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Written responses to the public questions asked at the Audit Committee on 27 June 2023

Barry Warren Council Tax Payer

Former Leader of Council for a short while. My questions relate to Agenda Item 12 starting on page 83 of the bundle. My questions are mainly directed to the Devon Audit Partnership Officers please.

On the third line of the introduction you report ‘We agreed the review would include’. Who were ‘WE’ please?

DAP: The Terms of Reference were agreed with the S151 officer.

Was I consulted on the Terms of Reference?

DAP: The Leader of the Council was not consulted. It is not the accepted process to agree ToRs with members. We note it was also a pre-election period.

On 16th February 2023 did Mr Middlemass write an email to the S151 Officer, Mr Jarrett, as the result of the then Leader, Councillor Deed, raising concerning issues?

DAP: An e-mail was sent by Mr Middlemass to Mr Jarrett noting the request from Cllr Deed for Internal and External audit to undertake work.

In that email were the words “I envisage we do a quick piece of work to help allay some basic concerns related to the payment of funds from MDDC to 3 Rivers” and “I suggest we meet to discuss the terms of reference for our work in the next few days.” Does that give confidence that a thorough independent review of concerns is going to be carried out?

DAP: We accepted at the time the need to quickly complete our work given member concerns. We also accepted that taking a significant amount of time on a review would impose burdens on the council and 3 Rivers when focus should be on formulating plans to address the challenges facing the council and 3 Rivers. In that regard, we noted the extensive work of external auditors and others to date.

At the bottom of page 85 you refer to advice given. Do you have evidence that I received such advice as I have no recollection?

DAP: We did not directly approach you to advise you to contact / inform DAP or Devon and Cornwall Police if you possess evidence which could support fraud or criminality.

In relation to the matter referred to on page 89 reference is made to information given by the Managing Director of 3 Rivers and the S151 Officer – a former Director of 3 Rivers. Did you enquire of anyone else as I and others received a totally

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different explanation at the time of a Director giving permission for the bricks to be borrowed?

DAP: We note in our report that “It is clear that any loss would have been to the detriment of 3RDL, therefore we must conclude that the matter has been formally dealt with. The lack of records around the investigation process, decision making, and outcomes does not assist 3RDL, MDDC or DAP to transparently conclude / dispose of this allegation in a fully satisfactory manner. Where such allegations are made in the future, full and complete records must be kept and made available for scrutiny should the need arise. To give future assurance around protection of the public purse, clarification whether MDDC Policies and the Code of Conduct apply to those being employed by 3RDL would assist all officers in understanding their responsibilities and duties”.

Were you told that I had reported to the Chief Executive my witnessing a tradesman attempting to purchase materials through the 3 Rivers account?

DAP: If this is reference to the 3 River Howdens account, we are aware of various attempts by tradesmen to purchase materials on a cheaper basis. It is incumbent on Howdens to ensure that this does not happen. The council is not responsible for how Howdens enforces its rules.

On page 90 reference is made to the resignation of the 3 Rivers Financial Director. Did the investigations reveal the email from that Director to a number of people dated 31st January 2023 in which he set out a lot of detail and then wrote “All of this places me in the position that I have to resign as a Director of 3 Rivers Developments Limited and St George's Court (Tiverton) Management Limited. I will lodge the resignations promptly at Companies House. I will also advise Simpkin Edwards, Hall & Scott, Absolute PR and Paul Steele Accountants of my resignation.” In response, the Chairman stated that none of the Members of the new Committee were qualified to answer the questions, he therefore asked if any of the officers could?

DAP: We have seen the e-mail and discussed the situation with the Finance Director. We note in the report that in our view his resignation sprung from his views on the conduct of some members, and not his opinion on internal management of Three Rivers.

Paul Elstone (a local resident)

My questions relate to agenda items 11 and 12. - Devon Audit Partnership - DAP's Internal Audit 2022/23 and the Investigation of 3 Rivers.

QUESTION 1:

In an email to DAP dated 24th May 2023, I stated that there was one allegation of fraud and four allegations of unethical conduct that warranted investigation. Will DAP explain why they did not investigate the fraud allegation actually made, or the ethical conduct allegations?

DAP: Any investigation requires an agreed terms of reference to prevent criticism that the work is a fishing exercise and to ensure that specific responses can be provided to any issues included within the scope. We investigated the allegations raised by members of

the public in council meetings. If other allegations exist, individuals can raise them with the police and provide evidence.

QUESTION 2.

After a request by DAP to provide evidence. This in respect of the fraud allegation, I stated the following:

“I have been blocked by MDDC Officers in getting a copy of the Viability Assessments in question despite I believe having a legal right as defined in a 2020 High Court Judgement”.

Why is this not mentioned in the DAP Report?

Why did DAP not follow up on this?

DAP: MDDC has a process for the public to request papers. If this is not successful you have the right to apply directly to the Information Commissioners Office.

We state in our report that the Viability Report is not a Land valuation, but a calculation of the viability of the project including the estimated costs of land and building to give an indication as to whether the project should go ahead. It is therefore a useful tool for management to refer to, but not a solid framework for the business to follow.

QUESTION 3

Page 13 of the report references a former and long-standing Council Leader saying, “the public do not know the Machiavellian things that have gone on from a finance point of view”.

Why was this statement not investigated and in any way by DAP?

DAP: We approached the previous Council Leader and asked for substantive evidence relating to his claims.

In terms of financial accounting, we have noted the role of Paul Steele in maintaining the accounts, Simkins Edwards acting as the 3 River External Auditor, and Grant Thornton also acting as the MDDC external auditor. In addition, two other extensive independent reviews were undertaken on how the company is managed in 2020.

QUESTION 4

Were DAP, or for that matter Grant Thornton made aware, by the MDDC Monitoring Officer or others, that in an email dated the 25th January 2023, the 3 Rivers Finance Director raised serious concerns with MDDC Officers about MDDC under reporting the level of 3 Rivers bad debt in its accounts?

DAP: The risk of inaccurate accounts is a known risk, and a reason why external audit is important in providing an independent view on the accounts. The recent review by Simkins Edwards of the latest accounts has ensure that figures for 3 Rivers are accurate based on current financial accounting standards.

QUESTION 5

Where DAP made aware by the MDDC Monitoring Officer or others that in the 3 Rivers Finance Directors resignation email dated 31st January 2023 he states Quote “I do not accept his response. I have sought legal advice regarding possible defamation” unquote, this was said in response to the MDDC Officers reply in respect of MDDC’s failure to properly report the level of 3 Rivers bad debt?

DAP: We are aware that for several months there was extensive debate on the actual financial figures in the accounts prompted by the work of Simkins Edwards as the external auditors. We have noted the work of the 3 River Accountant and External Auditor to ensure that company accounts present an accurate picture of the financial position of the company.

QUESTION 6

Given the information now at hand, including from previous Leaders of this Council, will this Audit Committee now recommend to Full Council that the DAP Internal Audit plus the Fraud Investigation Report be rejected ?

That another, more wide-ranging, investigation be implemented?

DAP: The Audit Committee of June 2023 did not decide to take this approach. We note that continued and lengthy investigations have a direct and indirect cost on the council and are a burden on 3 Rivers as managers are diverted from business activity to address claims and allegations.

Nick Quinn Local Resident

My first question relates to Agenda Item 12 – The DAP 3 Rivers Report. It is apparent from how the ‘Removal of Materials’ allegation has been treated, that this is a quick ‘skate over’ report. The report confirms there was unauthorised removal of materials from the St George's site, which was reported to the S151 Officer and to the Board of 3 Rivers. However, DAP accepted the Managing Director’s explanation, as fact - without seeing any evidence of an investigation or action. This proven lack of proper procedures and management control at 3 Rivers should have raised questions: “was this an isolated incident?”, or “what else has happened that has not been recorded?”. The report shows the allegation was true and that 3 Rivers’ management practices are flawed - a combination that should merit further investigation.

DAP: We note in our report that “It is clear that any loss would have been to the detriment of 3RDL, therefore we must conclude that the matter has been formally dealt with. The lack of records around the investigation process, decision making, and outcomes does not assist 3RDL, MDDC or DAP to transparently conclude / dispose of this allegation in a fully satisfactory manner. Where such allegations are made in the future, full and complete records must be kept and made available for scrutiny should the need arise. To give future assurance around protection of the public purse, clarification whether MDDC Policies and the Code of Conduct apply to those being employed by 3RDL would assist all officers in understanding their responsibilities and duties”.

With the admission that materials were removed from St Georges Court and a proven lack of proper management control or records, will this Committee ask for a proper investigation into this matter?

My last question relates to Agenda Item 15 – Grant Thornton’s Annual Report This report contains a number of comments concerning the problems of 3 Rivers but the worst of these are aimed at Elected Members of this Council. The Executive Summary states: “we observed the emerging escalation of ineffective decision making in respect of the process for approving the 2023/24 business plan of 3 Rivers” and this “raised concerns about the Council’s ability to take timely decisions in the best interests of the Council”. I believe these critical comments are misdirected. Given the risks associated with the very late, and obviously poor,

Business Plans; the escalating losses and likely loan impairments - Elected Members, including this Audit Committee, made positive decisions not to support any of the Business Plans presented to them.

Will this Committee seek, from Grant Thornton, a Full Explanation for the critical comments regarding Elected Member decisions, contained in this report?

Grant Thornton have provided the following general response to these two questions:

The point around elected Members was covered in the introduction to item 15. Specifically it was stated that the Grant Thornton VFM report for 2021/22 does not single out Members, its references concerns regarding the council's decision making, (officers and Members). It was also stated that the VFM report references the recent 3Rs issues but also that Grant Thornton have not undertaken any detailed work on this area and therefore are not in a position to reach any judgements on conclusion. The issues referred to happened in 2022/23 and Grant Thornton will be having regard to these in informing its approach to its VFM work for 2022/23.

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