Currently a local Land Charge equivalent to the value of the work completed over £5,000 but less than £15,000 (max £10,000 charge) will be placed against the property to be repaid, in full, on disposal of the property. The 'Charge' remains in place for 10 years but will not attract interest or administration costs. It is repayable, in full if the property is disposed of in this time period.
18. During 2019/20 the Disabled Facility Service administered 1,082 applications for assistance. Of this total 812 (75.05%) of the applications were received from Council tenants, children, veterans or those in receipt of benefit. Leaving just 270 (24.95%) of applicants that were subjected to a means test. This ratio is typical of previous years and likely future demand.
19. Of the 270 applicants subjected to a means test just 45 people were identified as having to make a contribution to the cost of their adaptation. That equates to just over 4% of the total applicants for grant being required to make a contribution.
20. Therefore 270 people went fully through the process and provided details of income, shares, savings etc. causing significant delay, distress to the client at what is often a very difficult time, and additional administration to the Council. As a result, only 45 people were required to contribute.
21. This means testing process takes officers accumulative time of approximately 6 hours for each case. The removal of the means test would free up these officers to provide much needed independent living support to clients.
22. The total contribution collected for the same period was £25,939.96 and Welsh Government have offered £65,490 additional Enable grant funding to cover this cost.
23. It should also be noted that there are clients who withdraw from the process of applying for a grant as they are initially informed that their application could be subject to a means test. The proposal will ensure these clients are not at risk or in crisis in their own home simply because they do not have access to the funds or a loan to pay for the work. The Occupational Therapy service have estimated that this relates to approximately one client per month. If it is decided that the means test should not be applied the position with these cases will be closely monitored to ensure that there is not an excessive increase in applicants as a result of the change.
24. The additional uplift in Enable grant is part of an annually approved hypothecated grant awarded by the Council. There is a commitment to ensure this grant is recurring, however this is subject to the level of

funding allocated by Welsh Government as part of its budget priorities. In the event that the level of funding was to change and additional pressures on disabled adaptations were to continue to be unfunded by grant support, options including reversing the proposals in this report could be reconsidered.

### **Changes proposed by the Welsh Government**

25. The Welsh Government have classified adaptations into 'small, medium and large'. An excerpt of their report is set out below:

#### **SMALL ADAPTATIONS**

*Small Adaptations adaptations are inexpensive items, which can be provided very quickly. It would generally fit into the description of 'immediate falls prevention' or 'urgent for hospital discharge' and can be assessed and installed within days or the same day if urgent.*

*Examples include:*

*Grab rails, Stair rails, Small ramps, Accessible taps, Key safes, Mop stick Handrails, Outdoor rails, External / staircase lights, Additional electrical sockets.*

#### **MEDIUM ADAPTATIONS**

*Medium Adaptations anything which is not classed as small or large*

*Examples include:*

*Walk in shower, Stair lifts, Large ramps,  
A combination of adaptations installed as one job*

*Further guidance for 'medium' works states:*

*Major home modification may be required, but building/planning approval not required*

#### **LARGE ADAPTATIONS**

*Large Adaptations these are works which will require specialist assessments, statutory approvals and major adaptations to a property such as extensions and through floor lifts. An Occupational Therapists assessment will be required, and planning permission may be needed*

*Examples include:*

*Building an extension to provide a downstairs bedroom and/or bathroom.  
Through floor lift, significant internal structural modifications e.g., relocate bathroom or kitchen*

26. The Welsh Government have asked Councils to consider not charging for small and medium adaptations. Cardiff is already largely compliant with these as small adaptations are not subject to means test and those defined as medium are not generally means tested if they are for a single adaptation only, e.g. just for a shower or stairlift but not for both. This keeps the overall value of works below £5,000.

27. The significant change to Cardiff of this proposal would be that multiple adaptations would not be subject to the means test. These works when added together could be very substantial. Also, some 'major home modification not requiring building or planning approval' could easily cost more than £20,000 and not require a means test. While the adaptations as defined by the Welsh Government as large such as converting an outhouse to a bathroom on the ground floor, may cost as little as £9,000 but would require the Council to apply a means test to the applicant. This would appear to be inequitable.
28. Having considered the very small amount of funding generated in total through the means test and to ensure fairness to all applicants it is proposed that the means test is not applied to any adaptations that meet the required criteria. For owner occupiers a charge on the property would still be made for higher value adaptations.
29. As stated above, in order to protect the Council from any financial losses Welsh Government have offered additional funding of £65,490 to cover any losses experienced by the council in the application of their request not to apply a means test to those applicants having small or medium adaptation works. This should more than offset the funding lost from the removal of the means test from all adaptations.

### ***Proposed Approach***

30. As the means test is seen by so many as being cumbersome and generally inequitable it is proposed that the Council uses its powers under the Regulatory Reform Order to introduce an alternative, discretionary adaptation grant (DAG) that will be available to everyone and will avoid the need for this time consuming, costly, bureaucratic, means test to be applied to any adaptation that meets the criteria.
31. The proposed discretionary adaptation grant (DAG) will work as follows:

The means test will not be applied to any grant for disabled adaptation that meets the required eligibility criteria.

All small and medium works (for this purpose defined as up to the value of £5,000) will also have no charge placed on the property.

Where the applicant is an owner occupier, for all works over £5,000 a local Land Charge equivalent to the value of the work completed over £5,000 (will be placed against the property to be repaid, in full, on disposal of the property.

The maximum 'Charge' will reflect the grant maximum, less the first £5,000. The grant maximum is currently £36,000 therefore the maximum Charge will be £31,000.

The 'Charge' remains in place for 10 years but will not attract interest or administration costs. It will be repayable, in full if the property is disposed of or changes hands in this time period

The 'Land Charge' follows current WG advice and guidance and may be applied to all cases where grant assistance is provided.

This proposal will fully meet and exceed Welsh Government recommendation.

32. If Cabinet approve this report, the Private Sector Housing Policy will be updated to reflect the changes set out in this report by 31<sup>st</sup> March 2022, this is in line with the timescale set out by the Minister for the change to the means test.

### **Reason for Recommendations**

33. To introduce an alternative discretionary adaptation grant scheme (DAG) which will avoid the need for the time consuming, costly, bureaucratic, means test to be applied. Loss of funding due to the removal of the means test will be more than offset by Welsh Government grant.

### **Financial Implications**

34. The report proposes the ceasing of means testing for Disabled Adaptations. This will result in a reduction in the value of contributions towards any grants awarded by the Council to owner occupiers. The level of means tested contributions, average circa £30,000 p.a. based on the value of contributions collected in previous years. This reduction in income is proposed to be offset by additional grant made available by Welsh Government as part of an uplift in Enable Grant. This is a specific grant and whilst there is no current intention to cease or reduce this grant in future years, this remains a risk as with all hypothecated grants receivable from Welsh Government. Should this be the case, the proposals set out in the report could be reconsidered along with other options to ensure the demand and level of funding available for adaptations remain sustainable.
35. The ceasing of the means test will also result in a reduction on processing and assessment of the means test. An estimate of this benefit is £37,000 p.a. The report proposes this resource is re-invested in service delivery, instead of reducing the fee level charged to capital budgets for disabled adaptations.

### **Legal Implications**

36. The discretionary powers under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 are outlined in the report.
37. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the

Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

38. The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. As such a decision to implement the proposal has to be made in the context of the Council's equality act public sector duties.

### **Well Being of Future Generations (Wales) Act 2015 - Standard legal imps**

39. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
40. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2021-24. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
41. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
  - Focus on prevention by understanding the root causes of problems
  - Deliver an integrated approach to achieving the 7 national well-being goals
  - Work in collaboration with others to find shared sustainable solutions
  - Involve people from all sections of the community in the decisions which affect them
42. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

### **HR Implications**

43. There are no HR implications for this report.

### **Property Implications**

44. There are no specific issues in the Disabled Adaptations (Changes to the Regulatory Reform Order) report from a property implications perspective. The Council's Strategic Estates department will continue to engage in respect of any relevant matters pertaining to disabled adaptations as part of the governance arrangements for the Council's estate.

## **RECOMMENDATIONS**

Cabinet is recommended to

1. Agree to introduce an alternative discretionary adaptation grant (DAG) that will be an alternative to the mandatory grant system thereby removing the requirement for a means test in relation to the provision of disabled adaptations.
2. Delegate authority to the Director Adults, Housing and Communities, in consultation with the Cabinet Member for Social Care, Health and Wellbeing, the section 151 Officer and Director of Governance and Legal Services, to update the Private Sector Housing Policy under the Regulatory Reform Order in line with this change and other administrative changes.

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| <b>SENIOR RESPONSIBLE OFFICER</b> | <b>Jane Thomas</b><br>Director Adults Housing and<br>Community |
|                                   | 12 November 2021   |