

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 21st January 2019
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WARD(S): Central
PORTFOLIO: Cabinet member for corporate finance and housing – Cllr Nazir

PART I **NON-KEY DECISION**

NOVA HOUSE; UPDATE ON PROGRESS

1 Purpose of Report

- 1.1 Nova House is a block of 68 apartments in the town centre, converted from offices to residential accommodation in 2015. Following the tragic fire at Grenfell Tower on 14 June 2017 the cladding at Nova House failed two flammability tests and further survey work during the summer and autumn of 2017 revealed significant defects with the compartmentation within the building.
- 1.2 During September 2017 the level of defects within the building was such as to lead both the Royal Berkshire Fire and Rescue Service (“RBFRS”) and the Council to question whether the building could continue to be occupied. Throughout this period the Council and RBFRS were in regular contact with the then owners of the building and began to have concerns about their capacity to undertake the substantial remediation work required to the building.
- 1.3 The primary concerns of the Council were and continue to be to protect the safety of residents, the wider interests of the community as a whole, and the interests of leaseholders (some of whom are also residents of Nova House).
- 1.4 At the end of September 2017 the evidence emerging from the building was such that RBFRS was considering enforcement action which would have led to the immediate evacuation of Nova House. It was agreed with the then owners that, subject to formal agreement by the Cabinet, the Council would take over the shares in the company owning the freehold. This was considered the most pragmatic solution to both protect the interests referred to above and to ensure that the necessary remediation works were undertaken. As agreed by members on 6 October 2017 when Cabinet approved in principle the acquisition of the shares in GRE5, officers proceeded to undertake due diligence which involved looking at the alternatives to acquisition in some detail. Following the period of due diligence the acquisition of the shares in GRE5 Ltd was completed on 7 March 2018.
- 1.5 Interim fire safety measures continue to be in place in the building to ensure the safety of residents, pending the completion of remediation works. These include a high-quality heat detector system, the presence of a 24 hour waking watch and immediate evacuation procedures in the event of fire.
- 1.6 GRE5 is currently seeking to agree an appropriate programme of remediation works as well as pursuing a number of routes for the recovery of costs. It is doing so in continued close collaboration with RBFRS and other regulatory authorities. The work

on cost recovery has made significant progress during December 2018 in relation to both the insurance claim and on the ability to recover the costs of the waking watch service from the leaseholders, should this prove necessary. Notwithstanding this, the company will not be waiting for final resolution of matters on cost recovery before commencing works. These will be started as soon as a programme is agreed.

- 1.7 This report provides Cabinet with a summary of progress on planning remedial works and on work to ensure the recovery of costs. It also updates members on the Government's position on the role of local authorities in ensuring the removal of ACM cladding from privately-owned buildings. A separate report on Part 2 of this agenda deals with the question of a loan facility between the Council and GRE5 Ltd with respect to the remediation works and sets out the position on legal action in more detail.

2 **Recommendation(s)/Proposed Action**

The Cabinet is requested to resolve:

- a) That the progress to date in establishing an appropriate programme of works for the remediation of Nova House and in ensuring the recovery of costs for the remediation works be noted;
- b) That the Government's latest announcements of support to local authorities in ensuring the removal of ACM cladding from privately- owned housing blocks be noted and the Chief Executive/Cabinet Member/Leader of the Council be authorised to write to the Secretary of State restating the case for support in relation to Nova House, should this prove necessary.
- c) That significant support to GRE5 will be required from a number of Council services as the remedial works are planned and implemented be noted.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

(a) Slough Joint Wellbeing Strategy Priorities

The remediation work at Nova House will ensure that much needed accommodation is provided in the Borough to a decent standard. It will ensure that residents have access to high quality and safe private rented sector housing. This supports our Housing Strategy that aims to improve the quality of private rented accommodation in Slough.

(b) Five Year Plan Outcomes

The supply of well managed quality private rented accommodation addresses the five year plan outcomes through:

- The provision of accommodation encourages people who work in Slough to also live in Slough, which will in turn help businesses of all sizes to locate, start, grow, and stay;
- Quality accommodation will contribute towards children and young people in Slough being healthy and resilient;
- The supply of homes will help prevent homelessness (where possible) and also help reduce the current financial burden of temporary housing costs.

4 **Other Implications**

(a) Financial

The financial implications of the work at Nova House are dealt with in the separate item on Part 2 of this agenda.

(b) Risk Management

The risk management implications of the work at Nova House are dealt with in the separate item on Part 2 of this agenda.

(c) Human Rights Act and Other Legal Implications

Human Rights Act Implications

The acquisition by the Council of the entire shareholding of GRE5 did not itself raise any immediate issues under the Human Rights Act 1998 ("the Act"). However, the purposes behind the proposed acquisition will affect leaseholders and sub-tenants in Nova House whose interests are property interests and this has the potential to engage Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms which is given effect to in the UK by the Act.

The said Article 1 provides that every natural and legal person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and subject to the conditions provided by law. This entitlement is qualified in that Article 1 itself provides that it shall not in any way impair the right of any state to enforce such laws as it deems necessary to control the use of property in the general interest or to secure the payment of taxes or other contributions or penalties.

It is not considered that any proposed actions in relation to Nova House are likely to breach the Act.

Regulatory compliance

In drawing up a programme of works for Nova House GRE5 is in close contact with RBFRS, the Housing Regulation service and SBC Building Control to ensure that the programme is consistent with their requirements

(d) Equalities Impact Assessment

There are no identified needs for an EIA at this juncture.

(e) Workforce

There are no workforce implications identified at this juncture.

(f) Property

The property implications of the work at Nova House are dealt with in the separate item on Part 2 of this agenda.

(g) Carbon Emissions and Energy Costs

There are no carbon emissions and energy cost implications at this juncture.

5 **Supporting Information**

Rationale for the Acquisition of GRE5

Before agreeing to the acquisition of GRE5 as the freeholder of Nova House the Council considered very carefully the options open to it and the implications of pursuing the different options. These considerations still apply to the position as it has developed.

The options considered at the time included do nothing, acquisition, and enforcement under the Housing Act 2004. The conclusion was that under any scenario substantial engagement by the Council in the refurbishment of the building was unavoidable.

As the Local Housing Authority the Council has statutory responsibilities on housing which meant it had to get involved in some way. However, there was a wider responsibility to take a lead to bring order and certainty to the situation.

Throughout its consideration of the position at Nova House the Council's concern has been for the safety of residents. Therefore a key consideration was the speed and certainty of the works being carried out. Both the Council and the Government wanted and expected the remedial works to be carried out as quickly as possible. The option most likely to achieve this was the acquisition.

All of the options, other than do nothing, which was not a viable option, would have involved considerable cost, time and effort, whether through acquisition or enforcement. All of the options involved some financial risk for the Council. It was not possible to be certain which option carried the smaller financial risk. On the one hand, acquisition brought the risk of non-recovery of costs. On the other hand, enforcement brought with it the prospect of other costs, which could be much higher.

However, the primary concern of the Council was not financial. It was to protect the safety of the residents. Acquiring shares in GRE5 brought control and more certainty about the timescale and quality of the remedial works and therefore for protecting the safety of residents. This rationale still applies to the situation at the beginning of 2019.

Programme of Works

A very substantial amount of intrusive survey work has been undertaken on the building both to inform the programme of works and to provide support for legal action to recover costs. This has revealed concerns about the fire resistance of the steel structure to add to the questions of cladding and compartmentation.

Detailed liaison is taking place with the Royal Berkshire Fire and Rescue Service (RBFRS) and the other statutory regulators over the programme of remedial works. The programme proposed and preferred is to replace the cladding, install a comprehensive sprinkler system and deal with the compartmentation and structural issues that could be actioned with residents remaining in situ. Separate and active consideration is being given to undertaking the external works first, including the replacement of the cladding. It is envisaged that an agreement on the programme of works will be reached early in 2019

Cost Recovery

In parallel with the development of the programme of works GRE5 is working on a number of fronts to seek to ensure the full recovery of costs. These are;

- Legal action against BLP/Allianz over the triggering of the insurance policy on the building. In December 2018 the insurer accepted in principle for the first time that the policy probably did cover the compartmentation defects in the building, subject to further investigation. Their view on the coverage on the cladding is expected early in 2019.
- Legal action against 3rd parties involved in the conversion of Nova House in 2015, including the developer, the cladding sub-contractor and the private sector Approved Inspector.
- Application to the First Tier Tribunal for a declaration that the costs of the waking watch are payable by leaseholders should this prove necessary. This application was heard on 28 November 2018 and was successful though is subject to appeal;
- Ensuring that leaseholders would be liable to pay through their service charges for the costs of works should recovery of costs prove unsuccessful through other routes.

With respect to action against the insurer and third parties, it may be necessary to issue proceedings in the near future. This is notwithstanding the partial acceptance by the insurer in relation to compartmentation referred to above.

The company will not be waiting for final resolution of matters on cost recovery before commencing works. These will be started as soon as a programme is agreed. GRE5 has been in constant contact with the leaseholders of the building both over the drawing up of the works programme and the progress with legal action.

Support from the Council

Once a programme of work has been agreed GRE5 will need significant support from the Council in drawing up a detailed specification and undertaking the works. This will involve a number of different services within the Council and will be governed by a Service Level Agreement between SBC and GRE5. The intention as far as possible will be to recover these costs through the routes described above. This is likely to be a significant volume of work for the Council in 2019 and 2020 and it will be necessary to identify a council lead for the project, supported by a project team. The Service Level Agreement is currently being drafted by and will be considered by the Council in January 2019.

Liaison with and Support from the Ministry of Housing, Communities and Local Government (MHCLG)

Throughout the period from 14 June 2017 to the Council's acquisition of GRE5 in March 2018 the Council was in very close contact with MHCLG about the position at Nova House. This contact has continued since the acquisition as part of the Government's regular monitoring of progress on the remediation of ACM cladding on privately-owned residential blocks.

In May 2018 the Interim Chief Executive wrote to MHCLG with a comprehensive update on the position at Nova House. This included a request for various forms of support, should this prove necessary. This included financial support, in the event that the cost recovery strategy, outlined again in this report, was unsuccessful or only partially successful. Although the overall response to the Council's letter was positive and offered advice and support on a number of other matters, it did not provide the financial reassurance the Council was then seeking, on the grounds that no financial provision existed for such assistance with respect to privately-owned blocks.

At the same time, in May 2018, the Prime Minister had announced new funding for social housing landlords to assist with the removal and replacement of ACM cladding. The Council submitted an application for funding from this source on the grounds that the freeholder of Nova House was under the control of a local authority, the works would be funded by a local authority, and the local authority was taking on the financial risk of remediation work. However, the bid was declined on the grounds that Nova House was not a social housing scheme.

Since that time, MHCLG has actively been encouraging the replacement of ACM cladding on private sector blocks and ministers have made statements on this issue. One assertion from ministers is that leaseholders should not be asked to contribute towards the costs of the replacement of ACM cladding and that these costs should be met through other sources and, if necessary, by freeholders. This suggestion has no basis in law but nevertheless forms part of the background in which GRE5 is operating.

A further development came on 29 November 2018 in a written statement by the Secretary of State, aimed at providing more support to local authorities where private owners were not fulfilling their responsibility to remediate unsafe ACM cladding. This included an addendum to the Housing Health and Safety Rating System operating guidance boost the ability of local authorities to take robust enforcement action. The Secretary of State was also to write to local authorities where owners were refusing to remediate ACM cladding to offer full support from MHCLG in taking enforcement action. To quote the statement;

“...This will include financial support where this is necessary for the local authority to carry out emergency remedial work. Where financial support is provided, local authorities will recover the costs from the building owner.”

Clearly Nova House is not an example of where the owner is refusing to carry out remedial work. Quite the contrary. However, this appears to be an acceptance in principle by ministers that there are circumstances in which it is appropriate for the Government to give financial support to local authorities with respect to costs in relation to defects in privately-owned buildings.

In the light of this development, this report recommends that the Council write again to MHCLG setting out the case for financial support in relation to Nova House, should this prove necessary.

Longer-Term Future for Nova House

The remediation works at Nova House are likely to take a considerable period of time to commission and complete, perhaps as much as 18 months to 2 years. The various processes for cost recovery described in this report may take as long or even longer. Nevertheless, once the building is brought up to standard the Council (via its control of GRE5) will control an asset in the freehold that has a value. As the works proceed

it will be necessary to consider how the Council wishes to handle the asset in the longer term.

6 **Comments of Other Committees**

The matter has not been considered by other Committees.

7 **Conclusion**

GRE5 has ensured that the safety of the residents of Nova House has been protected in the short term. Significant progress has been made in defining the scale of problems within the building and drawing up a proposed programme of works. There are positive prospects of the recovery of those costs from a combination of an insurance claim, action against third parties, and the leaseholders. Cabinet is recommended to initiate a fresh approach to Government in relation to financial support, should this prove necessary, given recent ministerial announcements of support to local authorities in dealing with ACM cladding in privately-owned blocks.

8 **Appendices Attached**

None

9 **Background Papers**

None