

The Ombudsman's final decision

Summary: Mrs and Mr C complained about the time it took the Council to realise her proposed extensions would be too expensive, and it should therefore pursue alternatives instead. This resulted in an unreasonable delay in providing her with a long-term solution in terms of her accommodation. We have upheld the complaint. The Council has agreed to apologise to Mrs and Mr C and pay her £7,000 for the significant distress and inconvenience these delays caused her.

The complaint

1. The complainants, whom I shall call Mrs C and Mr C, complains the Council failed to sufficiently monitor the increasing estimated costs of her proposed extension, and keep these under discussion with Essex County Council who agreed to contribute to the costs. As such it took until September 2019 (almost three years) before the Council estimated the costs would be £226,000 (or more), which would be too expensive for both Councils.
2. Mrs C says that, if the Council had realized this earlier, all involved could have started the process of pursuing an alternative, in this case building a new fully adapted new build, earlier which would have resulted in her and her family moving into it earlier.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*). I used my discretion to investigate what happened more than 12 months ago, because the decision not to continue with the adaptations had only been made recently.
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I considered the information I received from Mrs C, the Council and Essex County Council. I shared a copy of my draft decision statement with Mrs C and the Council and considered any comments I received, before I made my final decision.

What I found

Legislation

7. The purpose of a needs assessment is to find out if a person has needs that meet the eligibility criteria for care and support ('eligible needs'). If a person has eligible needs, the Council (social care authority) has a duty to ensure they are met. The Care Act 2014 recognises that suitable accommodation is one way of meeting care and support needs.
8. A person may be eligible for a Disabled Facilities Grants (DFG) to carry out adaptations. DFGs are provided under the terms of the Housing Grants, Construction and Regeneration Act 1996. Councils have a statutory duty to provide grant aid to disabled people for certain adaptations. The maximum amount of a DFG is £30,000. However, a council can award other / additional discretionary help if it thinks it is necessary.
9. In February 2015 the government withdrew its guidance, "*Delivering Housing Adaptations for Disabled People: A Good Practice Guide*" and replaced it with "*Home adaptations for disabled people: a detailed guide to related legislation, guidance and good practice*" published by the Homes Adaptations Consortium in 2013. This non statutory guidance stresses the importance of close links between the housing and social care authorities to ensure local people receive the most suitable help. In this case, Essex County Council was the social services authority and Uttlesford District Council (hereafter referred to as 'the Council') was the housing authority. After a social care authority determines if proposed adaptations are '*necessary and appropriate*', the housing authority needs to determine if they are '*reasonable and practicable*', in relation to things such as the age and condition of the property. This assessment is usually carried out by a building surveyor with the OT who carried out the assessment.
10. The guidance also says there is no restriction on the amount of assistance that a council may provide for housing adaptations; discretionary assistance may be given in addition, or as an alternative, to a mandatory DFG. DFG funding can also be pooled with other larger funding sources such as social care.

What happened

11. Mrs C lives with her husband and two young children, when she suddenly had to start using a wheelchair in 2016. Essex County Council carried out a needs assessment in 2016, which concluded Mrs C's needs could be met by extending and adapting her family home. In the interim, Mrs C and her family were moved to a bungalow. Mrs C says she and her family, and many professionals involved, always strongly supported the option of her returning to her home, which was also seen as the most suitable, viable, cost and time efficient option.
12. The Council says the first estimate it had of the cost of the works involved was in September 2016, which was £94,000. The estimate was provided by a company which managed the Council's adaption service at the time. It appears their estimate was based on an approximate building cost of £1,500 per square meter.

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- There is no evidence the Council discussed the feasibility of funding that with Essex County Council at the time, or shared this with Mrs C.
13. Subsequently, several options were explored to build an extension to Mrs C's property, and create wheelchair accessible bedrooms, a bathroom and a kitchen.
 14. When developing and revising plans for an extension (through a DFG) it is important to monitor what the estimated costs are, to ensure it remains within any potentially (maximum) funds available.
 15. In August 2018, the Council said at a meeting with Essex County Council that extensions usually cost around £60-70,000. It also said that it would have a more accurate pricing after receiving tenders (from architects and contractors).
 16. In two further emails that month, the Council told Essex County Council:
 - *"A rough estimate would be (and I may be wrong)": up to £125,000. After the DFG Grant of £30,000 and a "one off" DFG Top up loan of £10,000, there would be a budget shortfall of up to £85,000. The Council asked Essex County Council to initiate/continue discussions how/who this shortfall would be met.*
 - Before appointing an architect's firm to create further plans and applications (Planning - to vary the 3m height limit and Building Regs etc.), all would need to agree how this would be funded.
 17. Mrs C says the Council should have realized earlier (and have discussed this with Essex County Council) the estimated cost of this extension was going far beyond what was usually done as part of a DFG and/or what could be agreeable to both parties.
 18. Essex County Council confirmed in a letter to Mrs C in March 2019 that, based on the unique circumstances of the case, it would make: *"a formal offer to provide additional funding not covered by your own contribution or the Disabled Facilities Grant that you have been offered by the District Council for the adaptations set out in the scheme"*.
 19. In May 2019, the Council told a Design Company that:
 - It has been *"liaising with the Council's Procurement Department, discussing this particular project; this is because the contracts (to design, manage and build) are likely to be greater than £50K in total; this fact necessitated / warranted UDC Procurement involvement"*.
 - It has been liaising with Essex County Council (ECC) who are providing most of the funding for this project. *"At present, both they and I are "plucking figures out of the air" as to what we believe this full project could cost. This is making the allocation of funding (from UDC and ECC) more difficult.*
 - It knew: *"it would be a "ballpark" figure from you at this stage, but your "best guess" would be gratefully received"*.
 20. In an email in mid-June 2019, the Council still referred to an estimated full build cost of £130,000 + VAT. The Council has since said this was merely an approximate figure, rather than a full detailed architect estimate on cost for the project. It also excluded additional itemised costs. However, one day later, the Council told Essex County Council that the costs would be £178,000.
 21. A week later, planning permission was refused on the basis that the extension was excessive and would be intrusive to the neighbours. The Council told Essex County Council in July 2019 that Mr and Mrs C said they did not want to appeal the planning decision. It said this would therefore only leave the option to try and

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- revise the design and have a lower / flat roof. It said it would look at this and cost it.
22. At a meeting in August 2019 between all parties and Mr and Mrs C, the Council asked if Essex County Council would consider providing more funding. Essex County Council said it would consider that once a new estimate of the costs would be available.
 23. The Council asked an architect in September 2019, to produce an estimate of the costs involved. It told Essex County Council in early October 2019 that the cost increased to around £226,000, and perhaps more to realise the flat roof design.
 24. The Council says the increase was due to:
 - Amendments to plans.
 - Other architect and project management fees.
 - Confirmation of VAT payments on the gross amount.
 - A more detailed budget estimate.
 25. The Council met with Essex County Council in October 2019, when both parties agreed they could not go beyond the maximum amount agreed of £120,000. The Council advised they did not currently have housing stock available that they could adapt. As such, they would have to consider a new build, which could take around another two years.
 26. Essex County Council subsequently decided it would no longer pursue the option of adapting Mrs C's property. Mrs C told Essex County Council in January 2020 that, with deep regret, she would accept the offer of a new built home.
 27. Essex County Council says this will be a new build 3-bedroom bungalow, designed and built specifically to suitably house Mrs C and her family. The minimal timeframe to full completion is 18 months.
 28. The Council told Mrs C in November 2019. In response to her complaint, that: *"In examination of your case, the financial framework should have been fully explored, clarified and confirmed as a key initial component of your DFG as it evolved. This would have avoided the present situation where the cost of the adaptive design has far exceeded the budget available"*.
 29. The Council told me that:
 - It is clear this case was complex and one where the main focus was to agree a design solution that suited Mrs C's needs and her family. The original design and specification was subject to various changes over time.
 - When costs were identified, they should have been based on estimates provided by the architects involved in this case, although the Council cannot confirm this happened on all occasions.
 - It accepts it should have sought more frequent appraisal of costs throughout the design process and shared with all parties. It appears this did not occur, and the Council has apologised to Mrs C for this error.

Analysis

30. It is clear from the records that the case was overall complex, particularly in terms of the design of the extension. However, the Council has accepted it failed to monitor the escalating costs of the extension, and how these would be funded, between 2016 and September 2019. This was referred to in one of the records as

just having been ‘plucking figures out of the air’. The Council failed to properly involve architects in any estimates until September 2019, at which time the architect concluded it would cost at least £226,000.

31. It also failed to involve the Council’s Procurement Department at a much earlier stage. Once the Procurement Department became involved, things became more formalised and an architect provided a sufficiently detailed estimate of the costs, which showed the costs had significantly gone beyond any amount both Councils were willing to pay.
32. As a result, there has been an unreasonable delay in discarding the extension as a viable option and, as such, in Mrs C and her family moving into a new build property that will be built to the exact specifications needed for her. It also resulted in Mrs C experiencing distress and uncertainty that should have been avoided.

Agreed action

33. I recommended that the Council, within four weeks of my decision,
 - Provides an apology to Mrs C and Mr C for the faults identified above and the distress this has caused her and her family.
 - Pay them £7,000 to remedy the injustice for the resulting distress and uncertainty, as well as the significant delay in moving her and her family from the temporary bungalow where they have been staying, into a fully adapted newly built property.
 - Share the lessons learned with all officers and teams involved with Disability Facility Grants and Adaptations
34. The Council has told me it has accepted my recommendations.

Final decision

35. For reasons explained above, I decided to uphold Mrs and Mr C’s complaint.
36. I am satisfied with the actions the Council will carry out to remedy this and have therefore decided to complete my investigation and close the case

Investigator’s decision on behalf of the Ombudsman