

APPEALS PANEL 2

MONDAY 4 JULY 2016 AT 10.00AM

PRESENT: Councillors Bloxham, MacDonald, and Paton.

OFFICERS: Deputy Chief Executive
Director of Economic Development
Legal Services Manager
Principal Health and Housing Officer
Housing and Public Health Officer

ALSO

PRESENT: Appellant 1 & Appellant 2

1. APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor Bloxham be appointed as Chairman of the Panel for the Municipal Year 2016/17.

2. APOLOGIES FOR ABSENCE

No apologies for absence were submitted at the meeting.

3. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

4. PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

5. APPEAL AGAINST HOUSING SERVICES

The Chairman welcomed the Appellants and introduced the Panel.

The Chairman asked the Appellants to summarise their complaint as clearly as possible and what outcome they hoped to achieve from the hearing.

Appellant 1 explained that the complaint related to damage to their property which had occurred following the installation of a level access shower that had been installed by a contractor selected using the Council's in-house agency service which helped facilitate the disabled adaptation, the work had been funded by an external organisation.

Appellant 1 informed the Panel that the contractor used to carry out the original works(C1) had been selected from a list of approved contractors provided by the Council. Consequently, Appellant 1 did not feel that she and Appellant 2 had chosen the contractor, as they had been restricted to those companies put to them by the Council.

Appellant 1 explained that having appointed the contractor to carry out the adaptation works the Appellants held a meeting with the Council, C1, and an Occupational Therapist from the County Council during which it was agreed that the adaptation would be upgraded from a level access shower to a full wet room at no additional cost.

The bathroom adaptation work had been completed in December 2010. In May 2015, the Appellants had noticed damp staining appearing on the walls in the kitchen, underneath the wet room.

Appellant 1 described how following the loss of electrical power on the ground floor on the property and a subsequent inspection from her insurance company, she had been advised that the electrical ring arc for the ground floor had ceased working. The cause had been identified as dampness in the wall surrounding an electrical socket in the kitchen of the property which was situated directly beneath the wet room.

Appellant 1 explained as that damp had continued to appear she had contacted the insurance company to discuss the possibility of making a claim to carry out remedial works: she had been advised that as the original work had been grant funded, it was not possible for an insurance claim to be considered.

The Appellants had hired a company to replace the bathroom floor in October 2015, at which time the old joists, damaged by the leaking water had been removed, Appellant 1 noticed that, following the installation of new joists, the preform shower tray had begun to move. Within a matter of days of the new floor having been fitted, water was penetrating the back wall of the bathroom and leaking into the kitchen. As a result, Appellant 1 had contacted Trading Standards, and her insurance company, who had advised her to speak to the Council.

When Appellant 1 contacted the Council to complain about water leakage from the adapted bathroom an investigation was carried out and the cause of the leak was identified to be a batch of non-waterproof grout which had been used in the wet room and which was allowing water to penetrate the back wall. The Appellant explained how the adapted bathroom had been taken out, after which an independent surveyor had visited the property to assess the damage caused by the leaking water. Appellant 1 felt that this was ineffective as the damaged parts of the bathroom had already been removed.

Appellant 1 informed the Panel that the contractor who had been instructed by the Council to carry out the remedial works (C2) to the bathroom replaced the preform

tray underneath the shower floor in the wrong place which had resulted in a gap and the shower water was not falling into the tray and draining away correctly.

Additionally, the replacement preform tray was smaller than the originally fitted one, and in the view of the Appellants it was not able to process the volume of water discharged by the shower effectively. Appellant 1 felt that the installation of the smaller tray did not constitute a like for like replacement, and was a downgrading of the facilities.

Appellant 1 asserted that a further consequence of the remedial works undertaken by C2, was the floor area of the bathroom had been reduced making it too small for her to use her disability chair in the adapted bathroom.

Appellant 1 explained that the remedial work undertaken on the wet room floor had meant that the previously functional door to the room was no longer workable, therefore a shower curtain had been installed, but this restricted the area of the wet room and meant that Appellant 1 could not be assisted in showering.

Referring to the report pack, Appellant noted that an email from the Housing and Public Health Officer to C2 had stated that the issue with the preform tray was "no-one's fault". The Appellants' felt that C2 was wholly responsible for the incorrect fitting of the replacement preform tray.

Following the initial remedial work the Appellants felt that the water from the shower was not draining correctly, Appellant contacted C2 who had conducted an inspection of the bathroom and in March 2016 had removed the replacement installed tray, advising the Appellants that a replacement would be sourced. The Appellants had been further advised that the bathroom floor would need to be lifted to enable installation of the replacement tray. The Appellant stated that she was waiting for the replacement tray to be sourced and installed but that one had not been provided.

The Appellants described the damage incurred to their kitchen which they considered to be a result of the bathroom adaptation works, which had included damp walls and significant damage to kitchen units which had rendered them unusable. The Appellants considered the infiltration of damp into the kitchen units to be so severe, that the affected units were no longer suitable for food storage.

When the Appellants had initially discussed the remedial works with C1, the contractor had stated that he was only willing to replace the backboard on the affected kitchen units. The Housing and Public Health Officer had subsequently instructed C1 to replace the backboard and repaint the wall and ceiling. C1 had used a sub-contractor to carry out the redecoration of the kitchen, which had been of a high standard, and the Appellants were satisfied with that work.

Appellant 1 stated that C1, rather than replace the backboards, had simply covered them with plywood and reinstalled them in the kitchen. Appellant 1 had contacted the

Council to discuss this with the Housing and Public Health Officer, but had not been able to arrange an appointment for him to visit the property to carry out an inspection.

In April 2016, the Appellants had lodged their Corporate Complaint with the Council and requested that further work at their property be suspended until the complaints procedure had been finalised.

In terms of the way in which the Council had addressed the complaint, Appellant 1 stated that, in the first letter received from the Principal Health and Housing Officer, she and Appellant 2 had been offered two options for remedial action: a cash settlement for the Appellants to pay for remedial works to their bathroom or; a new bathroom. The Appellants had selected the option of having a new bathroom installed with the works being arranged by the Council.

Appellant 1 felt that responses to the complaint from senior Officers at the Council had not directly addressed the issues raised, and were, she asserted, aimed at protecting Officers. She sought further detail on reference made in the Officer's report to the Council having spent £912 on additional works at their property.

The Legal Services Manager noted that the report indicated that it related to works to that made the wet room comply with current building standards. The Panel advised the Appellants they would take this issue up with the Officers.

In response to Members questions the Appellants confirmed;

- They considered that the Council had acted as their agent for the original adaptation works, and that their contract for the works was with the Council.
- They were happy with the redecoration work carried out in the kitchen which had been carried out by a second firm on behalf of C1.
- They had installed their own dehumidifiers to manage the damp issues at their property.
- They had not informed the external organisation who had funded the original adaptation works of the problems they had experienced and the remedial action which had been undertaken.
- They had not and did not wish to pursue legal action against C1.
- They had not asked Occupational Therapy to visit their property following recent works.
- They had not provided Officers with receipts for work they had undertaken.

In summing up the complaint Appellant 1 stated that the remedial work undertaken had not provided a like for like replacement of the original adaptation works and that the Council's response to the complaint had been insufficient.

They wished the outcome of the Panel to be that the Council provide and install new bathroom and kitchen facilities at their property and, that the Council reimburse them for the payments they had made for remedial works.

The Panel thanked the Appellants for their input and advised that they would be informed by letter of the Panel's decision. The Appellants left the hearing at 11:08am.

The Panel invited the Principal Health and Housing Officer, and the Housing and Public Health Officer to the meeting.

The Chairman gave a summary of the Appellant's complaint and asked the Officers to address each of the Appellant's concerns.

The Principal Health and Housing Officer explained that the Appellants had selected C1 to carry out the initial adaptation works from a list of three companies. The Council ordinarily levied a fee for administering the Disabled Facilities Grants, but in this case that fee had been waived. Works carried out under DFGs, were not directly overseen by the Council as the contract for those works existed between the contractor and the person who had received the grant, in this case the Appellants. In terms of signing off the work carried out, this was the responsibility of the Appellant, and the relevant documentation had been included in the report circulated to Members.

The Principal Health and Housing Officer appreciated that the DFG application process in place at the time the Appellants had received their grant, may not have clearly outlined who the contract for the works was with; therefore she accepted that the Appellants could reasonably have considered that the Council had acted as their agent in respect of the original adaptation works. She added that the Council's procedure in relation to DFGs had subsequently changed and that a framework of contractors was now in operation.

The Principal Housing and Health Officer informed the Panel that following receipt of the complaint from the Appellant, she had sought advice from the Council's Legal Services Team. She had subsequently written to the Appellants offering to provide remedial works through a contractor or a cash sum to enable them to undertake the works independently. She stated that the Council's principal concern had been to fix the problems experienced by the Appellants, and she appreciated the difficult situation the need for remedial works had created.

In response to a question from a Member, the Principal Health and Housing Officer advised that the cost of additional works funded by the Council, referred to in the report, had comprised the installation of a new grab rail and the cost of refitting the bathroom floor, which had been undertaken to make the water drain into the shower area more efficiently. It was explained that the room being a wet room was satisfactory before the additional works and meet with current building standards.

The Housing and Public Health Officer advised the Panel that the remedial works undertaken at the Appellants' property by C2 had comprised: correctly levelling the bathroom floor; installing a new drainage fitting into the preform tray underneath the floor; the installation of a new ventilation fan; installation of new waterproof wallboards in the wet room.

Turning to the issue of the replacement preform tray, the Housing and Public Health Officer informed the Panel that C2 had advised that it was not possible to source a tray of the same size as the one originally installed, however, the tray which had been fitted was sufficient to manage the water drainage from the shower. He had advised the Appellants that a tray of the original size could not be installed.

The Principle Health and Housing Officer informed the Panel that a shower curtain had been installed in the wet room at the request of the Appellant's Occupational Therapist, the Shower curtain provided by the Council had been weighted at the bottom to prevent it moving whilst the shower was in use.

Referring to the claim that the shower curtain prevented a chair being used to assist in showering, the Principle Health and Housing Officer explained that installing a chair had not been part of the original specification, had it been so, the chair would have been fitted to the wall of the wet room to limit the amount of space taken.

Responding to a question from a Member regarding damp in the bathroom, the Housing and Public Health Officer explained that the construction of the ceiling in the Appellants' property creates a natural void which is difficult to insulate. When condensation was created by using the shower, this area was prone to becoming damp, as a cold spot.

The Housing and Public Health Officer stated that he had advised the Appellants to ensure that insulation be inserted into this cavity to reduce the occurrence of damp, and noted that as part of the remedial works anti-fungal paint had been used in both the bathroom and the kitchen areas. Use of the ventilation fan was also important in minimising damp. The Housing and Public Health Officer explained that whilst each of the measures would not wholly prevent the occurrence of damp, only small patches would be created which could be remedied by wiping the affected area with a cloth.

The Principal Health and Housing Officer explained that the cause of the water leakage had been identified, by an independent assessment, as a defective batch of grouting which had been used on the tiles in the wet room which had originally been installed. The defect in the product was latent, and could not have been known by C1 at the time of installation. C1 had been willing to undertake remedial works in the wet room, however, the Appellants were not agreeable to this course of action.

Regarding the repair of the kitchen backboard units, the Housing and Public Health Officer explained that C1 had been instructed to carry out this work, which he

understood had been carried out, however, he had not visited the property to check the work.

The Panel thanked the Officers for their input and they left the hearing at 11:08am.

The Panel adjourned from 11:10am and reconvened at 11:30am

The Panel invited the Deputy Chief Executive and Director of Economic Development to the meeting.

The Chairman summarised the Appellant's complaint and the response given by the Principle Health and Housing Officer, and the Housing and Public Health Officer, and their request for the Officer to undertake a further site visit and report back to them.

The Deputy Chief Executive appreciated that this complaint had been active for a significant amount of time, and that it was important primarily for the Appellants but also for the authority that the matter was effectively addressed and brought to a close. He acknowledged that the Council's procedures and processing of DFGs at the time of the Appellants' application had led to their perception of the Council acting as a clerk of work, and agreed with Members that there was not sufficient clarity for each of the parties at the beginning of the process.

The Deputy Chief Executive felt that in an instance where DFG works turned out to be defective or unsatisfactory, the Council's procedures had placed the organisation in the difficult position of being in the middle of the contractor and the person whose property was being adapted.

The Director of Economic Development accepted that procedures for DFGs had not previously given the clear explanation of roles, which was necessary for each party's understanding of the process. She added that the Council had amended its policies and procedures in terms of processing DFGs. She added that if the perception of the Council's role by the Appellants was as clerk of works, the Council should follow through on that.

The Panel thanked the Officers for their input and they left the hearing at 1:04pm

The Panel felt that there were a number of areas regarding the condition of the Appellants property following the works undertaken which required clarification. The Panel instructed the Housing and Public Health Officer to conduct a site visit to the Appellants' property to ascertain the status of those areas and to provide them with a written report.

The Panel adjourned at 1:08pm on 4 July 2016.

The Panel reconvened at 10:00am on 29 July 2016.

PRESENT: Councillors Bloxham, MacDonald, and Paton.

OFFICERS: Legal Services Manager

Copies of the Housing and Public Health Officer's report on the site visit, and the response from Appellant 1 had been circulated to the Panel in advance of the meeting.

The Panel then considered the presentation from the Appellants, the evidence that had been presented to them, prior to and during the initial hearing, the Housing and Public Health Officer's report on the site visit, and the response from Appellant 1 and:

RESOLVED –(1) That the complaint not be upheld as there has been no maladministration by Council officers as they had acted professionally throughout and worked hard to assist the Appellant in difficult circumstances.

(2) Considering the Council's role as agent, the Panel consider it right that the Council should step in to assist in remedying the defective works and recommend that the following steps be taken:

- i. The Council instructs C1 to replace the back board to the kitchen unit. This should have been replaced in April;
- ii. The Council arranges for the kitchen ceiling to be repainted with the appropriate stain blocking paint;
- iii. The Council instructs C2 to review the effectiveness of the bathroom fan, particularly its use while the window is open, and to repair or replace the fan as appropriate during the contractual defects period;
- iv. The Council asks C2 to confirm whether the larger shower tray identified by the Appellants is suitable for use in the bathroom. If not, to provide the Council with the reason why it is not suitable. If it is suitable, to make arrangements for this to be installed at no cost to the Appellant;
- v. A Council Officer is present while the above works are carried out.

(3) That Council Officers review processes and procedures for administering Disabled Facilities Grant to ensure that recipients have a clear understanding of the contractual responsibilities of all parties involved.

(the meeting ended at 10:38am)