
Report to: Cabinet

Date of Meeting: 26 May 2011

Subject: Capital Programme 2011/12: Disabled Facilities Grants

Report of: Director of Built Environment **Wards Affected:** All

Is this a Key Decision? Yes **Is it included in the Forward Plan?** Yes

Exempt/Confidential No

Purpose/Summary

To advise Cabinet that the cessation of the Government Housing Capital Pot from 2011/12 has resulted in a funding shortfall for Disabled Facilities Grants. As a result the resources available are insufficient to meet the statutory requirements. The Cabinet is therefore requested to approve top-up funding for Disabled Facilities Grants (DFGs) from the prudential borrowing previously earmarked for housing purposes. The revenue cost associated with this borrowing is already built into the base budget.

Recommendation(s)

That Cabinet agrees to

1. use this years' unringfenced funding for Disabled Facilities Grants (DFGs) made available by the Department for Communities and Local Government of £1,576,000; and
2. Approves the allocation of £1,000,000 of prudential borrowing previously earmarked by Cabinet for housing purposes to replace the Government's Housing Capital Pot funding.
3. Note that the revenue costs associated with this borrowing is already built into the base budget

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community	X		
2	Jobs and Prosperity	X		
3	Environmental Sustainability		X	
4	Health and Well-Being	X		
5	Children and Young People	X		
6	Creating Safe Communities	X		
7	Creating Inclusive Communities	X		

8	Improving the Quality of Council Services and Strengthening Local Democracy		X	
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Reasons for the Recommendation:

It is necessary to provide funding for Disabled Facilities Grants which are a statutory requirement. This is required due to the reduction in the level of government capital funding for this purpose.

What will it cost and how will it be financed?

(A) Revenue Costs: The revenue implications of the prudential borrowing is included within the 2011/12 revenue budget.

(B) Capital Costs: £1,000,000: Previously approved Prudential Borrowing

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal: The funding of DFGs in appropriate circumstances is a statutory obligation which case law indicates cannot be limited by the availability of resources.	
Human Resources: There are no additional human resources required as a consequence of this expenditure.	
Equality	
1. No Equality Implication	<input type="checkbox"/>
2. Equality Implications identified and mitigated	<input checked="" type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>
The recommendation will help to ensure that people with physical disabilities in receipt of Disabled Facilities Grant will be less disadvantaged than would otherwise be the case.	

Impact on Service Delivery:

This will ensure that the Council can continue to deliver an adequate level of Disabled Facilities Grant support.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD.777) has been consulted and has the following comments:

The risks of restricting resources to the grant figure will lead to ombudsman challenges which add to the full costs to the Council. The one year only allocation of capital funding will allow the Council to give fuller consideration to the future years funding as part of the 2012/13 budget plans.

Head of Corporate Legal Services (LD137/11) have been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

The provision of Disabled Facilities Grant is a statutory obligation. The only alternative would be to provide the top up funding from another source or run the risk of challenge.

Implementation Date for the Decision

Following the expiry of the "call-in" period for the Minutes of the Cabinet/Cabinet Member Meeting

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Background Papers:

The following papers are available for inspection by contacting the above officer(s).

Report to Cabinet 3rd March 2011: Capital Programme

Announcement by Housing Minister Grant Shapps, 3rd March 2011 on DFGs:

<http://www.communities.gov.uk/statements/corporate/1857592>

Summary

1. Disabled facilities Grants (DFGs) are a mandatory programme to which eligible applicants have a statutory right for necessary works.
2. The proposed Capital Programme for 2011/12 to cover committed expenditure including DFGs, was approved by Cabinet on the 3rd March 2011. At the time of writing the report, the amount of money to be provided by central government was not known. The allocation was announced on the 3rd March at £1,576,000.
3. Unfortunately, with the cessation of the Housing Capital Pot as part of the Comprehensive Spending Review, the balance of funding for the DFG programme to fund new applications is no longer available from that source, and there is already a backlog of some £650,000 of applications building up.
4. However, prudential borrowing previously earmarked for extra care housing and not utilised could be used to support the DFG programme.

Background

5. Under the *1996 Housing Grants, Construction and Regeneration Act*, mandatory Disabled Facilities Grants are required to be made available by local authorities in England and Wales (and the Housing Executive in Northern Ireland), subject, except for children, to a means test, 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.
6. The types of work that mandatory DFGs can cover include:
 - making it easier to get into and out of the dwelling by, for example, widening doors and installing ramps;
 - ensuring the safety of the disabled person and other occupants by, for example, providing a specially adapted room in which it would be safe to leave a disabled person unattended or improved lighting to ensure better visibility;
 - making access easier to the living room;
 - providing or improving access to the bedroom, and kitchen toilet, washbasin and bath (and/or shower) facilities; for example, by installing a stair lift or providing a downstairs bathroom;
 - improving or providing a heating system in the home which is suitable to the needs of the disabled person;
 - adapting heating or lighting controls to make them easier to use; and
 - improving access and movement around the home to enable the disabled person to care for another person who lives in the property, such as a spouse, child or another person for whom the disabled person cares.
 - access to a garden where the work will facilitate access to and from a garden by a disabled occupant or make access to a garden safe for a disabled occupant.
7. Most importantly, adaptations for people with disabilities enable them to live in their own homes with a much-improved quality of life. In addition, they reduce the resource burden on public bodies, for example, the provision of carer support eg lifting disabled people, and institutionalisation and hospitalisation. They also help

make possible the discharge of people who have been hospitalised following a disabling accident or illness. They are a key ingredient in a fair and equal society. There is legislation to ensure that the built environment takes account of the needs of disabled people – the Disability Discrimination Act.

8. Local authorities are required to issue a decision on a properly completed DFG application within six months of its receipt and to ensure that the grant is paid within 12 months of approval. Communities and Local Government (CLG) has issued guidance to authorities setting out best practice in delivering housing adaptations which includes target times for each stage of the delivery process.
9. The Department has also made it clear that eligibility for DFGs is 'tenure neutral'.

Legal Position

10. In relation to the Council's statutory obligations, the legal position is as follows:

- It is not lawful for persons in any tenure to be obstructed in making an application for assistance through a DFG.
- S23 of the Housing Grants, Construction and Regeneration Act 1996 states that applications for grants **MUST** be approved so long as certain criteria are met. This is usually where the purpose is to facilitate access to the property or rooms within it. Therefore if we do not provide a grant where the relevant criteria are met we would be in breach of this section and could face legal challenges as described below.
- The consequences of breaching our duties under S23 could be a complaint, investigation by the Local Government Ombudsman or judicial review if the decision not to give a grant was felt to be unreasonable. It is hard to estimate the amount of damages that might be awarded or the amount of compensation the Ombudsman may suggest, but there has been case law where the Local Authority was criticised for allowing a disabled applicant and her family to live in 'deplorable conditions' for over 20 months. The Court found that there had been a violation of Article 8 of the Human Rights Act re Right to Family Life due to the Council failing to act on its assessments. (R (Bernard) V Enfield LBC 2002).
- That we have no money is not a legitimate defence. The case of R v Birmingham CC exp P Taj Mohammed said that the duty in S23 is not resource dependent, and Dyson J said that housing authorities were not entitled to take its resources into account when deciding whether or not to approve a DFG.

Funding

11. From April 2011, Local authorities will receive an unringfenced DFG allocation as part of the Single Capital Pot, through a determination under section 31 Local Government Act 2003. There is no specified requirement to match this funding. This aim of this change was to give authorities increased flexibility to design services which fit with local delivery arrangements and the needs of individuals. It is for local authorities to determine, against local priorities, how they best use these funds.

12. The maximum grant available is £30,000 per applicant, and the Council recoups a proportion of the grant if the property is sold within a 10 year period. The amount of repayment which will be required is that part of the grant that exceeds £5,000 but is subject to a maximum repayment of £10,000.
13. In addition, local authorities have been given extended powers to issue loans and other forms of assistance to DFG applicants under *The Regulatory Reform (Housing Assistance)(England and Wales) Order 2002*. It is the Council's policy to provide 'equity' loans from the Council's capital resources that are to be refunded when the house is sold to top up the cost of adaptations which exceed the £30,000 maximum grant.
14. Historically, this authority, like most others, funded the 'top up' to DFGs from the Housing Capital Pot, a substantial capital allocation made by the Government each year towards the Council's Capital Programme. This funding ceased entirely as part of the most recent CSR. In Sefton, approximately half of the DFG budget was funded from this resource. In general, Local Authorities are now funding their DFG top-up from their capital programmes (however funded), from capital receipts, or its general funds (or a combination of these).
15. In Sefton in recent years the requirement has been for just over £3 million of funding in each year, approximately half of which is needed to fund existing commitments and the other half for new commitments. In other words, there is a new annual commitment requirement of approx £3 million per annum.
16. DFG Grant from CLG for 2011/12 is £1.576m, and increase of £0.236m on last year, leaving the Council to find approximately £1.5 million to meet projected future demand during 2011-12.
17. There are currently 86 applications awaiting approval at various stages of assessment. This excludes any currently being assessed by the occupational therapy service and indeed a number of OVH applications which have not yet been accepted as valid applications. The total value of these new approvals is not yet fully known, but, on past averages, could amount to £650,000 of new approvals being required even before the new financial year had started.
18. Cabinet has previously approved prudential borrowing of £3 million for housing related activity in the Borough. To date, only £310,000 of this has been allocated. That means that the balance of prudential borrowing capital is available to meet other needs. It is therefore proposed to use £1,000,000 of this fund to cover expenditure on new schemes in 2011/12 and into 2012/13, with final allocations subject to a review of Capital funding priorities to be undertaken later in 2011.
19. As demand is likely to continue to exceed the resources made available by central government into the future, further consideration of how the 'top-up' requirement is to be funded in future will need to be made before the Council's budget for future years is finalised.
20. The table below sets out the envisaged funding arrangements:

	2010/11 Est. out turn £	2011/12 Proposed Budget £	2012/13 Indicative Budget £
Expenditure:			
Committed programme previous years	1,556,000	195,010	0
Committed programme	1,692,470	1,304,600	0
New Programme 2011/12	0	1,600,000	1,600,000
New Programme 2012/13		0	1,750,390
TOTAL	3,248,000	3,099,610	3,250,000
Funded by:			
Housing Capital Pot	1,912,000	0	0
DCLG DFG	1,336,000	1,576,000	Est 1,576,000
Prudential Borrowing	0	1,000,000	0
Balance to be found	0	523,610	1,674,000
TOTAL	3,248,000	3,099,610	3,250,000