

Public Document Pack



Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP
www.middevon.gov.uk

All Members

Contact: **Andrew Seaman**
Email: **aseaman@middevon.gov.uk**

13 February 2023

Dear Member

Cabinet – 14 February 2023

I am now able to enclose, for consideration at the 14 February 2023 meeting of the Cabinet, the following supplementary information in respect of agenda item 4 that was unavailable when the agenda was published.

4. **3 Rivers Developments Limited - Business Plan 2023-2028 and associated Business Cases** (*Pages 3 - 8*)
 - **Scrutiny Committee recommendation (minute 76)**

sincerely
Andrew Seaman
Member Services Manager

Available in other languages and formats on request
Please telephone 01884 255255 or email customerfirst@middevon.gov.uk

This page is intentionally left blank

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 13 February 2023 at 2.15 pm

Present

Councillors

S J Clist (Chairman)
G Barnell, W Burke, L J Cruwys, J M Downes, Mrs S Griggs,
P J Heal, S Pugh, R F Radford, Mrs E J Slade and
B G J Warren

Apologies

Councillors

E J Berry, F W Letch and Mrs E J Lloyd

Also Present

Councillors

J Buczkowski, R M Deed, R J Dolley, C J Eginton, B Holdman,
D J Knowles, A Wilce, Mrs N Woollatt, A Wyer and C R Slade

Also Present

Officers

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)) and Maria De Leburne (District Solicitor and Monitoring Officer) Sarah Lees (Member Services Officer) Andrew Seaman (Member Services Manager)

73 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from:

- Cllr E J Berry who was substituted by Cllr P J Heal
- Cllr F Letch who was substituted by Cllr J Downes
- Cllr E Lloyd

74 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**

No interests were declared under this item.

75 **PUBLIC QUESTION TIME**

The following questions were asked by members of the public:

Mr Mark Wooding asked:

1. Could it be clarified if there is a Cabinet at the moment? If there isn't a Cabinet, what are the implications for the recent decision on 3 rivers?

The Chief Executive stated that a written response would be provided.

Mr Paul Elstone asked:

Question 1

I understand that a senior and very well-informed member of this Council has requested the Devon Audit Partnership have its fraud team look into the 3 Rivers business dealings with the Council.

Public money should not be loaned to any Company under fraud investigation.

Given that all loans to 3 Rivers are public money, will this Scrutiny Committee ensure that 3 the Rivers Business Plan approvals are rescinded. Also place on hold all future 3 Rivers expenditures, other than for safety or environmental reasons. This until the results of any fraud investigation are published?

Question 2

At the Cabinet meeting of the 31st January 2023 I asked about the reported problems with 3 Rivers Accounts and the lack of an Auditors Report.

In a written response I was told that; "In assessing the company's business plan(s), the Cabinet has considered comments/feedback from the Audit Committee, Scrutiny and Full Council and its professional officers".

It is hard to believe that the Cabinet did properly consider the advice being given, since the feedback from Council and Committees was "We do not support these Business Plans".

Will Scrutiny Committee please take the advice of Full Council and Audit Committee and send this 27/1/2023 Business Plan straight back to Cabinet with a recommendation that MDDC does not proceed. This until the 3 Rivers Fully Audited Accounts have been published and a further risk assessment has been undertaken by Audit Committee?

Question 3

At the same Cabinet meeting I asked; Why was the potential loss of 1.6 million pounds on St Georges Court, known to the Cabinet, kept secret from the MDDC Electorate? The written answer given: This information is restricted due to commercially sensitive nature. This is why the Public have a complete lack of trust in MDDC Executive Officers and Cabinet Members on anything to do with 3 Rivers.

Especially so as it seems a senior and very well-informed Member of this Council has said that the Public "do not know the Machiavellian things that have gone on from a finance point of view". Machiavellian characteristics are marked by cunning, duplicity or bad faith. An example is that 3 Rivers paid four hundred and twenty thousand pounds (£420,000) for low grade land at Bampton but gave the MDDC Planning Committee a viability statement stating the professional land valuation was only two hundred and thirteen thousand pounds (£213,000).

Will this Scrutiny Committee fulfil their obligation to the people of Mid Devon and remedy this serious situation. This by taking whatever steps are necessary to stop this Business from going any further into decline?

The Monitoring Officer stated that a written response would be provided.

Mr Steve Keable asked:

- a) Did the Cabinet work properly or constitutionally on the 31 January 2023?
- b) If so, why?
- c) If not, why not?
- d) Context of my question is the outcome of Council meeting on 18th January where Members were concerned about putting more good money into a questionable enterprise when also considering the cost of living demands of axing services to maintain a balanced budget.

The Monitoring Officer stated that the answers to these questions would be answered within the debate to follow.

76 DECISIONS OF THE CABINET (00:15:00)

A Decision made by the Cabinet on 31 January 2023 in respect of the following report was called in for consideration by Councillors B G J Warren, G Barnell, Mrs C P Daw, R M Deed, R J Dolley, A Wilce and Mrs N Woollatt.

3 Rivers Developments Limited - Business Plan 2023-2028 and associated Business Cases

The Cabinet had RESOLVED to:

1. Approve the new 3 River Developments Ltd business plan dated 27 January 2023.
2. Approve the business case for Bampton 2, 5 levels.
3. Approve case for Park Road and accept the revised increased unconditional offer made within the business plan dated 27 January 2023.
4. Continues to fund 3 Rivers Developments Ltd in line with the business plan dated 27 January 2023 Which is proposed to generate £900k gross interest received in 2023/24 which are already included in the Council draft 2023/24 general fund budget.
5. To continue with the due-diligence process agreed by Scrutiny, Audit Committee, Cabinet and Full Council that requires a detailed business case to be reviewed and approved by Cabinet for any development in excess of £1m.
6. Instruct external financial and legal advice should a different scope or direction be considered.

The reason for the call in was:

1. The Decision Notice is in Error.
2. The decisions are outside of the Budget & Policy Framework.
3. In relation to 2 above, decisions were not within the power of decision maker.
4. There was inadequate consultation.
5. There was insufficient legal and financial consideration.

The Monitoring Officer provided her opinion on the reasons given for the call in:

- Reason number 1 was not debateable in her opinion. She listed the path this issue had taken through the Scrutiny Committee, the Audit Committee, the Cabinet and full Council. This included a number of Extraordinary meetings.
- Regarding reasons 2 and 3 she confirmed that Council was responsible for approving the budget, however, the governance arrangements of the company made it clear that the Cabinet had authority to approve the Business Plans of the company.
- She did not consider reason number 4 as being debateable since a great deal of evidenced consultation had taken place.
- With regard to reason number 5 she again referred the Committee to the committees which had considered the financial and legal implications.

A Decision made by the Cabinet on 31 January 2023 in respect of the following report was called in for consideration by Councillors B G J Warren, G Barnell, Mrs C P Daw, R M Deed, R J Dolley, A Wilce and Mrs N Woollatt.

3 Rivers Developments Limited - Business Plan 2023-2028 and associated Business Cases

The Cabinet had RESOLVED to:

7. Approve the new 3 River Developments Ltd business plan dated 27 January 2023.
8. Approve the business case for Bampton 2, 5 levels.
9. Approve case for Park Road and accept the revised increased unconditional offer made within the business plan dated 27 January 2023.
10. Continues to fund 3 Rivers Developments Ltd in line with the business plan dated 27 January 2023 Which is proposed to generate £900k gross interest received in 2023/24 which are already included in the Council draft 2023/24 general fund budget.
11. To continue with the due-diligence process agreed by Scrutiny, Audit Committee, Cabinet and Full Council that requires a detailed business case to be reviewed and approved by Cabinet for any development in excess of £1m.
12. Instruct external financial and legal advice should a different scope or direction be considered.

The reason for the call in was:

6. The Decision Notice is in Error.
7. The decisions are outside of the Budget & Policy Framework.
8. In relation to 2 above, decisions were not within the power of decision maker.
9. There was inadequate consultation.
10. There was insufficient legal and financial consideration.

The Monitoring Officer provided her opinion on the reasons given for the call in:

- Reason number 1 - She listed the path this issue had taken through the Scrutiny Committee, the Audit Committee, the Cabinet and Full Council. This included a number of Extraordinary meetings. Also, that Cabinet had referred the matter to Extraordinary Full Council at the request of the Scrutiny Committee on the 21 November 22.

- Regarding reasons 2 and 3 she confirmed that Council was responsible for approving the budget, however, the Governance Agreement of the company made it clear that the Cabinet had authority to approve the Business Plans of the company.
- Reason number 4 - a great deal of evidenced consultation had taken place as referenced in the response to reason 1.
- With regard to reason number 5 she again referred the Committee to the committees which previously had considered this and which were all accompanied with reports on financial and legal implications.

Discussion took place and consideration was given to:

- The rationale for each of the call in reasons had not been provided as part of the agenda for the meeting. This may have been helpful to the public and those discussing the issue. The rationale in each case was then provided by one of the Members calling in the decision.
- The short length of time between the publication of documents and the meetings taking place to discuss and decide upon those documents.
- The absence of sufficient reasons for the Cabinet decisions.
- Article 15.2 was referred to in terms of reasons needing to be given by Council for all of its decisions.
- Whether the company was obtaining 'best value' for the sale of its assets, this needed further enquiry.
- Elements of the original Business Plan appeared to have been omitted from the revised Business Plan.
- Any Members of the Scrutiny Committee appointed to the Cabinet following this meeting would not be able to consider the matter as voting members of the Cabinet since there would be a significant element of predetermination.
- Some initial confusion as to whether or not the call in would be allowed.
- Any decisions regarding the budget needing to be made by full Council and not Cabinet.
- The revised Business Plan had not been considered by the Scrutiny or Audit Committee.
- The 'Notification of Key Decisions' was not thought to have given proper notice of the matter.
- Further advice was needed on matters such as how long to market a property and what was 'best value'.
- It was confirmed that the Cabinet had asked the company to amend the Business Plan with regard to a number of factors and the company had complied.
- The financial effect upon the Council if the Business Plan was not able to proceed. This may lead to reductions in service provision and consideration of using reserves. It was confirmed by the S151 Officer that the potential overall financial loss to the Council would be extremely significant.

It was **RECOMMENDED** to the Cabinet:

- I. That the Scrutiny Committee supports the original Full Council recommendation number one that, neither of the business plans or business cases in their current form be supported. This should now extend to the final version dated 27 January 2023. This recommendation should be returned to Full Council for consideration.
- II. That the Scrutiny Committee supports the original Full Council recommendation number two in its entirety. Cabinet has decided to continue to fund 3 Rivers but it has not stated to which stage. Cabinet should be recommended/asked to clarify this point.
- III. That Scrutiny Committee note the further part of recommendation number two which states “It further recommends that independent legal and financial advice be sought to help inform those considerations and explore what options are available”; and consider that in the light of Cabinet decision number 6 this matter has not been addressed and therefore as there are potential budgetary implications the matter should be referred to Full Council for decision.
- IV. That Scrutiny Committee recommend that decision three should not be implemented until the matter has been reviewed by Full Council with respect to the potential budgetary effect and a full independent review has taken place into the procedures and advice as to the legality for the sale of this site with the reduction in value. This may include reference to the Secretary of State as we have a duty to obtain best value.
- V. That Scrutiny Committee recommend that decision four be referred to the Full Council in the light of its major impact on the forthcoming draft budget.

(Proposed by Cllr B Warren and seconded by Cllr W Burke)

Notes:

- (i) Cllr J Downes requested that his abstention from voting be recorded.
- (ii) A proposal that the Scrutiny Committee makes ‘no recommendations’ to the Cabinet was not supported.

It was further **RESOLVED** that:

The Scrutiny Committee consider an external investigation into the Council’s handling of this matter, including the processes followed, from its inception to the current date.

(Proposed by Cllr J Downes and seconded by Cllr B Warren)

(The meeting ended at 4.06 pm)

CHAIRMAN