

Landlord's applications for DFG

The case for using landlord's applications more widely has been well put by Foundations: <https://wwwFOUNDATIONS.uk.com/library/housing-associations-and-home-adaptations/> (See the appendix below for an extract from the recent report.)

As a consequence there is now considerable interest in developing this approach amongst housing authorities. There are benefits to this as set out in the report.

There are however some issues and concerns which have arisen.

The history of landlord's applications

It has always been possible to make this sort of application. Prior to the 2002 Regulatory Reform Order (RRO), which abolished all grants except for DFG, it was not unheard of for a landlord to apply for a renovation or other statutory grant. Section 31 of the 1996 Act allows housing authorities to take into account the difference in the pre and post works rental income. This would clearly be at issue where a housing authority was providing a grant to a landlord as a result of which s/he would be able to charge a higher rent. Ferret's "Renovator" calculator has always provided a "net present value" calculator that authorities can use to arrive at the appropriate contribution.

Until recently, landlord's applications were an obscure dark art, rarely if ever used. One teaching example Ferret has used is where a disabled person lives in a dwelling belonging to a relative who lives abroad. The owner cannot make the standard owner's application as s/he will be "a person from abroad" and therefore not able to be an "applicant". However, there is nothing to prevent the owner making a landlord's application.

Nevertheless, a small number of authorities have used landlord's applications extensively, always with housing associations, benefitting from the increased speed around the administration of DFG and other advantages and sometimes explicitly in return for an agreement with the housing association that they will contribute towards the cost of works.

Overall, landlord's applications have been rare. It has been suggested by some of those who did make use of this route to renovation and other grants for landlords prior to the RRO that s.31 of the Act should have been removed along with the other grants by the RRO.

Is using landlord's applications "fair"?

It's often said that DFG is "tenure neutral" - customers are treated the same whether they are owners, tenants, park home dwellers, etc. That has perhaps been more of an idea than a reality. Ferret has already been approached by an authority who dealt with a case as a standard tenant's application and the customer was found not to be eligible for a grant on means-testing grounds. The customer then asked the authority to accept a landlord's application for the same works, as s/he had read online that no means-test would be applied in respect of a landlord's application.

Clearly if we have two customers who live in rented property and whose income situation is identical it does seem unfair if the one who is a private tenant is means-tested, but the one who

is a housing association tenant is not because there is an agreement that all applications from that housing association's tenants will be dealt with via landlord's applications.

Is there no means-test in respect of landlord's applications?

It is not clear that the common view that landlord's applications are outside the means-test is correct. The Housing Renewal Grants (Landlord's Applications) (England) Direction 1996 (which is given in full in the appendix) provides that:

"In determining the amount of grant (if any) where they approve an application to which section 31 of the Act applies ... the local housing authority shall take into account ... such other matters as seem to be relevant in all the circumstances"

This is very broad and would presumably allow a housing authority either to require a contribution from the landlord or even from the tenant.

Can a local land charge be placed on a dwelling which is the subject of a landlord's application?

Housing authorities are allowed to place charges under the terms of the 2008 General Consent (given in full in the Appendix). Although it is a common shorthand to refer to such charges only being placed in respect of conventional owner's applications this is imprecise.

The consent applies 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 term "qualifying owner's interest" is defined in s.19(4) of the Act which references s.19(1) and (3) and would most commonly apply where "the applicant has, or proposes to acquire, an owner's interest in every parcel of land on which the relevant works are to be carried out".

So one can assume that in almost every landlord's application case this condition would be met and a land charge can therefore be placed.

The Department has confirmed that this is their view: "a land charge can be made against an owner's application, and as landlords fall within that definition, a land charge can be made against a landlord's property".

Conclusion

There are clearly advantages to making more use of the landlord's application process but authorities should be aware of the issues considered above. It may need to be stressed that any consideration of means-testing landlords or tenants, and any decision to place land charges, are subject to the housing authority's discretion (they are "mays" not "shalls"). This amplifies the suggestion that authorities may wish to consider how they approach these issues within a discretionary housing assistance policy.

Appendix

Background documents:

Extract from the report on Housing Associations and Home Adaptations

Section 31 of the Housing Grants, Construction and Regeneration Act 1996

The Housing Renewal Grants (Landlord's Applications) (England) Direction 1996

Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008 (England)

Advantages of landlord applications

The arguments around landlord's applications, from:

<https://www-foundations-uk-com/library/housing-associations-and-home-adaptations/>

Advantages for the tenant:

- The tenant has one point of contact - their landlord.
- The landlord is made aware earlier that a tenant needs help with their home.
- It will initiate better discussions about housing options.
- It will reduce delays in getting consent and speed up the process.
- Removing the means test reduces paperwork.
- No means test will help more households go ahead with work - 23% currently drop out because they must pay a contribution.
- It treats housing association tenants the same as other social housing tenants who are less likely to be means-tested. It also gets rid of the post-code lottery due to some authorities removing the means test in their local Housing Assistance Policy while others still apply it.

Advantages for the landlord:

- Some will welcome the opportunity to take more control over the process.
- The 'contract' for completion of works is with the landlord and contractor (rather than tenant) so that they can control who completes works in their properties. It makes it easier if things go wrong either during or after works have been completed.
- Landlords will find it easier to top up the grant to get better designs.
- Landlords can do their own CRM compliance.

Advantages for the local authority:

- It makes it easier to resolve problems with the application process as there would be a named housing association contact on every form.
- It speeds up the process of dealing with paperwork and reduces delays.
- Authorities can reclaim specialised equipment when no longer needed, such as stairlifts.
- Local authorities can retain nomination rights for a period of five years to make sure DFG investment is protected and adapted properties are relet to other disabled people.
- Agreement about future maintenance could become part of the contract.
- If more associations took over project management, it would reduce the workload allowing authorities to focus on owner occupiers and private tenants who otherwise have little support
- Local authorities retain control of the funding to meet their statutory duties.

Disadvantages of landlord applications

Disadvantages for the tenant:

- Tenants have less support if an application is refused by the landlord, or they did not agree with the adaptation work proposed.

Disadvantages for the landlord:

- Although many associations will welcome the chance to have more control by managing adaptation work themselves it will require more staff resources and the right contractors - many will still prefer the local authority or HIA to manage the work.

Disadvantages for the local authority:

- There would be an impact on DFG spending in some areas if the means test was removed. However, as contributions are often quite small, removing the test might not add much to overall costs.
- There would be a loss of the local authority agency fee if associations take over project management.
- If housing associations take over more of the process, they will need to provide output and outcome data for DFG cases so authorities can show they are meeting their statutory duty and can make the annual DELTA statistical return to DLUHC.

Housing Grants, Construction and Regeneration Act 1996

Determination of amount of grant in case of landlord's application.

31. - (1) This section applies to an owner's application in respect of works to a dwelling which is or is intended to be let, or to the common parts of a building in which a flat is or is intended to be let.

(2)

(3) The amount of the grant (if any) shall be determined by the local housing authority, having regard to-

(a) the extent to which the landlord is able to charge a higher rent for the premises because of the works, and

(b) such other matters as the Secretary of State may direct.

(4) The authority may, if they think it appropriate, seek and act upon the advice of rent officers as to any matter.

(5) The Secretary of State may by regulations make provision requiring any information or evidence needed for the determination of any matter under this section to be furnished by such person as may be prescribed.

The Housing Renewal Grants (Landlord's Applications) (England) Direction 1996

The Secretary of State for the Environment, as respects England, in exercise of the powers conferred on him by sections 31(3)(b) and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996 ("the Act"), hereby makes the following Direction;-

Citation and commencement

1. This direction may be cited as the Housing Renewal Grants (Landlord's Applications) (England) Direction 1996 and shall come into force on 17 December 1996.

Determination of landlord's grants

2. In determining the amount of grant (if any) where they approve an application to which section 31 of the Act applies (determination of amount of grant in case of landlord's application), the local housing authority shall take into account, in addition to the matters referred to in section 31(3) (a) of the Act, such other matters as seem to be relevant in all the circumstances, having regard in particular to any relevant policy contained in their published strategy (if any) for private sector housing in their area.

Application

3. Paragraph 2 shall not in effect in relation to applications for grant made before 17 December 1996.

Signed by authority of the Secretary of State

C L L Braun

Assistant Secretary, Department of the Environment

2 December 1996

Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008 (England)

The Secretary of State for Communities and Local Government in exercise of her powers under sections 34(6)(b), 46, 52 and 94 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act") gives to all local housing authorities in England the following general consent:

Citation and commencement

1. This consent may be cited as the Housing Grants Construction and Regeneration Act 1996: Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008 and shall come into force on 22 May 2008.

Interpretation

2. Words and expressions used in this consent shall, unless the context otherwise requires, take the same meaning that is given to them in the Act.

Consent

3.-(1) Where -

(a) a local housing authority approves an application for a grant under Part 1 of the Act;

(b) the grant is for a sum exceeding £5,000; and

(c) 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 impose the conditions (or conditions to like effect) contained in paragraph (2).

(2) The local housing authority may demand the repayment by the recipient of such part of the grant that exceeds £5000 (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.

Application of Section 52 of the Act

4. The conditions in paragraph 3 are local land charges and are binding on any person who is for the time being an owner of the dwelling or building.

Signed by authority of the Secretary of State for Communities and Local Government

Terrie Alafat

A Senior Civil Servant in the Department for Communities and local Government

8th May 2008

[NB The Welsh equivalent is identical but does not contain the £10000 limit in 3(2)]

Ferret Support

If you have any queries about DFGs or the updates or use of our software, please telephone our Helpline on 029 2064 4444. Alternatively, our website contains answers to FAQs, plus information about our products and solutions, training courses, news items and more.

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