

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview and Scrutiny Committee

**DATE:** 7<sup>th</sup> April 2022

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**WARD(S):** Central Ward

### **PART I** **FOR COMMENT & CONSIDERATION**

#### **NOVA HOUSE/GRE5 UPDATE**

1. **Purpose of Report**

This report sets out the current position of Ground Rent Estates 5 Limited (“GRE5”) and the progress of works at Nova House.

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

The Overview and Scrutiny Committee is requested to note and comment on the content of the report below.

**Commissioners Review:**

*“Commissioners want to draw the Committee's attention to the comments in the budget reports approved by Council which noted that no further parent company guarantees or cash flow support will be provided without the explicit approval of Commissioners.”*

3 **Report**

**Background**

Nova House is a block of 68 apartments in Slough town centre. It was converted from offices to residential accommodation in 2015 at which time further floors were also added to the existing structure. GRE5 owns the freehold of Nova House.

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.

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.

The primary concern of the Council was, and continues 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).

In 2018, the Council therefore decided to acquire all of the shares of GRE5 for £1. Whilst the scope of works was unknown at that stage, costs were anticipated to be less than £10m, and the Council assumed that any costs would be recoverable following a legal claim.

Interim fire safety measures were put in place, and continue to be in place, in the building to ensure the safety of residents, pending the completion of remediation works. These have included a high-quality heat detector system, the presence of a 24-hour waking watch and immediate evacuation procedures in the event of fire.

A scope of works and Development Agreement were agreed in 2021 with Slough Urban Renewal Community Projects LLP (“SUR”).

### Progress.

The project has been delayed due to covid restrictions and the requirements to undertake additional tests and surveys in 2020/2021, which identified a range of defects and technical issues.

These additional tests and surveys have identified further significant structural defects dating from the conversion of the building in 2014/15 and the design solutions to these are ongoing with the contractor and design team. Solutions to these are likely to add further costs and time to the project.

By the end of January 2022 all ACM Cladding was removed from the building and a fire-resistant weatherproof membrane has been installed whilst solutions to the structural issues are designed and remediated. The current programme for the known works is for completion in early 2023.

In addition to the external works, internal works have been identified as being needed in order to protect the safety of the building and its residents. To date the flat entrance doors have been replaced and defective fire compartmentation to the staircase escape route has been addressed. This, combined with the removal of the ACM Cladding, means that the fire safety of the building has improved since the project commenced. However, further work is necessary to address the remaining issues compromising fire safety. This includes rectification of internal fire compartmentation to communal areas and the installation of an internal sprinkler system.

Due to the severity of these fire safety related defects, a Waking Watch remains in the building. The timing of the removal of this is currently under review with RBFRS and GRE5’s fire safety consultant.

### Identified Structural Issues

There are three main structural defects so far identified within the building, these all date to the conversion works carried out in 2014/15.

- Defective Welds/Splice Details at level 4 – The removal of the ACM Cladding has revealed several instances where the primary steel joints are not compliant with building regulations and need to be rectified. Proposals

to carry out these works with the minimum disruption to residents are currently being developed by the contractor and engineers.

- Level 4 Shims – There are significant defects connecting the additional floor slab to the existing structure. In places, this slab is resting on shims that are not themselves fixed to the structure. This is not compliant with building regulations and needs to be rectified. Works to rectify these are likely to be disruptive and a satisfactory solution is being sought.
- Bracing – Investigations have not found bracing within the storeys that were added during the conversion works. This is also a significant defect that needs remediation. Provisional proposals to carry out these works have been produced; however, they will need to be completed following the rectification of the defective welds.

These defects have been notified to the warranty provider with a view to their inclusion within the insurance claim being pursued by GRE5, if not accepted.

### Fire Safety Defects

One of the major fire safety defects affecting the building, the ACM cladding, has now been removed and will be replaced with an approved safe alternative.

The following additional fire safety defects sit outside the scope of the current works contract. Solutions to rectify these are ongoing with individual specialist contractors.

- Defective compartmentation works – These present a significant risk that needs to be rectified and works will follow the installation of the sprinkler system to ensure that there is no damage caused during its installation.
- Sprinkler Installation – This is required to mitigate a range of fire safety risks in the building. Draft proposals for this have been received and these are being reviewed by GRE5's fire safety consultant and RBFRS. Works to install this will be carried out in a manner to minimise disruption to residents.
- Missing/defective fire protection to the primary frame – There are several locations that have been uncovered during removing the ACM cladding, proposals for ensuring the adequate replacement of this are underway.

It is also noted that various other defects have been remediated during the works to date. In addition, the replacement of the flat entrance doors and compartmentation works to the escape staircase have been carried out.

The cost of remediation of these items forms part of the insurance claim against the warranty provider that GRE5 are pursuing.

### Insurance Claim

GRE5 and the Leaseholders are currently engaged in legal proceedings with the insurance backed warranty provider for the building. Mediation proceedings are expected to take place in May 22. A separate paper will be produced for Members and Commissioners which will inform the establishment of mediation principles for the mediation process. If the parties are not able to reach a commercial settlement, the matter will proceed to trial next year. Current work is on finalising the quantum of the claim prior to the end of March 2022.

### Leaseholder Engagement (inc. Residents)

GRE5 have met with the Leaseholders at the end of January 2022, and have a meeting proposed for the beginning of April 2022. This will be followed by more regular meetings to keep them updated on progress of the works and discussions around recovery of costs will be included where appropriate. Meetings are proposed to be held every 8-10 weeks.

In addition, GRE5 are planning to hold sessions specifically focused on residents who, in many cases, are not the leaseholders. These are planned to take place in April 2022 to focus on the day-to-day activities and disruptions of the project and safety updates rather than the financial aspects.

GRE5 are currently seeking legal advice on reclaiming costs from leaseholders.

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

### 3a. **Slough Wellbeing Strategy Priorities**

The original project was intended to ensure that the private housing block was brought up to standards to meet those required for private sector housing. The Council choose to do this via acquiring the shares in GRE5, as opposed to utilising its enforcement powers under the Housing Act 2004.

### 3b. **Other Strategic Outcomes**

The project was intended to ensure that Nova House was brought up to standard to allow tenants to safely live in the property without the need for ongoing interim measures to address the fire risks evident from the defects in the building.

## 4. **Other Implications**

### (a) Financial

#### *Nova House refurbishment costs*

Total costs have increased significantly and are now estimated to be in the region of £19.6m, although this continues to remain under review. The Capital Strategy report includes £1.5m of contingency and therefore allows for a total cost to £21.1m.

Costs have increased since the July 2021 Council report which provided an update to members. Total costs have increased from £18.8m v £19.6m; an

increase of £0.8m. This remains an estimate and is subject to ongoing discussions with advisors and RBFRS.

Costs relate to the main external development works (under contract), internal works, legal costs, waking watch costs, project management costs, tests, surveys, and advisor costs.

Total costs incurred to date are estimated to be in the region of £10m (as at the 31/1/22) which includes some pre-development works funded by Homes England. The remaining costs are projected to be incurred in FY 22/23.

Most costs associated with the Nova House refurbishment programme have been included on the Council's balance sheet (P181 code) within its capital programme pending the execution of a Council loan to GRE5 (see loan summary below).

### Grant funding

During FY 21/22, the Council and GRE5 successfully agreed grant funding of £9.3m from Homes England for eligible development costs. This includes £1.7m for pre-development works which have been completed and grant funding drawdown. The Grant Funding Agreement (GFA) has now been completed by DLUHC and the first grant drawdown is being processed with immediate effect. Further applications will then be made monthly. Discussions continue to take place with Homes England with regards to changing the scope of eligible costs which may result in additional grant funding being made available to GRE5. This will reduce financial risk to the Council.

As per the GFA, Homes England may clawback a proportion of its grant should GRE5 be successful in its legal claim against the warranty provider. The clawback mechanism has not yet been agreed with Homes England and will be set out in a Deed of Variation/side letter to the GFA. This may result in the full grant being clawed back by Homes England (£9.3m), although it is anticipated that the clawback mechanism will reflect the Council's costs in pursuing the claim.

Should the legal claim be unsuccessful, the maximum financial exposure to GRE5, and therefore the Council as 100% shareholder, is up to £10.3m (£19.6m costs less £9.3m Homes England grant). Alternative funding strategies are being considered to meet any funding shortfalls, including potential recovery of costs from leaseholders. A tribunal has already determined that leaseholders, and not the freeholder, are liable for waking watch costs.

### Loan facility and PCG

In July 2021, the Council approved a loan facility to GRE5 of up to £10m to meet its short-term cash flow requirements, pending the:

- outcome of the legal proceedings;

- approval of the grant funding agreement with Homes England;
- completion of works to determine total final costs; and
- recovery of monies from leaseholders.

A draft £10m loan facility agreement has been produced and is scheduled to be executed before the end of the FY 21/22. This loan facility agreement formalises a loan facility that was originally approved by the Cabinet in 2019 but was not approved in accordance with the Council's Investment Strategy. The Council has funded GRE5 costs to date; costs have been included in a separate capital programme cost centre on the Council's balance sheet. These costs will be recharged/passported to GRE5 following the execution of the loan facility. The terms of the loan are similar to the Council's other commercial loans with third parties such as SUR.

Latest cash flow projections estimate that the maximum financial exposure to GRE5, and therefore the Council as 100% shareholder, is up to £10.3m. The peak funding requirement will be dependent upon the agreed GFA drawdown schedule and any impact on the accrual of interest on the Council loan facility. The outcome of the legal case and timing of any associated financial payments will also impact upon the peak facility requirement.

As noted elsewhere in this report, additional defects have been identified which could result in increased costs which are not eligible for inclusion in the insurance claim. The financial position is updated monthly and any increased loan facility requirement will require Council approval in line with the Council's Investment Strategy.

In FY 21/22, the Council entered into a Parent Company Guarantee (PCG) to enable the works under the Development Agreement to be completed. The majority of the Development Agreement costs are considered to be eligible costs under the terms of the Homes England GFA but there is a shortfall in the region of £1.3m which would be covered under the terms of the PCG should GRE5 be unable to pay the total costs under the Development Agreement. It should be noted that the Council is not a party to the GFA or the Development Agreement.

#### (b) Risk Management

As identified in previous reports, the main risks for the Council in relation to Nova House are financial and are covered in the finance implications. GRE5 as the freeholder has responsibility for maintenance responsibilities under the leases, however this does not provide an obligation on the Council, as the sole shareholder, to provide a specific level of funding. As in most residential leases, whilst the maintenance responsibilities for structural issues lie with the freeholder, the cost of these are chargeable via service charges, subject to compliance with statutory consultation and other obligations. GRE5 have taken appropriate advice from professionals to support the board of directors with compliance with its statutory responsibilities. As sole shareholder, the Council is responsible for appointing directors to the company board.

GRE5 maintains a risk management plan which will be considered as part of the overall review of GRE5 and the development of an Action Plan.

The following key risks have been identified:

- Increased costs – As the project has progressed, several additional defects have been identified. Where appropriate these are being added to the Particulars of Claim for the insurance litigation. Where these are not eligible under the policy then alternative funding is being investigated by GRE5. Variations to the contract are being interrogated and reported by GRE5 as part of the financial and risk management of the project.
- Further unknown defects – There is an ongoing risk that further defects may be identified during remediation works
- Legal Claim – The actual amount recoverable remains unknown.
- Leaseholder Recovery – The amount that will be sought from Leaseholders to meet any shortfall in with the insurance claim remains uncertain. Central government has recently suggested this will be capped. However, this has not been confirmed and GRE5 are seeking clarity.
- Delay to Home England Grant Funding – The main Grant Funding Agreement has been signed and preparation of the first claim is underway. Any delay to this claim being paid could impact the ability of GRE5's cash flow and the loan facility may not be sufficient to meet obligations.

#### (c) Legal Implications

GRE5 is responsible for regulatory compliance of the Nova House site and has worked closely with key regulators: RBFRS, SBC Building Control and Housing Regulation.

In November 2018, MHCLG issued guidance to local authorities in relation to their Housing Act 2004 duties. This specifically addressed the profile for the hazard of fire in relation to cladding systems on high rise residential buildings. The guidance clarifies that the 2004 Act permits the inspection and rating of the common parts as separate residential premises and that this includes the exterior of the building and internal common parts of each floor and that consideration should also be given to balcony areas and terraces, service risers and ducting.

The guidance confirms that the fire authority also holds responsibility for fire hazards under the Fire Safety Order. It is recommended that there be a local protocol on the liaison between the Council and the fire and rescue authority, including the need for the Council in its enforcement role, to consult with the fire and rescue authority in advance of any action, except in an emergency situation.

The guidance confirms that interim measures such as waking watches should not be considered in the hazard assessment but will be relevant to decisions on what action should be taken in response to an assessment.

If, following assessment, a local housing authority identifies a Category 1 hazard, it has a duty to use the provisions of the 2004 Act. If the hazard is identified as a Category 2 hazard, it has the power to take action and the guidance makes it clear that in this situation, it will be necessary to show how its discretion has been used.

To date, the Council, in its enforcement role, has not conducted a formal assessment of Nova House. Instead, it has worked with the fire and rescue

authority and the freeholder to seek to advise on the most appropriate works to respond to the defects identified. The Council's duties as enforcement body remain the same regardless of whether it is the shareholder of the freehold company, as Nova House remains a private sector housing block.

If the Council assessed the building as having a Category 1 hazard and served an improvement notice, this would place responsibility on the building owners and/or leaseholders to take appropriate action. There is a right of appeal against relevant notices, and this can be used by the recipient if they believe they are not the responsible person. Failure to comply with a notice gives the Council the right to do works in default and charge these back to the responsible person.

(d) Equalities Impact Assessment

There are no identified needs for an EIA at this juncture

(e) Workforce

There are no workforce implications, although it is recognised that significant additional Council and external resource will be required to deliver this project, pursue the legal claim and provide governance and management.

5. **Supporting Information**

None

6. **Comments of Other Committees**

None

7. **Conclusion**

This report has updated the Committee on the progress being made towards the remediation of the fire defects at Nova House. It has highlighted a range of new defects that have been discovered through surveys and investigations and the associated challenges. It has provided an overview on the status of the grant funding being received from Homes England and also an update on the progress towards the resolution of the insurance claim with the potential implications for leaseholders and the Council.

The report has also highlighted the key risks to the Council and potential path forward. While no viable alternative options have been identified at this stage, these will continue to be investigated and reported.

8. **Background Papers**

None