

Housing

Ombudsman Service

REPORT

COMPLAINT 202205089

Newark and Sherwood District Council

30 May 2023

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about the landlord's handling of:
 - a. Adaptations following occupational therapist (OT) assessments;
 - b. A rehousing request.

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.
3. After carefully considering all the evidence, in accordance with paragraph 42 of the Housing Ombudsman Scheme, the following aspect of the complaint is outside of the Ombudsman's jurisdiction:
 - a. Rehousing request.
4. Paragraph 42(k) of the Scheme says the Ombudsman will not investigate complaints which, in the Ombudsman's opinion, "fall properly within the jurisdiction of another ombudsman, regulator or complaint-handling body".
5. The resident wants to be permanently moved to alternative accommodation. The information seen suggests her request is based on health/welfare grounds.
6. Part 6 of the Housing Act (1996) governs the allocation of local authority housing stock in England. It sets out the circumstances where reasonable preference must be given to certain applicants, when making decisions about offers of

property. The reasonable preference criteria include applicants living in unsuitable conditions and applicants who need to move on medical or welfare grounds.

7. The Housing Ombudsman can only consider complaints about transfer applications that are outside of Part 6 of the Housing Act (1996). The Local Government and Social Care Ombudsman (LGSCO) can review complaints about applications for rehousing that fall under Part 6. This includes complaints concerning applications for rehousing that meet the reasonable preference criteria and the assessment of such applications.
8. Since the resident's rehousing request falls within Part 6 of the Housing Act (1996), it cannot be reviewed by the Housing Ombudsman. As a result, this aspect of the complaint is better suited to the LGSCO. This Service can consider the resident's other concerns.

Background and summary of events

9. The resident is a secure tenant and the tenancy began in January 2019. The property is a three bedroom semi-detached house with a garden. He occupied the property with his partner and two children. He is in the process of separating with his partner and moving to separate accommodation
10. The landlord's aids and adaptations policy says:
 - a. On receipt of a major adaptation referral, it will determine whether there is 'under occupation at the property... If the decision is made that it is not reasonable and practicable to carry out a recommended adaptation... [the local authority] will endeavour to offer suitable alternative accommodation that meets a customer's needs as soon as reasonably possible'.
 - b. A complex adaptation includes where 'costly structural works' are needed to meet the needs of the person.
 - c. Factors in determining whether the landlord would undertake extensive adaptations include: 'the extent to which the property is capable of being adapted...availability of suitable alternative accommodation... the degree of occupation in the premises... the extent to which the tenant is complying with the tenancy agreement'.
 - d. Major adaptations are generally defined as works costing £350 or over in value.

Summary of events

11. On 19 September 2018, prior to the start of the tenancy, an initial occupational therapist attended the property and completed an assessment in relation to the resident's needs. They said:
 - a. The resident and family should have a four bedroom property, but a three bedroom property with two rooms downstairs would also be acceptable.
 - b. A ground floor toilet was a minimum requirement.
 - c. A shower over the bath would be acceptable.
12. The landlord deemed the property to comply with the OT's assessment of the resident's needs.
13. There is a gap in the timeline until 20 May 2020 when the OT responded to a major adaptations referral for the resident's partner. They recommended:
 - a. Widening the front door.
 - b. Ramp access to front door.
 - c. Replacing the stair lift.
 - d. Providing vehicle 'hard standing' to front/side of the property.
14. The landlord wrote to the resident on 31 July 2020. It said that following the OT's recommendation, it was evident that "complex adaptation work" was required to meet the resident's needs. In the first instance it would look for suitable accommodation that met these needs or could be easily adapted. The case would be reviewed regularly until the end of the year, when the resident would be updated. It offered to install the stairlift in the interim.
15. The landlord wrote to the resident on 7 September 2020 and said the "installation of a driveway, crossover and ramp" was completed the previous week; a new stairlift had been ordered; a replacement front door had been ordered and would be installed in approximately three weeks. Further, that it would not be carrying out any further adaptations as the family composition had changed, with only one child living with the resident and his partner. As a result rehousing could be more appropriate.
16. Notes from the landlord's internal systems recorded the stair lift as replaced on 2 October "albeit the existing one was in full working order", and the door also fitted in October 2020.
17. From October 2020 to August 2021 the landlord's internal email records show frequent communication with the resident, usually on the phone or in person. The contact covered a range of issues, including boundaries and fencing, parking, fly tipping, abandoned vehicles, pest control, exterior works to outhouses and

reports of repairs needed to the adaptations carried out. The repairs were completed by the landlord.

18. An internal email from the landlord on 28 September 2021 said it had been decided that it would only be carrying out essential repairs at the property due to the resident's "constant harassment" of the landlord and its contractors. Internal emails record numerous instances where the resident had shouted at, or been abusive to, the landlord and its contractors.
19. The OT provided a major adaptations referral for the resident's partner on 28 September 2021. They acknowledged some administrative delays at the council. They said they were awaiting further medical information to "advise on longer term prognosis and wheelchair use". They recommended:
 - a. Level access to an appropriate ground floor toilet.
 - b. Provision of a level access shower facility.
 - c. Level access to rear garden.
 - d. Replacement of window in dining room to be replaced with a door.
20. The OT emailed the landlord on 1 November 2021. They said:
 - a. They had emailed the resident's partner's doctor for medical information that she was going to become a fulltime wheelchair user as the family said they required "full ground floor access and facilities...there is currently no evidence to support this view".
 - b. A significant amount of work has been done to this property already and that unless additional works were minor, it may be more realistic to review whether this a suitable property in the long term.
21. The resident raised a stage one complaint on 1 November 2021. He said:
 - a. He and his partner were living in a property that no longer met their needs as she was disabled.
 - b. His partner cannot go up and down stairs and has to use the outdoor toilet to wash.
 - c. He requested rehousing or for the current property to be adapted, but this had not been done.
 - d. The landlord was discriminating against his partner due to her disabilities.
 - e. The landlord had not responded to his calls.
22. The landlord acknowledged the complaint the same day and said it would reply within ten working days.

23. The landlord issued a stage one response on 11 November 2021. It said:
- a. It was in receipt of a major adaptation referral from an OT, which recommended:
 - i. Adapting the first floor bathroom to provide a level access shower.
 - ii. Providing a ground floor accessible toilet.
 - iii. Replacing the dining room window with a door to access the rear garden.
 - b. It deemed the request to be of a complex nature. In line with its policy, it would discuss more suitable housing options that better met the resident's needs.
 - c. The case would be discussed at the 'extensive adaptation panel' meeting which would provide its decision.
 - d. It had already carried out significant adaptations to the property including installing two different types of stair lift.
 - e. A senior member of the responsive repair team would call the resident once a week to update on outstanding works highlighted in the email dated 1 November 2021 until the repairs were completed.
24. Notes from an internal meeting in January 2022 recorded the resident being offered a three bedroom void bungalow, which was rejected as he wanted to remain in the same area. The notes added the resident requested a five bedroom house with split ground floor reception rooms, of which there were only a few in the area. Further, the OT was "struggling to get a long term medical prognosis" in relation to the occupants' needs.
25. The landlord emailed the resident on 7 March 2022 and said that it was searching for a suitable alternative property for him. It said he was eligible for a three bedroom property and his "insistence" on a four bedroom property had hindered the process. Further that while the resident was working towards the return of his other children, until this was confirmed by the courts, they would not be considered as part of the referral.
26. The resident called the landlord to escalate the complaint to stage two on 10 March 2022. The landlord summarised the discussion in an email to the resident on 14 March 2022. It said the resident:
- a. Wanted the landlord to take into account his mother coming to live with him and his three children, who did not live at the property, returning home, when considering his housing needs.
 - b. Felt current adaptations were taking too long and the landlord has delayed deliberately.

- c. Had to make multiple complaints against council staff, including for discriminatory comments made against his partner. He said he received £5000 worth of fencing in compensation as a result.
- d. He had been trying to contact a member of staff at the landlord for six months but received no call back.
- e. Questioned what the aids and adaptations budget had been spent on during the pandemic as no work was carried out.
- f. Was unhappy it had not completed any further adaptations in favour of moving him to more suitable accommodation.
- g. As a result he wanted the landlord to either:
 - i. Build him a four bedroom property to suit his needs and for it to be gifted to his children, so his benefits were not affected. This had to be completed by August or September.
 - ii. Or, adapt the existing home to include “double parking with car port, open plan kitchen diner, downstairs wet room, underfloor heating, air source heating and PV panels and a downstairs double bedroom”. Ideally this should involve knocking through to the attached property to make one property. He added he would not move during the works and this needed to be completed by August or September.
- h. Upon receipt of his partner’s medical records he would take legal action against the landlord and seek damages of £4million plus the build of a new four bedroom property.

27. The landlord issued a stage two response on 31 March 2022. It said:

- a. It was only able to take the resident’s current housing needs into consideration when searching for an alternative property. If his mother and children were to join him this could be reassessed, but given the limitations of current stock, he should not worsen his circumstances by bringing in other family members who are adequately housed elsewhere.
- b. An OT provided guidance at the time the resident signed up. They said the resident required either a 4 bed house or a 3 bed house with two downstairs rooms; a ground floor toilet and a shower over bath. The property complied with these requirements.
- c. All adaptations recommended in May 2020; namely: to widen the front door, provide ramped access, install a stairlift and create a hard standing for a vehicle were all completed and the case closed in August 2020.
- d. The resident’s request to install patio doors would not proceed as the landlord had not received a referral from the OT.

- e. A second OT referral was received in “November” 2021. The OT confirmed the delay was with the council’s admin team and not the landlord. This referral was to provide level access to an appropriate ground floor toilet; provide a level access shower facility and level access to rear garden by replacing the window in the dining room with a door.
- f. The landlord would try to find a suitable alternative property due to the cost of the complex adaptations. The resident was advised of the same.
- g. The resident was offered a three bedroom bungalow which was declined as it was not in the same area as the current property.
- h. The OT had been unable to obtain a long term prognosis for his partner so even if the adaptations were done, the property may still not be suitable.
- i. There was no evidence of a complaint against staff resulting in a fence being erected at the property.
- j. Due to a problem with the email address, some emails were not received from the resident. This was now fixed. However, the delay was not six months and it did not affect the discussions had.
- k. The OT referral was received in November 2021 and would have been allocated to that year’s budget. At the time of receipt the budget was completely committed.
- l. The OT referral commenced conversations about the adaptations.
- m. It was normal practice to look to alternative stock in response to wider challenges of adapting homes.
- n. It proposed the following in relation to adaptations:
 - i. The downstairs outside toilet is not suitable to be remodelled into a modern toilet.
 - ii. The OT was happy to meet the resident’s partner to try alternative stair lifts.
 - iii. The OT would provide a commode to assist with emergency toilet needs while it would see what further changes are required to the existing bathroom.
 - iv. The door to the rear would not be considered until the rear garden was cleared as it cannot be accessed by his partner or son. This was also a breach of tenancy.
 - v. There would be one point of contact and prescribed updates provided by the landlord as previous conversations had been “overwhelming” for landlord staff.
 - vi. It would let the resident digest the response and then attend the property with a local counsellor on 12 April 2022 before closing the complaint.

28. The OT issued a housing needs assessment on 14 June 2022 in relation to the resident's partner's needs. They recommended a home, either from rehousing or adaptation, that has:

- a. Accommodation on one level or a vertical lift.
- b. Level access.
- c. No steps between rooms.
- d. Internal doors that can be widened to 840mm.
- e. Minimum three bedrooms.
- f. Level access shower facility.
- g. If a vertical lift was installed, a toilet would be required to both floors.
- h. Kitchen to have a raised housing for oven, accessible storage, lever taps, space for a perching stool.
- i. Adequate central heating.
- j. Off road parking for mobility vehicle.
- k. Access to a secure garden.
- l. Accessible power sockets, controls and switches.

29. Minutes from a meeting between the landlord and resident on 23 June 2022 recorded:

- a. It was not disputed the OT was responsible for some of the delays.
- b. The resident said the stairlift was not safe and tilted forward.
- c. The landlord offered to clear the garden and recharge the resident. The resident said he wants to go through everything in his own time but would not be doing so due to the 'mouse/rat infestation'.
- d. The resident said adaptations to the following areas had been completed at that point:
 - i. The driveway.
 - ii. The front door.
 - iii. The ramped access.
- e. The resident requested the dates that the remainder of the adaptations would be complete.
- f. The resident had baited various areas of the property for pests.

30. The landlord issued the resident with a notice of contravention of tenancy conditions on 15 September 2022. This was in relation to the condition of the

garden at the property. Supporting photographs show a large amount of timber, pallets and other materials present. The notice added there was a second caravan parked at the property for which the resident did not have permission to store.

31. The landlord wrote to the resident on 1 September 2022. It said:

- a. It understood the resident and his partner were planning to separate.
- b. Two of the children were going to live with the resident's partner away from the property.
- c. The resident was going to stay at the property until he could find smaller, more affordable accommodation.
- d. The adaptations were designed for the resident's partner and only one bedroom would be used, so it would not be the best use of the property.
- e. The resident would be entitled to a one bedroom property, in accordance with its allocations policy. It noted the resident's housing application.
- f. It would not be carrying out any further adaptations to the property. A total of £14,564.22 was spent on existing adaptations.

32. The OT issued a housing needs assessment on 31 October 2022 for the resident. The recommended:

- a. Ground floor accommodation on a single level.
- b. Two bedrooms for when children visit.
- c. Shower over bath and toilet grab rail.
- d. Maximum two step access.
- e. Central heating.
- f. Off road parking.
- g. Fenced garden.

33. The resident contacted this service on 19 December 2022. He said:

- a. He was expecting the landlord to knock through to the neighbouring property to address the medical needs of the family.
- b. There was an ongoing pest problem to the outbuilding.
- c. He wanted alternative accommodation or the adaptations completed.
- d. Alternatively he wanted "several million pounds" compensation.

34. The landlord's legal department wrote to the resident on 17 April 2023. It said:

- a. As the resident's relationship with his partner had broken down, it would correspond with them separately in relation to their housing applications. It noted they both still resided at the property.
- b. An OT determined two bedroom properties with ground floor toilet facilities were suitable for his needs and that he had "been awarded medical band 2" based on his circumstances.
- c. He needed to bid on suitable properties when they become available and that the current property needed to have passed a transfer inspection first. The property had failed a transfer inspection and he would not be permitted to move until it passed.
- d. He had been verbally abusive to its staff in a recent telephone call. Should any further abuse occur, all contact would be through email.
- e.

Assessment and findings

35. The parties discussed the possibility of a "mouse/rat infestation" and the landlord attended the property to undertake control measures. However, this did not form any part of the complaint and therefore did not give the landlord an appropriate opportunity to address any concerns. In the absence of any evidence to show a complaint handling failure, this part of the complaint will not be considered as part of this process. If this issue persists, the resident should raise this in a formal complaint to the landlord.
36. It is recognised that this situation was distressing for the resident. He was seeking adaptations to improve the quality of life for his family.
37. The timeline shows a decision by the landlord to only progress essential repairs from September 2021 due to the "constant harassment" of the landlord and its contractors by the resident. While the situation was frustrating for the resident, the timeline shows a number of instances where the resident shouted at the landlord and its contractors. This was not appropriate.
38. The timeline shows an OT assessment of the property before the resident moved in, in relation to the occupant's circumstances. The landlord determined that the property was suitable for the resident and in accordance with the specifications set out by the OT. The resident did not dispute the property's suitability when the family moved in.
39. A further OT assessment was carried out in May 2020. The OT recommended widening the front door to a minimum opening of 860mm; ramp access to front door; a replacement stair lift; and a vehicle 'hard standing' to front/side of the property. The landlord notified the resident that as the recommended adaptations were 'complex' it would seek suitable alternative accommodation in the first

instance. This was in accordance with its aids and adaptations policy. It also fitted the stairlift in the interim. This was a reasonable step which assisted in facilitating the resident's partner's mobility. It was also in accordance with its policy and OT recommendation.

40. While the landlord's policy shows it has discretion in relation to complex adaptations and was entitled to seek suitable alternative accommodation for the resident, it proceeded to undertake the initial adaptations recommended by the OT.
41. The landlord completed the installation of a driveway, crossover and ramp, as recommended. Further, it had ordered a new front door, which was subsequently installed. A replacement stair lift was also ordered. The door and stair lift were recorded as fitted on 2 October 2020. This was an appropriate response to the OT recommendations and completed the adaptations required.
42. While the works were completed nearly five months after the recommendations were received, these were not day to day repairs and required planning. It should also be noted that the preceding COVID-19 lockdown would have impacted the landlord's works program. Therefore, the time period was not unreasonable, considering also the landlord's policy which said it was able to seek suitable alternative accommodation for the resident and was silent on timescales. Further, there was already a previously fitted stair lift in situ, which was noted as being in a good condition.
43. The OT provided a major adaptations referral for the resident's partner on 28 September 2021. It recommended: level access to an appropriate ground floor toilet; provision of a level access shower facility; and level access to the rear garden; replacement of the dining room window with a door. While these adaptations were recommended by the OT, they added that supporting medical evidence had been requested and was outstanding, and that it may be more realistic for the occupants to be rehoused.
44. The landlord said it would not be carrying out the adaptations and it confirmed its intention to seek alternative accommodation for the occupants. The landlord's policy defines these recommendations as 'major adaptations'. The policy provides examples of when alternative solutions may be a more reasonable or practicable option. Factors affecting the decision as to whether an adaptation was reasonable or practicable included: the cost of the work; availability of suitable accommodation; the degree of occupation in the premises; and the extent to which the resident is complying with the tenancy agreement.
45. While the landlord has not provided a cost assessment of the works recommended, it explained that it had already spent £14,564.22 on adaptations

and provided a replacement stair lift. It was evident that cost was a consideration when determining the reasonableness and practicality of the recommendations.

46. The landlord offered the resident alternative accommodation, which was rejected as he wished to remain in the same area. This was understandable. However, the fact the landlord did find suitable alternative accommodation, demonstrated that it was possible for the resident to move. Therefore it was appropriate for this factor to be considered under the requirements of its policy.
47. The household consisted of the resident, his partner and two children at the start of the tenancy. It is understood that one child no longer lived at the property. It was appropriate for the landlord to hold the position that the occupancy to room ratio was different to that at the start of the tenancy and as such the housing need had changed. While the resident said others may join him to live at the property, the landlord was reasonable in notifying the resident that it was the current, not prospective circumstances that may be taken into consideration when assessing the housing need.
48. The landlord contacted the resident on various occasions from October 2021 to discuss the condition of the garden and the construction of outhouses without permission, fly tipping and abandoned vehicles at the property. These were in contravention of the tenancy agreement. It was therefore reasonable for this to be a factor for consideration when assessing the reasonableness or practicality of adopting the recommendations for adaptations.
49. In summary, the landlord acted appropriately and in accordance with its policy following the recommendation for complex adaptations. It was entitled to rely on the factors listed for consideration when determining whether complex adaptations were both reasonable and practicable. Its decision to pursue alternative accommodation was reasonable in consideration of the circumstances of the case.

Determination (decision)

50. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration in relation to the landlord's handling of adaptations following occupational therapist (OT) assessments.

Reasons

51. The landlord acted appropriately and in accordance with its policy which gave it discretion as to whether it would carry out complex adaptations or seek suitable alternative accommodation. The landlord demonstrated a reasonable approach to adaptations by completing earlier complex adaptation recommendations. However, it was entitled to rely on its policy when deciding on the

appropriateness of carrying out further complex adaptation recommendations at the property.

Recommendations

52. The landlord should consider reviewing its complaint responses in this case. Complaint responses should focus on responding to the issues raised and should not be used to highlight other issues such as resident behaviour. Such issues should be raised separately under the relevant procedures.