

Slough Borough Council

Report To:	Cabinet Committee - Assets Disposals
Date:	14 September 2023
Subject:	Update on Nova House / Ground Rent Estates 5 Ltd (GRE5)
Lead Member:	Councillor Wal Chahal Deputy Leader – Financial Oversight, Council Assets, Procurement and Revenues & Benefits
Chief Officer:	Pat Hayes, Executive Director Property & Housing
Contact Officer:	Mark Halligan - Assistant Director (Property)
Ward(s):	Herschel Park
Key Decision:	No
Exempt:	No
Decision Subject To Call In:	No
Appendices:	None

1. Summary and Recommendations

1.1 This report sets out an update on Ground Rent Estates 5 (GRE5) and the current position and future programme of works at Nova House since approval of the annual business plan and a further loan at the Committee on 16 March 2023.

Recommendations:

- 1.2 The Committee is requested to:
- a) Note the current position, including the latest estimate of the final financial exposure of SBC.

Reason

- 1.3 To ensure member oversight of the governance of GRE5 and to update members on the progress with works at Nova House.

Commissioner Review

- The commissioners are content with the recommendations in this report. Good progress has been made in the negotiations, however the indicative financial exposure of the Council in this regard should be noted and will need to be addressed in due course.

2. Report

Introduction

- 2.1 Members are aware the Council received a formal direction from DLUHC made under s.15(5) and (6) of the Local Government Act 1999, including a direction that prescribed functions are to be exercised by Commissioners; and the appointment of Commissioners from 1 December 2021.
- 2.2 A key component of the Directions is the need for the Council to demonstrate it is able to achieve financial sustainability. Under the Directions, the Council was required to review its companies within 6 months and consider the roles and case for continuing with each subsidiary company. For those it agreed to continue, the Council should ensure the appointed directors are appropriately skilled in either technical or company governance matters to make sure the Board functions effectively under an explicit shareholder agreement and that there is a nominated shareholder representative.
- 2.3 The Council's acquisition of GRE5 was for a specific purpose and as set out in its business plan, one of its key strategic objectives is to develop an exit strategy following completion of the works to Nova House.

Background

- 2.4 Ground Rent Estates 5 Limited ("GRE5") is a company which is 100% owned by Slough Borough Council (the Council). GRE5 owns the freehold lease of Nova House, a block of 68 apartments in Slough town centre. The building was previously office accommodation and was converted to an apartment block in 2015 with additional floors added to the building.
- 2.5 In 2018, the Council approved the acquisition of 100% of the share capital of GRE5 for £1 due to concerns about the capacity and ability of the company, and its existing shareholders, to undertake the substantial remediation works required and concerns about the safety of residents. GRE5 has legal obligations under the Building Safety Act 2022 due to Nova House being a high risk residential block.
- 2.6 A scope of works and Development Agreement were agreed with Slough Urban Renewal ("SUR") in 2021 and all Aluminium Composite Material (ACM) Cladding was removed by the end of January 2022. However, the project was delayed due to covid restrictions and additional tests and surveys that were completed in financial year 20/21 and again in financial year 22/23, which identified a range of defects and technical issues.
- 2.7 Following the removal of the cladding, several structural issues were identified relating to the Spine Beam, bracing to the building, shims and column connections. For safety reasons, this resulted in the halt of the cladding replacement whilst SUR and its building contractor, Morgan Sindall (with Structural engineers Arup), made assessments and provided remediation options for the structural issues. The structural issues will need to be remediated before the cladding and balconies can be replaced.
- 2.8 Works during 2022 have focused on further investigations into the structural defects and design proposals for their remediation, this essential work has inevitably delayed the project and caused unavoidable, further disruption, to the residents of Nova House. Although it is also noted that due to the removal of the cladding and safety measures in place, the building has been made significantly safer from the risk of fire.

Current position

- 2.9 Following a variation to the current development agreement being agreed at the beginning of June 2023, and early design and procurement of materials, the structural remediations to the building have commenced.
- 2.10 During these works a phased decant of 18 flats is taking place, with residents being housed temporarily at the Residence Inn atop the Moxy Hotel. The first 6 of these flats have been completed, with the residents due to return during August, when the next series of flats will be decanted.
- 2.11 Structural remediation works are programmed for completion during November 2023. During these works fire compartmentation defects that had been identified in the communal areas are also being addressed. On completion of these the waking watch can be removed from the building. Waking watch costs are included up to 31 March 2024 in the current forecasts. The waking watch is unlikely to be needed after completion of the internal works, which is currently forecast to be at the end of November. However, this will need to be agreed with the Fire Service, and therefore a buffer has been included.
- 2.12 At the beginning of August 2023, the structural remedial works have progressed to the stage where it is safe to commence the recladding of the building at the lower levels.
- 2.13 The table below sets out the costs spent to date (as at end of June 2023), and those forecast to completion:

£m	Costs incurred to 30 June 2023	Expected future spend	Forecast total spend	Previous estimate (March 2022)
Ongoing costs*	2.6	1.1	3.7	2.8
Legal costs	2.2	0.2	2.4	2.6
Development contract	10.4	6.2	16.6	10.6
Remediation Works*	-	3.6	3.6	-
External works - other	1.3	0.0	1.3	0.3
Internal works*	0.0	0.6	0.6	3.3
Decant	0.1	0.1	0.2	-
Total	16.6	11.8	28.4	19.6

**includes waking watch costs, project management costs and directors fees*

- 2.14 The total cost included in the table above is consistent with that reported in March 2023 and a comparison to the cost estimate in March 2022 is shown above. The reasons behind the variation in cost between March 2022 and March 2023 was reported to the Asset Disposal Committee in March 2023. The overall cost forecast is reviewed by the GRE5 Board on a monthly basis. Although a general contingency has not been included in the costs, estimates have been made on a prudent basis and all the development contract and remediation work budget has been reviewed for reasonableness by Artelia on behalf of GRE5.

Forecast programme.

- 2.15 The structural remedial works are programmed for completion in November 2023, the focus will then be on completion of the cladding works including reinstallation of the balconies and the internal installation of the sprinkler system. The sprinkler system cannot be installed until the scaffold has been removed as supports for the scaffold impede on the areas needed for the water storage tank.
- 2.16 The replacement cladding works will be carried out for the remainder of 2023 and be completed in the 3rd quarter of 2024, following sectional completions of the cladding the balconies will also be reinstated, this entails significant additional steelwork also being installed due to defects in the original construction.
- 2.17 The current forecast is for all these works, including the sprinkler system to be complete in December 2024.

3 Implications of the Recommendation

Financial implications

- 3.1 Mediation with the Insurer has been completed with an agreement for a substantial sum as a full and final settlement to the claim, against items covered by the insurance backed building warranty, by GRE5 for the cladding and structural works. Items not covered by this policy were not able to be recovered and GRE5 continue to pursue alternative means to recover these costs.
- 3.2 GRE5 and the Council have been successful in obtaining £9.2m in grant from the Building Safety Fund towards the cladding works. The Grant Funding Agreement was signed in October 2021. Eligibility rules have recently been changed to include strengthening works directly relating to the replacement of cladding to the building and decanting, a variation for further grant is currently being discussed with Homes England who administer the fund. This also includes revised costs and estimates to the works which formed part of the original grant award. The current grant is subject to clawback provisions following the recovery from the insurers, this is currently being discussed with Homes England.
- 3.3 Under the clawback provisions of the Grant Funding Agreement, GRE5 are obliged to notify Homes England of any amount recovered against the eligible funded works within 12 years of the agreement date. Following the recovery of these GRE5 will if requested repay the amount it has received in relation to these eligible works, that have been funded by Homes England, capped at the maximum sum of the agreement net of any share of irrecoverable costs.
- 3.4 GRE5 are working with Fenchurch Law and Homes England to apportion the insurance sum against the eligible items to establish the level of clawback applicable. This is due to be complete and submitted to Homes England in October 2023.
- 3.5 The combination of the successful insurance claim, Homes England funding and loan from the Council has resulted in sufficient funds being available to complete the works and recladding of the building. However, there is a shortfall

between the insurance settlement and the total cost of the works. The element of this shortfall which will be to the account of the Council is subject to discussion with Homes England on additional grant being eligible and the level of clawback from the sum recovered from the insurers. Additionally, GRE5 are establishing the sums that could be recharged to the leaseholders subject to the provisions of the Building Safety Act.

- 3.6 The Building Safety Act 2022 has had an impact on the project with several requirements and legal obligations on freeholders such as GRE5.. This includes a cap on qualifying Leaseholders of £10,000 towards remediation costs (payable over 10 years). A qualifying leaseholder is a leaseholder that owns a property in a high-risk building and on 14 February 2022, the lease was in existence and the property was the individual's primary residence or the owner owned no more than three UK residential properties, including this property.
- 3.7 Out of the 68 leaseholders in the building, GRE5 are in the process of identifying those that are designated 'non-qualifying' under the Building Safety Act and therefore not covered by the £10,000 cap above. The shortfall in funding can then be apportioned as allowed by the Building Safety Act between the Non-Qualifying Leaseholders proportionately against the number of properties they hold the leasehold interest in. The relevant notices have been submitted to the leaseholders, on receipt of these GRE5 will be able to establish the number of qualifying against non-qualifying and further details will be presented to cabinet for consideration
- 3.8 The loan facility with the Council is available for GRE5 to draw against, subject to approval of drawdown notices and up to a maximum balance of £15.0m, until August 2027. Interest accrues on the balance of the loan monthly at a rate of 6.0% per annum. The balance on the loan facility with the Council was £9.9m (including £1.2m of accrued interest) as at 30 June 2023.
- 3.9 The final exposure on the Council loan will depend on a number of factors, including the clawback position on the current HE funding of £9.2m, any future funding and any recovery from leaseholders. Under a worst case scenario, where no future funding is awarded from HE, clawback under the existing Grant Funding Agreement is based on the current proposed position, all leaseholders are defined as Qualifying Leaseholders under the Building Safety Act and any leaseholder contribution is capped at £10k per leaseholder, the final Council exposure would be £7.6m (excluding accrued interest of £2.4m).
- 3.10 Under what is understood to be a more realistic scenario, where HE does not require any clawback under the current Grant Funding Agreement in acknowledgement of the waiver of any further funding requirement, this liability reduces to £1.7m (excluding accrued interest of £2.0m). This is before any additional recovery of costs from leaseholders as outlined above.

Legal implications

- 3.11 GRE5 is responsible for regulatory compliance of the Nova House site. The introduction of the Building Safety Act 2022 has significantly changed the rights, powers and protections for residents of high-rise buildings. The purpose behind the legislation is to provide leaseholders with protection from the costs associated with non-cladding defects, including interim measures like waking watches. Residents also have rights to report concerns to the Building Safety Regulator.

3.12 The Council owes a fiduciary duty to its taxpayers, as well as a best value duty to make arrangements to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Some of the works required to cover building defects are not covered by a Homes England grant, although the availability of grant funding has been widened over time. Any works undertaken by GRE5 to the building are likely to increase the value of the leases, but unlikely to substantially increase the value of the freehold interest. Therefore the Council needs to consider the recoverability of any loans, rather than assume that the value of its shareholding will increase. GRE5 has sought professional advice and taken legal proceedings against the original warranty holder and this has been subject to a mediated settlement. The Council is awaiting details of the recoverability of the remainder of its loan from qualifying leaseholders and the extent to which Homes England will recoup its grant funding from the settlement figure. A range of scenarios is set out in this report in relation to loan repayment. Members will be kept updated on this figure and the extent to which any outstanding loan should be written off.

Risk management implications

3.13 The table below sets the key risks

Risk	Summary	Mitigations
Financial	Non payment of loan.	GRE5 directors have instructed lawyers and other professionals to pursue recovery action. It has also applied for a Homes England grant and been in discussions about further grant opportunities and is considering other recovery action. Despite this there is still a significant risk that not all of the loan will be repayable.
Legal	Legal responsibilities to residents	GRE5 has experienced directors who have the skills and knowledge to run a company managing a high risk building. Professional advice has been sought, including on the new regulatory requirements. Once the works are complete the Council needs to consider an exit strategy as the Council’s original purpose in acquiring the company was to ensure that works were undertaken to rectify the building defects. The timescale for this was set out in the approved business plan as 2025/26.
Reputational	That taxpayer funds were used to fund works to a residential building.	Open and transparent reporting will allow residents and taxpayers to understand decision-making and the efforts made to manage the financial risks of the works.

Environmental Implications

- 3.14 There are no direct environmental implications as a result of the recommendations contained in this report.

Equality implications

- 3.15 The Council has a duty contained in section 149 of the Equality Act to have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are:

- age
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The broad purpose of this duty is to integrate considerations of equality into day-to-day business and to keep them under review in decision making, the design of policies and the delivery of services.

Procurement implications

- 3.16 One of the Directions includes specific reference to the procurement and contract management function. Any element of this project that requires procurement will be subject to our usual procedures.

Workforce implications

- 3.17 No direct workforce implications.

Property implications

- 3.18 The future of GRE5 and Nova House are key considerations in the review of council assets.

4 Background Papers

None.