

STROUD DISTRICT COUNCIL
STRATEGY AND RESOURCES COMMITTEE

**AGENDA
ITEM NO**

10 JUNE 2021

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Report Title	TENANCIES AT BRIMSCOMBE PORT – RUSH SKATEPARK AND GRACE NETWORK
Purpose of Report	A decision is sought from Committee to confirm when vacant possession is required from tenants currently occupying units that are due to be demolished; forming the start of redevelopment at the Port
Decision(s)	<p>The Committee RESOLVES to:</p> <p>a) Delegate authority to the Head of Property Services to take all necessary steps, including legal action, to ensure vacant possession of all the units required to be demolished as part of the redevelopment of Brimscombe Port including Unit 3, Industrial Estate, (occupied by RUSH Skatepark) and Units 1a, 2a and 4, Business Park, Brimscombe Port (occupied by the Grace Network), if they are not vacated at the end of June 2021.</p> <p>b) Approve the Write-Off of Sums owed by Inside Football as recommended by the S151 Officer.</p>
Consultation and Feedback	<p>Consultation and discussions have taken place with members of the Strategic Leadership Team, Group Leaders, Brimscombe Port Project Board and the Parish Council. The initial deadline of the end of March for vacant possession was extended to the end of June as a result of these and confirmed in the report to Strategy and Resources in March 2021.</p> <p>Further requests by RUSH and Grace Network to stay beyond June have been considered and it is recognised that the circumstances of the two tenants are different. There is support for securing vacant possession of all the units so as not to prejudice the redevelopment, from senior officers and members.</p> <p>The Parish Council has also been consulted.</p>
Report Author	Alison Fisk, Head of Property Services Email: alison.fisk@stroud.gov.uk
Options	<p>The options are:</p> <ul style="list-style-type: none"> • To seek vacant possession of the units by the end of June 2021 • To grant new leases to tenants beyond this date

Appendices	<p>Appendix A (i) – Site plan</p> <p>Appendix A (ii) – Infrastructure; Approved General Arrangement Drawing</p> <p>Appendix D – Key milestones</p> <p>The following appendices contain exempt information by virtue of Paragraphs 3 and 5 of Part 1 of Schedule 12a of the Local government Act 1972 and a resolution may be passed to exclude the public during consideration of these items:</p> <p>Appendix B – Exempt Text Background Information, Discussion and Legal Implications.</p> <p>Appendix C – Tenancy schedule showing impact on infrastructure, rent holidays and arrears</p> <p>Appendix E – Flow chart showing legal process for repossession of commercial property</p> <p>Appendix F – Letter from The Grace Network</p>			
Implications (further details at the end of the report)	Financial	Legal	Equality	Environmental
	Yes	Yes	Yes	Yes

1. INTRODUCTION / BACKGROUND

- 1.1 One of the Council’s key corporate priorities is the redevelopment of Brimscombe Port, the destination at the eastern end of the canal with a vision to deliver a reinstated canal and basin, a sustainable, new residential-led mixed use community that meets the needs of both existing and future residents. By responding to the site’s unique characteristics with innovative and inspiring design, the Council aspires to create an exemplar scheme that integrates with the existing surroundings and expands upon the site’s constraints and opportunities to enhance the residents’ daily lives. The scheme will respond to the district’s post-COVID economic recovery strategy and its ambition to be carbon neutral by 2030.
- 1.2 The redevelopment of the Port has been the subject of various reports to this Committee over the last few years as the Council has proceeded to de risk the site to deliver a viable opportunity to the market and maximise the interest from potential partners. These reports, the output specification, programme, FAQ’s and more background information can all be found on the council’s website at <https://www.stroud.gov.uk/environment/brimscombe-port>.
- 1.3 With delegated planning permission granted on the 23 February 2021 for the key infrastructure to take the site out of the flood plain, by the reinstatement of the canal and basin, the committee gave approval to take the next important step; to procure a developer partner to work alongside the Council to progress the redevelopment of the Port.
- 1.4 The resolutions made at the meeting on the 4th March 2021 are set out below for ease of reference:

- 1) *Delegate authority to the Head of Property Services to:*

 - i. *commence the procurement of a developer partner for Brimscombe Port using the competitive dialogue procedure with the final selection of the partner to be presented to Committee for approval at the completion of the process.*
 - ii. *in consultation with the Strategic Head of Resources and Chair and Vice Chair of this committee to:*

 - a) *proceed when necessary with the demolition of buildings on the site prior to a partner being selected, subject to planning conditions being met, for any of the reasons set out in section 3.23 of this report.*

1.5 Sections 3.23 and 3.24 of that report were as follows:

Tenancies/ Demolition of units

3.23 *All of the remaining tenancies of the buildings required to be demolished, to facilitate the infrastructure works, expire at the end of June 2021. This is to provide the Council with the maximum flexibility in progressing the redevelopment. It may be necessary for the Council to procure the first stage of the works and demolish empty units on the site to:*

- *avoid further delays once a development partner is procured;*
- *reduce NNDR/ security costs etc. which will eat into the management account and limit the ability for the Council to accrue any more surpluses;*
- *enable the installation of car charging points to improve the ongoing management and desirability of the Mill for current and prospective tenants;*
- *reduce the risk of anti-social behaviour and improve the aesthetics of the site (as units continue to deteriorate, some being at end of life);*
- *give the council the option of proceeding with the infrastructure works as a worst case scenario if a developer partner isn't procured.*

3.24 *Many of the businesses on site have had to close due to COVID -19 restrictions. The council has extended tenancies for as long as practicable, without prejudicing its ability to regain possession of the units and continues to support tenants both whilst on site, through rent holidays, and to relocate.*

1.6 Planning permission for the demolition of the Business Park, Industrial Estate and Port House and completion of the infrastructure for the redevelopment of the Port was granted on the 24th March 2021 (S.19.1502/FUL); see plans at Appendix A.

1.7 Many of the units on the site lie directly in the path of the reinstated canal, the basin, de-culverted river and new highway access on to the site. The reasons for the need to start demolition ahead of the main redevelopment are still valid and are explored later in this report.

1.8 Current Position

The council continues to support tenants to relocate. However, the council has received requests that RUSH be allowed to stay on site until the end of the summer to allow young people to access the facility over the summer holidays after the lockdown and RUSH itself has recently asked that it be allowed to remain open until Christmas this year, or at the

very least until the end September. A subsequent on-line petition 'requests a lease extension until January 2022 for RUSH Skatepark et al'.

- 1.9 The Grace Network has confirmed that it has not as yet been able to secure new premises (with the exception of Stroud Foodbank) and has requested confirmation of the date that it needs to vacate the site by. A letter was received from The Grace Network outlining its request to the Committee, just before publication of this report. This is attached at Appendix F (Exempt) Details of the circumstances of these 2 tenants and their leases are set out in Appendix B (Exempt).
- 1.10 The Cotswold Canals Trust, SVCC (and SDC) also occupy units on the site to store materials for the ongoing restoration of the canal and the council is providing support to find alternative sites.
- 1.11 Inside Football vacated their unit in April 2021 as their business had been impacted by the Pandemic. A rent holiday valued at approximately £42k was given to the business during the pandemic to support operation. However, even in spite of this holiday, rental arrears £10,185 remain at the end of the tenancy. The Council's constitution states that debts of between £10k and £20k may be written off by the S151 Officer and reported retrospectively to the Committee. It is the view of the S151 Officer that as a rent holiday was required and the business is no longer trading this debt will not be collected. It is therefore to be formally written off. The Committee is asked to agree this write off decision recommended by the S151 Officer.
- 1.12 Finally, but as importantly, there are two other commercial tenants whose leases are due to expire at the end of June 2021, these tenants would also like to stay as long as possible on the site. One of these has not been able to secure alternative premises but is also aware that their lease end date is the 30th June. Appendix C (Exempt) provides details of the tenancies of units that are to be demolished, the infrastructure that will be within the footprint of their units, rent holidays that have been granted and any rent arrears.
- 1.13 The **purpose of this report** is, therefore (in light of these new requests for tenants to stay longer) to seek approval as to whether the council still wishes to try to secure vacant possession of the units that are due to be demolished and which have leases that expire at the end of June 2021 or whether it wishes to consider requests from tenants to occupy beyond this point, and to outline the risks to the project if it does so.

2. **Background: RUSH Skatepark and Grace Network**

RUSH

- 2.1 RUSH Skatepark is a community interest company based in Unit 3 on the Industrial Estate at Brimscombe Port. They were granted a Tenancy at Will and then a formal lease (completed in July 2017) of the unit in 2013 by Stroud Valleys Company (SVCC)¹ before the Council secured a £2m loan from Homes England towards the infrastructure costs. SVCC was acting on advice from the council. It was always clear that the site was a redevelopment site, although the prospect of vacant possession being needed was some

¹ SVCC (Stroud Valleys Canal Company) was set up, in part, to hold the property assets of the reinstated canal. Brimscombe Port was transferred to SVCC by SWRDA after it had acquired it from British Waterways in 2009. The freehold interest in the site was subsequently transferred to SDC on the 1st April 2020 as a condition of the funding agreement with Homes England part of the terms of the transfer are that the reinstated canal and basin are transferred back to SVCC on completion.

years away. Consequently, the lease contained a landlord's break clause first operable in January 2019 and annually thereafter. This break clause was operated in January this year as the council was close to a decision on the planning application for the key infrastructure on the site being considered at Development Control Committee.

- 2.2 Members will be familiar with the Skatepark as a unique facility in the District and County. In April 2018 Committee agreed to grant a ground lease of land at Stratford Park to RUSH, subject to detailed terms and planning permission being secured and RUSH funding the build costs of a new facility RUSH had been looking for an alternative site for some time and this was considered the most suitable in the District, with good transport links and sitting alongside the leisure centre. RUSH has been unable to progress plans for the site
- 2.3 RUSH has continued to seek alternative premises, but buildings of the size required are relatively few.
- 2.4 The rental arrears for Rush, although now owed to the Council, largely pre-date the Council ownership of the site as shown in the table in Appendix B (Exempt). In the Council's accounts an allowance has been made for this debt to effectively, although not legally, write off the sums due. This is because it is not deemed likely to be collectable so prudent accounting requires this to be reflected. However, the process of seeking vacant possession will involve reconciliation and clarification of all sums owed. There is likely to be a future report to this committee seeking approval to formally write off some or all of the sums owed.
- 2.5 In order to maintain a viable business model RUSH needs a new building, regardless of the council's redevelopment plans. A separate area for toddlers and younger children is needed, as well as outdoor space to maintain income. They also need a well maintained building with a secure future in order to book competitions and attract elite riders to come and train/ compete/ exhibit bringing new members to the Park. The unit they occupy at Brimscombe Port is at end of life.
- 2.6 **Grace Network**
- 2.7 Grace Network (GN), first approached the Council in 2014 seeking premises for a warehouse and distribution hub for Stroud Foodbank and were granted a lease of Unit 2a in April 2015. GN developed and supported a variety of social enterprises including Stroud Furniture Bank, Kids Stuff and Stroud Foodbank within this unit. GN were very aware of the council's redevelopment plans for the Port and the lease was granted for a 5-year term with 2 tenant only break clauses at years 2 and 4. This was some months before the council secured £2m of funding from Homes England.
- 2.8 In 2016 GN used Unit 1 as a temporary overspill for the furniture bank for a few months. Subsequently in 2018 they requested use of the unit again for the furniture and food banks and a Tenancy at Will was granted on a low rent co-terminus with their lease of unit 2a.
- 2.9 Subsequently the Long Table was started up in Unit 1, however, it became apparent that the multiple uses within these units required both planning permission for change of use and were of concern to the council's insurers. As Unit 4 became vacant and as COVID-19 hit, the Council allowed the furniture bank to move into Unit 4, leaving Unit 1a for the Long Table use only. This was intended for a short-term period only with a low rent reflecting this.

2.10 GN applied for planning permission for a change of use for Units 1 and 4 in July 2020, a decision is awaited, but a deferral was recommended by the Highways Authority in December 2020 until the applicant provides evidence to justify the parking levels proposed. See S20/1550/FUL.

2.11 The current position with regard to these tenants' leases is set out in Appendix B (Exempt.)

3. Discussion - RUSH Skatepark and Grace Network's tenancies

Please see Appendix B for additional exempt information

RUSH

3.1 It has not completed the new lease offered to it and which it has had since January and is occupying on a Tenancy at Will. It is assumed that it would only be able to continue in occupation beyond June on the basis of a peppercorn rent. This would require committee approval because of the rent arrears already owed and as occupation would extend beyond the lock down period, within which rent holidays have been granted by officers.

3.2 The facility has been closed for a large part of the pandemic, only now starting to re-open and as the summer approaches, outside venues are likely to still be used, particularly in good weather. It will have to close again to relocate or to provide the council with vacant possession. RUSH have indicated that they do not have the resources to remove the ramps from the unit at the end of term as prescribed for in their Tenancy at Will. This will add to the council's demolition costs and could potentially make the unit liable for NNDR, preventing the council's ability to be granted void rates.

Grace Network

3.3 Discussions have been taking place with GN for many months regarding the need for the council to gain vacant possession of their units and assisting with trying to find alternative sites. The deadline for this had been agreed as March (similarly for RUSH) and has since been extended to June. They have been looking for alternative premises for some time, and it is understood that, whilst not ideal, the various social enterprises within the units could be split up and other buildings secured in the short or long term, if larger premises are unavailable. Whilst GN has tried to purchase 2 larger properties during this time, it has been unsuccessful in securing these. Officers have recently offered other accommodation which is currently available in council buildings on a temporary basis and sites that may be suitable in the longer term.

3.4 All the tenants on the site have been kept updated on progress with the redevelopment through liaison meetings set up by the former ward councillor in 2014 which also includes local residents and the Parish Council and through direct one to one contact. Prior to this SVCC held regular meetings with tenants as well. The council has been publishing the redevelopment programme and discussing the likely requirement for vacant possession with tenants for several years.

3.5 Reasons for the delegation and early demolition of Units:

These have been set out in this and the previous report to committee but are expanded on below;

The Development Programme

- 3.6 The key milestones for the redevelopment of the Port were published as part of the previous report to Committee and are attached at Appendix D. These have been updated to demonstrate the impact of the current uncertainty around achieving vacant possession by June (see para 2.3 Appendix E: Exempt)
- 3.7 Vacant possession is required in June to give the Council flexibility to carry out the demolition for the reasons outlined and to have the option to construct the infrastructure if the procurement of a partner is not successful. This may become necessary at various stages in the procurement process as follows:
- a) July 2021 - Little market interest to the tender opportunity (tenants remaining on site with public support and no clear vacant possession date may impact developers' interest as well as wider economic factors)
 - b) Oct 2021 - Evaluation at the SQ (Selection Questionnaire) stage does not result in any preferred bidders
 - c) Dec 2021 - Shortlisted bidders from SQ stage do not proceed beyond competitive dialogue phase due to a mismatch between their approach and the Council's to the redevelopment
 - d) May 2022 Strategy and Resources does not approve the selection of the final bidder at the completion of the tender evaluation stage

These are all points at which the council may decide it wishes to commence the full infrastructure works.

- 3.8 The continued occupation of the units has already had an impact on programme as pre-contract asbestos surveys cannot be undertaken until they are vacant. This means that provisional sums will have to be included in tenders and time given for these to be undertaken before the start of any works. Officers are trying to reduce the impact by phasing surveys as units become empty and these have started.
- 3.9 The impact on programme is further complicated by the limited ecological windows for bat surveys and licences and Environment Agency permits to work in the river. This can mean delays in the programme further down the line for up to a year if the opportunity to demolish is not taken this year.
- 3.10 All of the units are in the way of some of the key infrastructure – Units 1 to 3 on the Industrial Estate are a terrace and need to be demolished to allow the new highway access onto the site from the A419 and the Business Park units, (several of which are also attached to each other), are where the river will be de-culverted and the canal reinstated, as well as services such as the mains sewer diverted. It is not possible at this stage for officers to work out what the developer's programme and preference for timing of demolitions will be. Appendix B sets out the units on the site, their current state of occupancy and the key infrastructure that they lie in the path of.
- 3.11 Homes England and Land Release Fund bid requirements – the Council needs to be mindful of the key milestones and HE's requirement for achieving best value in any decisions it makes with regard to the development programme. The council has also been successful in its LRF bid for £776k where there is a deadline to meet, whereby the site has

to be released for housing by March 2023. (see Appendix C: Exempt) The success of this recent bid shows continuing confidence that the council will deliver the redevelopment and acknowledges the de-risking and investment in the site that has already taken place.

- 3.12 National Non-Domestic Rates/ Security costs. Empty industrial units will qualify for 6 months void rates period after which full business rates will become payable. As some of the units are already empty, payments will start to be made from mid-July. Officers will minimise liability as far as is possible but these costs will eat into the management account for the Port as rental income diminishes. There is the risk that with reduced rental income and vacant offices in the Mill, the Port income will not cover its costs.
- 3.13 Anti-social behaviour/aesthetics/ecology. The Parish Council and local residents have expressed concerns over units standing empty for long periods. Security costs and anti-social behaviour are likely to be higher with empty dilapidated units on the site rather than fenced off areas which are less inviting. Current estimates of the programme show there being a relatively short period between buildings being demolished and infrastructure works being able to start on site. Empty buildings will potentially be used by bats and more surveys may need to be undertaken before demolition, with further delays to the programme possible.
- 3.14 Electric Vehicle Charging Points and Mill lettings
- 3.15 The council has had requests for the installation of EV points from companies interested in taking space at the Mill. Power to this area is limited and taken up by the Business Park Units, their demolition would help both with power supply, but also laying out a temporary extended car park for the Mill, which would provide more certainty for tenants. The Mill remains the only property on site which can be let in the long term, bringing in income to cover its running costs and potentially producing a surplus for the redevelopment budget. Lettings here should be prioritised.
- 3.16 Developer confidence
Any uncertainty around the council's ability to secure vacant possession will be picked up by developers interested in the redevelopment. With the council set to start procuring a partner in July this year this may impact on the quality and quantity of bids received
- 3.17 **Securing Vacant Possession**
See Flow chart at Appendix E (Exempt) and Legal Implications.

Community benefits provided by RUSH and Grace Network

- 3.18 Whilst RUSH has been closed for a lot of the pandemic it has been able to open and provide sessions for vulnerable groups of children and adults and the benefits of exercise for people's health and well-being are well documented and more acute as a result of the pandemic. With children now back in school and the potential to be able to use the skate park in small groups there are obvious benefits in it continuing to be open for as long as possible. Currently bookings are only being taken a week in advance.
- 3.19 Grace Network has provided a life-line to the local community in terms of its pre-prepared and frozen meals during the lockdown and has been in receipt of council grants to support its community work. Kids' Stuff, the furniture bank and the foodbank are also important services for some of the most vulnerable in our community.

CONCLUSION

- 3.20 This is an extremely complex and challenging site to develop, unviable without the significant amounts of public investment that have been secured. The amount of infrastructure is disproportionately large compared to the numbers of homes that can be built on site and many developers will not be interested because of this. However, there is already developer interest in the site, confidence is high at the moment and the property market is extremely strong. A lack of clarity around when tenants will be vacating the site may impact on confidence when the council starts the procurement process.
- 3.21 These units need to be vacated by the end of June, in order that pre-demolition surveys on them can begin and the demolition of units can start outside of the main activity season for bats (between October to April). Any delays to this programme limits the council's ability to complete the demolition within this time period and will lead to longer delays to the redevelopment programme with the ability to do works in the river also only permitted outside the fish spawning season (i.e. from June to September).
- 3.22 Relatively small delays of weeks or months now are therefore greatly magnified by these protected 'ecological' time periods and result in even longer delays, (potentially up to a year) to the start of the anticipated development programme, where little will be able to happen on site, contrary to the wishes of the local community and Parish Council and resulting in a longer redevelopment programme of up to 2 years on site.
- 3.23 Whilst officers cannot confirm how a developer partner will approach the programming of works, the complexity of the timing of the works suggests that providing maximum flexibility to a partner and the council is the right way to proceed. Starting demolition further de-risks the site, making it more attractive to develop.
- 3.24 The council needs the flexibility possession of the units gives it, in order to make decisions on how best to progress the redevelopment at the key points as set out above. The milestones show clearly that delaying achieving vacant possession only until September is a significant risk to the project – there is no contingency for any delay and if tenants have not vacated before the end of June the whole project and the £2.776k funding secured is at considerable risk.
- 3.25 The benefits that these two tenants in particular bring to the community are very much acknowledged but cannot continue on the Port if the redevelopment is to go ahead. The impact of their loss from the site/closure is recognised in the Equalities Impact Assessment at section 4.3 below, but has to be considered against the long term gains to the community of the redevelopment. Stroud Foodbank has already made the decision to relocate and has secured premises in Stroud Town centre.
- 3.26 If the council allows tenants to remain on site, the redevelopment of the Port is at significant risk and the council may become in breach of its contractual obligations to its funding partners and to Stroud Valleys Canal Company.
- 3.27 If, however, members wish to extend leases beyond June 30th this year, new leases should be entered into with a specific end date and members need to bear in mind the process set out in paragraphs 3.12 of Appendix B (Exempt), which could mean that tenants occupy beyond these dates; compromising the redevelopment programme further. It is clear from the programme that any occupation beyond September jeopardises the project.

3.28 Ultimately, the balance to be made between these opposing requirements is a political one; officers have made a clear recommendation with regard to the longest end date that should be given for occupancy of the site (June 2021) as previously approved by committee.

4. IMPLICATIONS

4.1 Financial Implications

4.1.1 The costs of securing vacant possession and demolishing units to prepare for Infrastructure works are already included within the approved Brimscombe Port Project Budget. The Council has already spent approximately £1.1 million in getting the project to this stage.

4.1.2 The funding agreement with Homes England allows them to request the return of funding if the milestones in the funding agreement, as set out in the development timetable, are not met. This return of funding would be up to the value of the original grant funding to acquire the site (£7.6 million) plus the development funding of £2m, or a transfer of the site to Homes England at nil value. Delays in site development increase the risk of default to the agreement requiring the Council to pay out those sums or lose ownership of the site.

4.1.3 Appendix C provides details of the significant financial support provided to Port tenants in the form of rent holidays throughout the Covid pandemic. Income from the Port is ring-fenced to the development budget. Therefore, these rent holidays have reduced the total budget for Port Development but have helped ensure valued local businesses and services have remained operational throughout the pandemic.

4.1.4 As set out in this, and the previous, report to the Committee, delays in demolition will result in increased costs and also the Council incurring liabilities for business rates on the buildings.

4.1.5 All rent arrears which predate the Council's ownership of the site (April 1st 2020) have been deemed as not collectable in the Council's accounts and therefore there is no additional financial impact created by writing off debts.

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4.2 Legal Implications – Exempt: see Appendix B

4.3 Equality Implications

An EqIA has been carried out and confirms that some protected groups could be negatively impacted from the loss of some of the businesses and social enterprises currently occupying the site if they cannot, or do not wish to, find alternative premises. This is being mitigated by the council supporting these tenants through the pandemic and to find suitable alternative premises locally. Also by allowing tenants to remain on site for as long as possible without jeopardising the redevelopment programme. The Output Specification for the site (development brief) includes the provision of a new social enterprise centre, commercial and retail space, affordable homes, a reinstated canal and basin with towpath and de culverted river; providing new opportunities for outdoor recreation, social enterprises and employment on the site.

4.4 Environmental Implications

- 4.4.1 The greatest proportion of carbon emissions for Stroud District, in common with elsewhere, is the built environment. The key challenge on delivering our 2030 Carbon Neutral commitment is that about 85% of these built environment emissions are in private control. By taking the partnership approach to the delivery of the redevelopment of the Port, the Council will remain in control and, whilst acknowledging that the demolition and construction will have an impact, we can ensure that the scheme responds to its commitments.
- 4.4.2 The redevelopment, as set out clearly in the Output Specification, is to deliver an exemplar scheme with high levels of energy efficiency that exceed the Council's current Local Plan and will be in line with the proposals set out in the draft Local Plan. Building with Nature accreditation is a requirement for the scheme.
- 4.4.3 The Environmental Statement (ES) that has been published as part of the planning application demonstrates that overall there are no significant adverse effects which will result from the proposed development. The approach undertaken as part of the ES and subsequent ES Addendum has led to the inclusion of a number of mitigation measures which have accounted for the likely impacts associated with proposed development and reduced their respective effects to within acceptable levels.
- 4.4.4 The planning conditions ensure that ecology, contamination and flood risk are addressed as part of the infrastructure works.