

SLOUGH BOROUGH COUNCIL

REPORT TO: Overview and Scrutiny Committee

DATE: 30th October 2017

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WARD(S): Central

PART I **FOR COMMENT AND CONSIDERATION**

CALL-IN – STRATEGIC ACQUISITION OF TOWN CENTRE SITE

1 Purpose of Report

- 1.1 To advise the Committee of a member call-in and seek the Committee's views and instructions on how it wishes to deal with it.
- 1.2 The call-in relates to a decision of Cabinet on 6 October 2017 to pursue the acquisition of the company owning the freehold of Nova House, 1 Buckingham Gardens, currently Ground Rent Estates 5 Limited.

2 Recommendation(s)/Proposed Action

The Committee is requested to consider the call-in and decide what action it wishes to take in response to it.

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

(a) Slough Joint Wellbeing Strategy Priorities

This proposal 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 Council has responded to the current situation at Nova House by putting in place certain fire safety measures, deploying staff, and seeking external legal and technical advice as to the legal powers and options open to the Council. These short term revenue costs are likely to run into the tens of thousands of pounds and will have to be met from the Council's own funds pending any funding support from the Government.

Longer term, the cost envelope will be dependent upon the next steps that the Council takes. For instance, should the Council decide to purchase the shares in the company managing Nova House, there are potential liabilities and service charge issues that could prove to be expensive for the Council.

There are potential issues around the external cladding and the internal fire works. Significant investment may be needed to address the issues already identified, as well as other remedial works that are needed internally. Recovery of these costs – or 'loan' – (which initially might be funded through the capital programme but will have a detrimental effect on the Council's finances if not recovered) will be long term and complex.

The Council will need to undertake due diligence on Nova House so that it can mitigate any financial risk to the Council and avoid incurring major financial commitments which it is unable to recover.

(b) Risk Management

Risk	Mitigation	Opportunity
Collapse of Housing Market – Significant losses made on purchase of shares in the company owning Nova House	The company could be wound up relatively easily if necessary	
Finance/Management – Collection of legally recoverable monies	Undertake due diligence on the terms of the leases	Opportunity to collect all legally recoverable monies
Capacity – The Council does not have the internal capacity to manage, improve and maintain the building. This project will take up a great deal of management time and capacity of Senior Management while trying to implement the Senior Management re-structure	Resource planning and identification of internal and external resources required up front	
Health & Safety – Health & Safety of	Taking control of the building will enable the	

residents is currently a concern in the short term	Council to undertake the necessary work to improve the fire safety of the block	
Experience – Unusual situation of having to take over the running of an existing private company	Legal advice sought Experience of operating independent companies (Herschel Homes etc.)	
Cost Avoidance – There is a risk of high costs associated with evacuating families from the building		There is the opportunity to avoid costs associated with evacuating families from the building
Reputation – There is a threat to the reputation of the Council if it appears that the Council have not acted appropriately	Project management specialists to oversee and facilitate project Communication strategy to manage expectations	Conversely there is the opportunity to enhance the reputation of the Council if this project is concluded successfully
Leaseholders – Need to take over the management of 68 leases/leaseholders many of whom do not reside in the UK		
Cost – Exact cost of project is not known and may affect the delivery of other planned Capital projects	Re-profiling of the Capital program Structural survey is undertaken by Savills	
Timescales – Project may take too long which increases the risk of enforcement against the Company by the Council or Fire service	Project Management and contract management of contractors Understanding the reasonable expectations of enforcement agencies	
Precedence – This project may set a precedent for other private sector buildings with similar issues		

(c) Human Rights Act and Other Legal Implications

External legal advice was obtained upon the legal implications and this was before Cabinet when the decision was made. The advice confirmed that the Council had the powers to make the acquisition proposed, subject to due diligence.

Article 8 of the Human Rights Act 1988 enshrines the principle that everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of (among other things) public safety and for the protection of health.

The recommendations in the report sought to allow residents to remain in their homes whilst necessary works are carried out.

(d) Equalities Impact Assessment

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

(e) Property

This is dealt with within the supporting information below.

5. **Supporting Information**

Call-in Process

5.1 A Member call-in has been received from Councillors Swindlehurst, Davis and N. Holledge relating to an urgent decision taken by Cabinet on 6 October 2017. The call-in request is annexed to this report.

5.2 The Committee may take the following action on the call-in:

- Agree to take no further action on the request (reason for this to be recorded in the minutes)
- Make alternative recommendations to Council or Cabinet (if applicable)
- Make representations/views known to Council or Cabinet (if applicable) in respect of decisions taken under officer or Cabinet delegated powers.
- Make recommendations/views known in respect of lessons learnt.

Cabinet Decision; Strategic Acquisition of Town Centre Site

Background

5.3 Nova House is a former 1980's six storey office block that was converted into 68 residential apartments. Planning permission was granted on 28th March 2014 for the conversion and extension of the building. Conditions attached to the permission required certain details to be submitted for approval, works to be carried out and certain items maintained. All details were submitted and works have been completed. Items to be maintained include parking spaces, bin stores, cycle stores, basement, car park traffic control system and basement entry control. Obligations on the land owner in a Section 106 Agreement have been complied with.

5.4 The conversion was undertaken by Timeless. Having liaised with the Council regarding a potential joint venture, the property was eventually developed as a Private Rented Sector ("PRS") development. The leaseholds of the 68 apartments were sold in 2015 to individual investors on the basis of a 999 year lease.

5.5 The Building Control regulator for this building was an Approved Inspector (AI); a company appointed by the person undertaking the building work to carry out the building control function. The AI was appointed in 2014. Once an AI is appointed, it

is their responsibility to take reasonable steps to satisfy themselves that the building work complies with the Building Regulations.

- 5.6 All Approved Inspector registrations are maintained and managed by the Construction Industry Council as the body designated by the Secretary of State.

Ownership and Occupation of Nova House

- 5.7 At Nova House each flat is owned by an individual long leaseholder. There is a separate freeholder. Until July 2017 the freeholder was a private limited company, Freehold Properties 42 Limited. In July the freehold was passed to Ground Rent Estates 5 Limited, a company within the same group, with some common Directors and the same controlling shareholder. The block has a managing agent – Ringley.
- 5.8 It is believed that of the 68 flats, 6 are owner-occupied and the remainder are owned by individual non-resident buy-to-let landlords who let their properties to private tenants. The majority of these non-resident owners are based overseas.

Testing of ACM Cladding

- 5.9 The tragic fire at Grenfell Tower took place on 14 June 2017. Immediately following the fire the Government asked owners of buildings over 18m in height in both the public and private sectors who believed their building to have the same form of cladding as had been present at Grenfell Tower to submit samples of the cladding for testing.
- 5.10 On 29 June 2017 the Council was informed that Nova House, 1 Buckingham Gardens, had failed a test for Aluminium Composite Material (ACM) cladding.
- 5.11 Following these initial screening tests the Department for Communities and Local Government (CLG) commissioned a series of large-scale tests of cladding systems. These would test different combinations of ACM cladding and insulation. On 2 August CLG informed the Council of the failure of the second of these tests. This involved category 3 ACM panels with unmodified polyethylene filler and stone wool insulation. Failure meant that the system did not adequately resist the spread of fire over the wall to the standard required by the current Building Regulations guidance set out in BR135. Nova House falls within the scope of this second test. CLG alerted the Council to the result of the test, to the fact that the building owner was being informed of the result and to the guidance which was being issued to the owners of buildings which had failed this test.

Government Guidance

- 5.12 Since the Grenfell Tower fire CLG has been issuing guidance to the owners of buildings with ACM cladding. On 22 June the Department issued advice on the interim mitigating measures to be implemented to ensure the safety of residents, pending the remediation of the cladding. This was updated on 29 September 2017. On 3 August, alongside the notification of the failure of the second test, CLG issued advice for the owners of buildings with this combination of cladding and insulation. As well as referring to the interim mitigating measures and recommending the taking of professional advice, the CLG advice recommended that owners;

“....Put in place measures to review the cladding system and undertake remedial work, in particular to remove cladding.”

5.13 On 11 August 2017 the Secretary of State wrote to all Local Authority Chief Executives about residential tower blocks with ACM cladding. This included the subject of private sector blocks with ACM cladding. The Secretary of State wrote;

“ ...While it is a building owner’s responsibility to ensure their buildings are safe, you will know that it is also the statutory duty of local housing authorities to keep local housing conditions under review, with a view to identifying if action needs to be taken in relation to housing health and safety. I am sure you therefore agree it is of the utmost importance you take active steps to ensure that building owners of residential tower blocks are taking measures to ensure that their residents are safe and feel safe, particularly where buildings have been found to have cladding systems which have failed the combustibility tests.....

If private sector building owners do not comply with your requests, I will look at what further action can be taken to support you in carrying out your responsibilities. It is of course important to highlight that local housing authorities do have enforcement powers, under the Housing Act, to direct landlords to take action, and can ultimately step in to undertake remedial work where necessary, then reclaim the cost from the owner.....

My Department will be working closely with the Local Government Association and wider sector partners to identify good practice and provide further clarification. This will also help us all understand the cost implications to you of implementing these duties, in line with Government’s New Burdens Doctrine.”

The Council’s Response and Joint Work with RBFRS

5.14 Immediately after the Grenfell Tower fire officers established a High Rise Task Force consisting of representatives from across the Authority to manage the Council’s response. Nova House quickly became a primary focus of attention. The primary stance was to work closely with the Royal Berkshire Fire and Rescue Service (RBFRS) to seek to ensure that the owners discharged their responsibilities to keep residents safe and to carry out mitigating measures and remediation works to the building.

5.15 Since the result of the large-scale ACM testing, the Council’s Housing Regulation Team and RBFRS have been in regular contact with the owners and the managing agent over their plans for works to the building. RBFRS issued to the owners an Action Plan of works that were required. Joint meetings were held between the owners, RBFRS and the Council on 6 September and 26 September to review progress. CLG have been kept fully informed of these discussions as they have progressed.

5.16 The owners have made some progress. Some short-term works have been undertaken and surveys are underway. A fire marshal service is in place within the building. Nevertheless, there have been some concerns about the capacity of the owners to discharge their responsibilities.

Recent Events

5.17 On 27 September, and in the light of the latest information from the survey work in the building there were discussions between the Council and RBFRS about the condition of the building and its suitability for continued occupation. It was

established both that there was a need for additional on-site presence to deal with the immediate measures required should a fire occur and for a fundamental change in the management and control arrangements for the building.

- 5.18 A further meeting took place between the owners of Nova House, RBFRS and the Council on 28th September. When RBFRS had left the meeting officers discussed the position with the owners, who indicated their willingness in principle to pass the control of Nova House to the Council.
- 5.19 Additional 24 hour arrangements are now in place on-site at Nova House to deal with the immediate reaction should a fire occur and in the few minutes before the arrival of the fire service-. This was provided by an RBFRS fire vehicle up to the afternoon of 30 September. Since then it has been provided by a private company, Event Fire Solutions, sourced and paid for by the Council. Residents have been assured that this will remain in place until urgent mitigation works have been completed. Officers are satisfied that this company has the appropriate accreditations to undertake this task.

The Cabinet Decision

5.20 Amongst the key recommendations agreed by Cabinet on 6 October were to;

- Approve in principle the acquisition of the company owning the freehold of Nova House and delegate to officers in consultation with the Cabinet Member the authority to complete the acquisition, subject to due diligence.
- Authorise a comprehensive Options Appraisal for the future of Nova house;
- Authorise any immediate actions required to prepare for the undertaking of works to Nova House after the completion of the acquisition.
- Authorise a loan to the acquired company, subject to the agreement of the S151 officer, to allow for the undertaking of fire safety works and in advance of the recoupment of those costs.
- Nominate a number of officers as directors of the acquired company.
- Agree that following the completion of the acquisition the Council approach CLG to discuss the issue of costs.
- Agree to approve and implement the recommendations as a matter of urgency.

Reasons for the Decision

5.21 The reasons for the decision were set out in the Cabinet report;

- Nova House had failed the tests of ACM cladding instigated by the Government following the tragic fire at Grenfell Tower on 14 June 2017. Further investigation had revealed other significant deficiencies with fire safety in the building such as to call into question its suitability for continued occupation. The report needed to be considered urgently and its recommendations implemented urgently in order allow for the immediate acquisition of the company and speedy commencement of works.
- The primary reason for bringing forward the recommendations in the report was the protection of the safety and interests of the residents of Nova House.
- In the aftermath of the tragic fire at Grenfell Tower, the Council would wish to show clear and pro-active leadership in order to ensure that residents are safe and feel safe. There had been a loss of confidence that the current owners of the freehold of the building, and their managing agent, had the capacity to

undertake the works required in a manner and to a timetable that would allow the continued occupation of the building.

- The Council had the power to take enforcement action on the building. This could lead to a position in which the Council would carry out the works in default and recharge the owner. However, the enforcement process under the Housing Act is not guaranteed to produce mitigating action quickly. By taking over responsibility for the building the Council would have much more control over the quality and timing of works.
- The alternative was an evacuation of Nova House. This would have needed to happen immediately and would have involved initially the use of rest centres and hotels and then the rehousing of residents. The experience in Kensington and Chelsea and in Camden had shown that this is hugely disruptive to the lives of residents – their employment, their education and their social networks. It is worth a great deal to them and to the wider community to avoid this disruption if at all possible and to allow them to remain in situ.
- Evacuation would also be very disruptive for the Council. Again, the experience at Camden shows that managing the process of evacuation and rehousing would dominate the work of the Council over a period of months. There would be substantial associated costs, both in the administration of the process and in paying for temporary accommodation. In some cases, the Council would have statutory obligations to provide accommodation for a lengthy period under Homelessness legislation. Even where this was not the case there would be short term costs in providing temporary accommodation while the statutory assessment was made.
- Finally, there were reputational risks for the Council arising from an evacuation. However well-managed, an evacuation and rehousing operation would bring great stress into the lives of a large number of residents.
- Considered in the round the report recommended that the best course of action was for the Council to step in and pro-actively take control of the situation.

Immediate Mitigating Actions

5.22 The Council has undertaken planning for a number of mitigation actions, subject to due diligence and acquisition:

- The future implementation of a Waking Watch in line with NFCC Waking Watch and Common Fire Alarm Guidance
- The installation of a suitable interim extension of the alarm system in the common areas of Nova House. This would include wireless CCTV, together with the installation of a heat detector and sounder in every individual dwelling and be a prelude to installation of a permanent solution;
- Preparation in respect of the requirement to undertake any immediate and necessary works, post acquisition;
- Preparation to undertake a full and comprehensive Fire Risk Assessment and liaison with the consultant, in respect of the survey already being undertaken;
- The undertaking of a full and detailed building survey, as part of due diligence;

Short and Longer Term Objectives

5.23 In assuming control of Nova House the Council would have a number of short-term objectives.

- To reassure residents that they are safe;

- To provide confidence to RBFRRS that works will be carried in an appropriate and timely manner;
- To carry out urgent mitigating works as required by RBFRRS;
- To provide additional, qualified personnel on site while these works are carried out;
- To ensure proper management of the building;
- To commission and execute remedial works, including dealing with the cladding;
- To recover costs as appropriate and protect the financial interests of the Council, including discussion with CLG over contributions towards costs;

5.24 The commissioning of an Options Appraisal will allow the Council to take a longer term view of its interest in the building once the fire safety position has been resolved and stabilised. The options could range from disposal through to retention in pursuit of the Council's wider strategic objectives.

Communication with Residents

5.25 Communication with residents has been mainly by letter, hand delivered through each door at Nova House. Residents have also been given the communication manager's email address for any questions they may have of the Council and there is regular communication with the some key residents through this medium. After the recommendations were approved by Cabinet a letter was immediately delivered to all residents giving an outline of the Council's intentions.

6 Conclusions

6.1 The report was brought before Cabinet because of the urgency of the position at Nova House. The Council's priorities must be to ensure that residents are safe and feel safe and to enable the Council to discharge its statutory duties relating to enforcing housing standards. The proposed step was unusual and this may have been the first occasion that a local authority has intervened in this way to protect residents of a privately-owned block and is the certainly the first instance since the tragic events of 14 June 2017.

6.2 It was not without risks to the Council. However, the report proposed that it was right for the Council to pro-actively exercise its community leadership role to protect the safety and interests of the residents of Nova House and of the wider community.

7. Appendices Attached

'A' - Call-In request

8. Background Papers

None