

REPORT

AND

Havering Council

13 February 2019

Report prepared by

Our approach

It is the Ombudsman's duty under the Housing Act 1996 to consider a case and to decide what is fair in all of the circumstances. We consider the evidence and look to see if there has been any maladministration, for example whether the landlord has failed to keep to the law, follow proper procedure, follow good practice or behave in a reasonable and competent manner.

Both the complainant and the landlord have submitted details to the Service and these have been carefully considered in this investigation. 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.

Complaint definition

1. The complaint concerns the Council's response to the complainant's reports of noise from the flat above.

Background and Summary of Events

2. At the time of the complaint (and until August 2018) the complainant and her husband were the secure tenants of a local authority ground-floor flat.
3. Over a period of several years the complainant made reports to the landlord ('the Council') of noise from the occupants of the tenanted flat above, particularly the sound of footsteps and furniture being moved across a laminate floor. She also reported some minor anti-social behaviour (such as parking issues) from the same neighbours, but this did not form part of the complaint brought to the Ombudsman,
4. The complainant's husband is disabled and so is largely confined to the flat, resulting in him being more regularly and acutely affected by any noise.
5. The Council's tenancy officer held meetings between the parties. These meetings appeared to initially resolve the problems, but the complainant reported that the noise escalated again after these meetings.
6. The Council required the neighbours to remove laminate flooring that they had installed (date unknown), as this was in contravention of the terms of their tenancy agreement. The neighbours complied with this requirement and removed the flooring.
7. In 2016 the neighbours of the flat above bought the leasehold interest of their property. The lease did not contain a specific prohibition against laminate

flooring but did require the leaseholder *'To provide carpets or such other suitable floor coverings to the floors ...'*.

8. The complainant continued to report excessive household noise. The Council installed noise monitoring equipment in 2017, but no significant results were recorded. The complainant believed that this was because the neighbour was aware of the installation and reduced the noise level until the equipment was removed.
9. On 29 June 2017, the complainant made a formal complaint to the Chief Executive about the Council's failure to take adequate and timely action to minimise the noise over the past seven years. She further complained that the Council should have acted more quickly and should have provided alternative accommodation.
10. The complainant acknowledged that the Council had put in sound monitoring equipment and insulated the ceilings, and *'The council told the tenant to remove the laminate flooring and he did so'*. She was *'vety grateful'* for this but still found the noise of feet to be a problem. She was also aware that the neighbour had since bought the flat and re-installed laminate flooring (or similar) although they planned to buy mats.
11. On 4 July 2017 the complainant's daughter wrote to the Council in support of her parent's complaint and their application to be transferred to a one-bedroom bungalow (due to the noise). She stressed the impact that the noise was having on her father's health.
12. The Council's Tenancy Sustainment Manager, investigated the complaint and sent a stage 1 response on 14 July 2017, stating that:
 - Reports of noise and other issues had been investigated previously by the Council, *'but to enable me to have a full picture of the history and actions that have been taken previously'* the manager planned to discuss the complaint with his colleagues.
 - The complainant's daughter had asked for her parents be moved to live closer to her in a neighbouring council's area. The daughter had said that she had contacted the neighbouring council and was told that they would consider receiving a 'nomination' from the landlord. *'I am sorry to inform you that this was incorrect advice ... [the Council] does not have a scheme of nomination and [the neighbouring council] do not accept these. My Complaints Officer... telephoned the Housing Needs Team in [the neighbouring council] who confirmed this. What they can consider is for you to apply to go on their Housing Register and bid for suitable properties. You are able to do this as there is a local connection through your daughter living in the area.'*

- The complainant was on the Council's housing register and could bid for more suitable properties in the borough, including sheltered accommodation, or could consider a mutual exchange.
13. On 10 November 2017, the complainant emailed the Council and a councillor about the noise; this was treated as an addition to the complaint already raised, rather than a new complaint.
14. There was no further correspondence about the formal complaint until March 2018, although the complainant was in regular contact with the Council's Tenancy Sustainment Officers. On 8 March 2018, the complainant's daughter wrote to the Council to request a meeting (in the presence of the family solicitor) to discuss the options available her parents.
15. Following correspondence from the Housing Ombudsman Service, the council agreed (in March 2018) to review the complaint at Stage 2 of its procedure. The Council informed the complainant's daughter that, as the issues raised by her parents were still under investigation, it would be inappropriate at that time to agree to her request for a meeting in the presence of a solicitor.
16. On 26 March 2018, the Chief Executive sent the complainant the Council's stage 2 response, stating that:
- The complaint concerned the noise which *'you believe you experience as a consequence of the recently installed laminate flooring in... [the flat above]. The residents ... previously installed laminate flooring when they were tenants, which was a breach of their tenancy agreement. The council took action to remedy the situation.'* The neighbours had bought the leasehold of their property and *'and are no longer bound by the terms of the previous tenancy agreement. The lease has no prohibition against the installation of laminate flooring and this would not, on its own, be cause for the council to take action.'*
 - The Tenancy Sustainment Officer, and Home Ownership Manager had visited the complainant and had also visited the neighbour, to try to reach a resolution to the issues.
 - The Council's officers had seen evidence that the insulation beneath the neighbours' floor had been improved. The neighbours also confirmed that they had taken steps to reduce any noise nuisance, including some loose carpets, and they did wear outdoor shoes when walking on the floor. The Council had advised them of some further steps they may wish to take to mitigate any noise nuisance and they had agreed to consider these.
 - Noise monitoring equipment was installed in 2017 but failed to register a level of noise significant enough to constitute a statutory nuisance. *'You believe this may have been because the family were aware of the installation and took steps to minimise the noise until the equipment was removed'*. The Council had discussed a second monitoring exercise with

the complainant and *'if you would like to take advantage of this please confirm to [the Council's officer]'*.

- Whilst preferring to remain in the property, the complainant had said she was willing to consider moving to a smaller property. *'You remain on the council's Housing Register and have been allocated a priority code of... which is the highest category other than for Emergency Housing requirements'*. The level of priority was enhanced by the willingness to downsize and by medical needs. However, the preference for a bungalow and a particular area limited the available choices.
- The Council was not actively looking to identify a property. It was the complainant's responsibility to monitor the Choice Based Lettings Scheme and bid for any suitable property: *'If you are uncertain how to do this please ask [the Council's officer]'*.
- The Council would agree to the request made by the complainant's daughter to hold a meeting with a senior council official. The Interim Assistant Director of Housing *'has agreed to facilitate such a meeting but this would be for the parties directly involved only and would not include [the complainant's daughter's] solicitor'*.
- The Interim Assistant Director of Housing was also willing to facilitate mediation between the complainant and her neighbours, should she feel this may be beneficial.
- *'I am satisfied members of the Housing team are doing everything possible to ensure the nuisance you believe you are experiencing is minimised... I do not uphold your complaint at Stage 2....'*

17. The landlord has explained that, although the complainant agreed to a further period of noise were frequently absent from the property and not present for periods long enough for the equipment to be effectively operated.

18. The complainant replied to the Chief Executive on 26 March 2018 and said that she did not agree with his stage 2 response. She considered the noise to be unacceptable and required a move. She said that she had tried mediation with the neighbours: *'but nothing will work with us living underneath a wooden floor'*.

19. The complainant wrote to the Council again on 4 April 2018, repeating her request to be moved to a more appropriate property. She indicated that she would accept a smaller property and had considered sheltered accommodation, but her preference was to move to an area closer to her daughter.

20. The complainant asked to escalate her complaint. In response, on 6 April 2018, the Council asked her to complete an escalation request form, setting out which elements of the stage 2 response she disagreed with and what outcome she wished to achieve from a stage 3 Member Review Panel

hearing. The complainant repeated her escalation request by e-mail on 18 April 2018, but did not complete the escalation request form.

21. On 20 April 2018 the complainant emailed the Council to say that she would accept the offer of further mediation. She said that she would like this to go ahead as soon as possible because *'we just want to be able to live peacefully, we are currently looking for alternative accommodation more suited to my husband's needs but meanwhile this would be very helpful. I still would want to take up stage 3 but if anything can be done to help us that's all we want.'*
22. On 25 April 2018 the complainant emailed the Council to say that her husband's health had worsened and was of great concern. She no longer wished to escalate the complaint to stage 3 but *'...am asking that you assist us in anyway you can to take up retired/sheltered accommodation. We are registered with... [a housing association in a neighbouring borough] and are on their housing list too'.*
23. On 27 April 2018, the Council repeated its offer to the complainant's daughter to facilitate a meeting, but not one that involved the solicitor.
24. The complainant and her husband registered with a housing association which provided sheltered housing and moved into a new tenancy with them (in the same local authority area) in August 2018.
25. On 17 August 2018 the complainant explained to the Housing Ombudsman that she and her husband had accepted the offer of a housing association tenancy due to the noise, although the new property was not entirely suitable to their needs. She said that she would like the Ombudsman to investigate her complaint and, as an outcome, would like the Council to apologise and amend its policy, so that residents on upper floors in converted houses (whether leasehold or otherwise) were not allowed to have wooden flooring, and for carpets to be mandatory.

Assessment and Findings

26. It is clear that the complainant and her husband were distressed by the noise from the flat above and the effect on them, which was exacerbated by the poor health of the complainant's husband. The Ombudsman's role is to assess the adequacy of the Council's response to the reports of noise and its responses to the formal complaint, in light of its obligations under legislation, the tenancy agreement and neighbour's lease, and its own policies.
27. There is no evidence that the noise was caused deliberately by the neighbours with the purpose of causing distress or annoyance to the complainant and her husband. However, everyday family noise (such as

walking and moving furniture across flooring) can cause disturbance and annoyance, and a landlord should investigate such reports and consider what actions it is able to take to remove or reduce the problem.

28. In this case, the Council took a number of steps to investigate and address the complainant's reports. The Council's officers visited the properties concerned, discussed the issue with both parties, and facilitated mediation. There was also regular contact between the complainant and the Council's Tenancy Sustainment Officers.

29. The Council required the neighbours in the flat above to remove laminate flooring, in line with the requirements of their tenancy. However, the neighbours bought a leasehold interest in the property in 2016 and decided to reinstate the laminate flooring. Some leases explicitly prohibit laminate flooring in flats above the ground floor- but this was not the case in this instant.

30. The neighbours' lease did require the leaseholder to *'provide carpets or such other suitable floor coverings to the floors ...'*. There is no further definition of this clause within the lease, to determine what type of floor covering might be *'suitable'*. It is not the Ombudsman's role to construe the meaning of terms in a lease – this would be the role of a court or tribunal.

31. The Ombudsman's role is to assess the reasonableness of the Council's response. There is evidence that the Council discussed the noise, and how it could be mitigated, on a number of occasions with the neighbours, and discussed floor coverings- which the neighbours agreed to provide.

32. The Council acted appropriately by providing the complainant and her husband with details of how they could apply for a move to another property, either with the Council or with another social landlord. The Council was not obliged to directly arrange a transfer of tenancy for the complainant and her husband.

Determination

33. After carefully considering all the evidence, and in accordance with the terms of paragraph 42 of the Housing Ombudsman Scheme ('the Scheme'), I confirm that there was no maladministration by the Council in relation to the Council's response to her reports of noise from the flat above.

Reasons

34. The Council took appropriate steps to investigate the reports of noise and established that the noise was not a statutory nuisance and did not find evidence of it being deliberately targeted at the complainant. The Council took

steps to resolve the issue, including through visits and mediation, and through enforcing the terms of the neighbours' tenancy. It also subsequently sought to ensure that the neighbours complied with the terms of their lease.

Recommendation

35. It is recommended that the Council considers reviewing the terms of leases that it grants, to clarify the position regarding laminate or other hard flooring and floor coverings in flats above the ground floor- which may affect noise transmission to a property below.