

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 15 February 2021
at 2.15 pm

Present

Councillors

F W Letch (Chairman)
G Barnell, W Burke, L J Cruwys,
Mrs C P Daw, J M Downes, R L Stanley,
B G J Warren, E J Berry, Mrs S Griggs,
S J Penny and A Wilce

Also Present

Councillor(s)

S J Clist, R M Deed, R Evans, B A Moore, C R Slade and
Mrs N Woollatt

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy
Chief Executive (S151)), Jill May (Director of Business
Improvement and Operations), Kathryn Tebbey (Head of
Legal (Monitoring Officer)), Lisa Lewis (Corporate Manager
for Business Transformation and Customer Engagement),
Matthew Page (Corporate Manager for People,
Governance and Waste), Catherine Yandle (Operations
Manager for Performance, Governance and Health &
Safety), Maria De Leburne (Legal Services Team Leader),
Nicola Cuskeran (Senior H R Business Partner), Vicky
Lowman (Environment and Enforcement Manager),
Deborah Sharpley (Solicitor), Clare Robathan (Scrutiny
Officer) and Carole Oliphant (Member Services Officer)

148 **APOLOGIES AND SUBSTITUTE MEMBERS (0.03.55)**

There were no apologies or substitute Members

149 **REMOTE MEETINGS PROTOCOL (0.04.10)**

The Committee had before it, and **NOTED**, the *Remote Meetings Protocol

Note: *Protocol previously circulated and attached to the minutes

150 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0.04.17)**

Members were reminded of the need to make declarations of interest when appropriate.

151 **PUBLIC QUESTION TIME (0.04.37)**

Alderman Nation, a local resident, referring to item 9 on the agenda stated:

'I'd like to ask some questions please, I suppose more of the Chairman of the Working Group of Governance, Cllr Moore, than of the Scrutiny Committee. I would hope that the Scrutiny Committee would put these questions to Cllr Moore.

Between 27th January last year and 28th January this year the Governance Working Group held 6 secret meetings which I had to make for FOI requests to get minutes of those meetings. I am wondering is this conducive of an open democratic government? I would like to know as well why the Working Group has decided that the fundamental structure of governance does not require attention as it says in one of the most recent reports. They have totally failed to consider the pros and cons of returning to a committee structure and I would like to know why that is.

The wish of the public and many councillors to prevent the Cabinet acting contrary to their clear wishes will continue unfettered if the Working Groups proposals are enacted. Is this really what the Council wanted when they voted for a review of governance?

I think the proposal to scrap the PDG's in favour of two Scrutiny committees portrays the real wishes of the controlling councillors to clearly, purely control the Leader of the Council. PDG's were supposed to develop policy, if they are scrapped all backbenchers will be doing will to scrutinise actions of Cabinet. It does nothing to increase their powers at all.

The changes proposed do not challenge the outright power of the Cabinet. The Working Group has failed to address the concerns to the public and the Council and I hope Scrutiny Committee will ask Cllr Moore why that is and what their true intentions are.'

The Chairman advised that the questions would be addressed at the item.

152 **MEMBER FORUM (0.08.11)**

Cllr G Barnell stated:

At the last meeting of the Scrutiny Committee on 18th January the Leader, Cllr Deed, gave an undertaking that the forthcoming 3RDL Business Plan would be the subject of pre scrutiny by this committee at today's meeting. He gave a further undertaking that the Business Plan would return to Cabinet on 18th February, the forward plan confirms that, for further consideration before proceeding to Council on 24th February for a decision.

In accordance to the legislation on how local government business should be conducted, the Cabinet agenda report on the 3RDL Business Plan was published publicly a week before the Cabinet on 4th February together with the Plan which was circulated to Members only. The recommendation in the report was that Cabinet recommend the Business Plan and this was consistent both with Cllr Deed commitment to the Scrutiny Committee on the 18th and formal notice of Mid Devon key decisions which stated that the Cabinet be asked to consider the Business Plan.

The report and its recommendations remained unchanged prior to the Cabinet meeting on 4th February and during the meeting until the item was called for discussion, it stayed the same until the item was called. After the item had been

called, the Leader announced that the recommendation was to be changed very significantly, he removed the word recommends and replaced it with the word approves. This amendment immediately changed the entire purpose of the report and the consequences of the subsequent Cabinet discussion and the Cabinet proceeded to approve the Business Plan and significant loan amounts to 3RDL.

The questions are these:

1. The change of one word in the reports recommendation entirely changed the purpose of the report. It effectively became a new report. Is it lawful and/or constitutional for a report to be considered by Cabinet without prior notice?
2. Is it lawful or constitutional for a key decision to be made on a report to Cabinet without prior notice of its intention to consider making one?
3. Was the decision by Cabinet on 4th February to approve the 3RDL Business Plan and very significant loans, was that decision lawful and constitutional?

The events described above point to a strong possibility that the Leader of the Council set out to deliberately mislead the Scrutiny Committee and the wider membership of Mid Devon and also members of the public. To mislead them about purpose of intent of 3RDL Business Plan on 4th February. This could be seen as an attempt to avoid scrutiny of the business plan and to push through Cabinet approval at the earliest opportunity. Given the prima facie evidence that the Leader may have mislead Scrutiny Committee, together with the membership and the public, will the Monitoring Officer carry out an investigation into the matter of possible misconduct. In this conduct I would refer her to the Nolan principles of integrity, accountability, openness, honesty to which I might add leadership.

The Monitoring Officer explained that she would replying in detail and in writing which would be circulated to the Committee.

The Leader accepted that as the charges against him by Cllr Barnell as to his motives and conduct were serious he would not respond but leave a response to the Monitoring Officer.

153 **MINUTES OF THE PREVIOUS MEETING (0.13.59)**

The minutes of the meeting held on 18th January 2021 were approved as a correct record.

154 **DECISIONS OF THE CABINET (0.16.27)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 4th February 2021 had been called in.

155 **CHAIRMAN'S ANNOUNCEMENTS(0.16.37)**

The Chairman announced that he was going to be attending a meeting with the Leader, the Chief Executive and the Chairman of the Planning Enforcement Working Group to find a way forward.

156 MEETING MANAGEMENT

The Chairman indicated that he would take item 11 as the next item of business.

157 3 RIVERS DEVELOPMENTS LTD BUSINESS PLAN (0.18.06)

Member discussed the 3 Rivers Development Ltd (3RDL) Business Plan.

Consideration was given to:

- The decision to approve the Business Plan and recommend it to Council had already been made
- The St Georges site was due for completion in March 2022 and marketing would commence when the site was nearing completion as it could not be occupied until the whole development was completed
- 3RDL needed Members support
- The possible use of social media to promote the Company and to respond to negative posts
- The relationship between the Scrutiny Committee and the Audit Committee to scrutinise 3RDL and any associated risk to the Council

In response to a question asked about the role of pre scrutiny of business cases for 3RDL the Monitoring Officer explained that the Scrutiny Committee had enhanced rights and that she would provide a written response to Members.

The Cabinet Member for Finance explained that a business case for each site would be presented to the Cabinet by 3RDL and that each would be considered on its own merits. He reminded Members of the agreed process between Scrutiny Committee and Audit Committee and that the Audit Committee should have visibility of financial risks.

Members stated their frustration at 3RDL and felt that it was not the Scrutiny Committee's function to support the company but to show the public that they were robustly analysing it.

The Chairman of the Audit Committee stated that if Members had concerns about the financial risks of 3RDL then those concerns should be brought to the Audit Committee.

In response to a question asked, the Deputy Chief Executive (S151) explained that all lending to 3RDL had come from short term lending from the Council's reserves and was not directly from Council tax income. That £1.2m had been received from the company to date which was the equivalent to running the Council's 3 leisure centres for a year. He informed Members of the Treasury Management Strategy which was due to be presented to the Cabinet.

The Committee had further discussions and **AGREED** that:

- The 3 Rivers Development Limited - Business Case and Appraisal for the 9 dwellings at Bampton be brought before the Scrutiny Committee before being considered by the Cabinet

(Proposed by Cllr G Barnell and seconded by Cllr A Wilce)

Reason for the decision: To pre scrutinise the business case for the Bampton development

Notes:

- i.) Councillor R L Stanley declared a Disclosable Pecuniary Interest with regard to his involvement with 3 Rivers Developments Limited and left the meeting for the discussion and vote thereon
- ii.) Cllrs E J Berry, W Burke and Mrs C P Daw requested that their vote against the decision be recorded
- iii.) *Report previously circulated and attached to the minutes

158 **UPDATE ON THE GOVERNANCE WORKING GROUP (1.12.07)**

The Chairman of the Governance Working Group provided an update to Members and stated:

The Full Council meeting on 6 January 2021 ratified the Governance Working Group's way forward based on the 7 key conclusions from Group's activities to that date, notably including the outcome of internal and external consultation events. This report provides an update on work since that date.

A further meeting was held by the Working Group on 28 January 2021 at which the Monitoring Officer presented a paper providing options for discussion based on the agreed way forward. These were:

1. To continue with the current arrangements but enhance the scrutiny process; or,
2. To replace the 4 Policy Development Groups plus a Scrutiny Committee with one or more Overview & Scrutiny Committees.

After discussion it was agreed that a more detailed proposal be provided by Officers in consultation with the LGA for the second option. This was to look at 2 Overview & Scrutiny Committees addressing Corporate and Community topics respectively. The inclusion of a Programming Board to manage the work between the 2 Committees plus a Joint Overview & Scrutiny meeting to consider items of joint interest would also be developed. Working Groups could continue in the guise of Task & Finish Groups to support the work of the Committees.

This approach was considered to be worth exploring in more detail, as it appeared to offer the opportunity to improve Member involvement, improve cross-discipline working without unnecessary overlap, and enhance decision making through early engagement in the process. It was also thought that routine policy updates might become Cabinet Member responsibilities to allow the Committees to focus on matters of more criticality.

Member support for a new approach was recognised as crucial. Subsequent to the meeting the Monitoring Officer has started work and will contact the Chairs of Scrutiny Committee, Audit Committee and the 4 Policy Development Groups for input in due course.

As planned, the Working Group is scheduled to meet again on 2 March 2021 where more detailed proposals will be discussed. All Members are welcome to contribute to that meeting. The aim remains to bring a recommendation to an Extraordinary Full Council meeting on 17 March 2021.

The Chairman of the Governance Working Group stated that he would provide a written response to the public questions raised.

Consideration was given to:

- The working group considered public engagement in the process to have been adequate
- Members thoughts that it was clear from public consultation that there was no real appetite for huge constitutional change to the authority's governance arrangements
- Some Members views that the Working Group had made no serious attempt to reverse the Strong Leader and Cabinet System

A member of the Working Group explained that he had not initially gone into the review with an open mind and was convinced that a return to a committee structure was the way to go initially. However, during the work of the Working Group many alternatives had been explored and that he felt that option 2 could control the Cabinet in the proposed structure.

159 **ESTABLISHMENT ANNUAL UPDATE (1.39.07)**

The Committee had before it, and **NOTED**, a *report of the Corporate Manager for People, Governance and Waste presenting the Establishment annual update.

The officer outlined the contents of the report and stated that it included updates on the key establishment indicators of sickness and agency expenditure, turnover and the impact of COVID-19 on our workforce.

He explained the work that had been ongoing on the engagement, development and wellbeing of the workforce and priorities for the coming year.

In response to questions asked the Corporate Manager for People, Governance and Waste provided the following responses:

- Turnover was higher than the Council would have liked but there had been some challenges including proactive headhunting by another authority, restructuring and some challenging staffing issues to address
- Forecast sickness absence was running at 6 days lost per FTE employee which compared favourably to both the private sector and public sector
- When advising on people issues such as employee relation issues, retention and development that the impact on both the operational and financial performance had to be considered e.g. timescales, expenditure

- A new staff survey would be launched in the autumn

There was a general discussion with regard to how the workforce had changed and adapted during the pandemic and that some staff had particularly enjoyed working from home and had been more productive.

The Chief Executive reassured Members that the authority was looking at the new normal and how it transitioned in the future. He explained that the initial approach to working from home had been a make do and mend approach which had developed over time and that the infrastructure would need to be investigated moving forward.

Notes:

- i.) Cllr S J Penny left the meeting at 4.05pm
- ii.) *Report previously circulated and attached to the minutes

160 AMENDMENT(S) TO THE CONSTITUTION (1.54.16)

The Monitoring Officer provided a verbal update to Members and stated that subject to 17.3 (b) of the Constitution, changes to the Constitution would only be approved by the full Council following discussion by the Standards Committee.

The Monitoring Officer had the authority to make changes if it was:

1. A minor variation; or
2. Required to be made to remove any inconsistency or ambiguity; or
3. Required to be made so as to put into effect any decision of the Council or its committees or the Cabinet.

She informed Members that all changes to the constitution were recorded at the back of the published document.

The Monitoring Officer further explained that she had given instructions that the book of motions be amended to show if the motion had been carried and if a constitutional change was required and made. All constitutional changes would be reported to the Standards Committee.

161 PUBLIC SPACES PROTECTION ORDER (2.10.19)

The Committee had before it, and **NOTED**, a *report of the Legal Services Team Leader providing the process for the Public Spaces Protection Order (PSPO).

The officer provided a further update and confirmed that all maps had been sent to the Town and Parish Council's in order that their accuracy could be verified.

The Legal Services Team Leader explained to Members that the legislation was in place but this was not enforceable without an adopted PSPO in place.

She explained the lessons learned and the following processes moving forward:

- The Town and Parish Council's would be used to validate maps as they had the local knowledge

- There would be longer project management lead times to enable the process to go through its different stages in a timely manner
- Members to be involved to review any future drafts of a PSPO before it is sent to the PDG's for review and approval

The Cabinet Member for the Environment stated that he could not comment on why the process had taken so long as he had only taken over the portfolio in September. He reassured Members that he was now heavily involved in the process and would ensure that necessary and relevant enforcement was in place.

The Committee then **RECOMMENDED** to the Cabinet Member for the Environment that:

a) arising from the lessons learned, a procedure is put in place to ensure that all future renewals or reviews of PSPOs (or similar enforcement legislation) goes through each necessary stage or process required to ensure the effective and lawful application of that legislation

b) the responsible Cabinet Member to ensure that, once the PSPO (Dogs) is enforceable, there is sufficient officer resource committed to actively enforcing it.

(Proposed by Cllr A Wilce and seconded by Cllr B G J Warren)

Reason for the Decision: To ensure that there are robust processes in place for the implementation of a Public Spaces Protection Order

Notes

- i.) Cllr B G J Warren declared a personal interest as Chairman of the Environment PDG and Willand Parish Council
- ii.) *Report previously circulated and attached to the minutes

162 **WHISTLE BLOWING 6 MONTH UPDATE (2.44.21)**

The Director of Business Improvement and Operations explained to the Committee that there had been no whistleblowing instances in the previous 12 months.

163 **PERFORMANCE AND RISK (2.56.03)**

The Committee had before it, and **NOTED**, the *Performance and Risk report of the Operations Manager for Performance, Governance and Health & Safety.

The Director of Business Improvement and Operations noted the following questions from Members and stated she would provide a written response:

- Under Homes PDG why had the Emergency Repairs Completed on Time, the Urgent Repairs Completed on Time, Routine Repairs Completed on Time and the Repair Jobs When an Appointment was Kept targets been reduced?
- Why was the measure for the % of rents collected not included
- Under Homes PDG Members requested updated targets for Deliver Housing
- Under Corporate Plan PI why did the figures for % total NNDR collected – monthly go from red to pink but the figures were higher?

Members requested that their thanks to the waste and recycling officers be recorded.

Notes:

- i.) Cllr R J Stanley left the meeting at 17.19pm
- ii.) *Performance and Risk report previously circulated and attached to the minutes

164 **FORWARD PLAN (2.58.58)**

The Committee had before it, and **NOTED**, the *Forward Plan.

Note: *Forward Plan previously circulated and attached to the minutes.

165 **MENOPAUSE WORKING GROUP (3.01.46)**

The Committee had before it the *report of the Scrutiny Officer presenting the final report of the Scrutiny Committee Menopause Working Group.

The Chairman of the Working Group thanked Members, staff and officers for the work that had been done on the Working Group.

Therefore it was **RECOMMENDED** to the Head of Paid Service:

1. That MDDC introduces 'Wellbeing Ambassadors'. These will be members of staff who will be supported by relevant training to be able to provide advice to employees on a range of issues, including menopause, mental health and other workplace issues. Ambassadors should have clear knowledge about where to signpost staff for further support if necessary.
2. That a review of support available to staff with menopause symptoms takes place. This could include whether desk fans are too large and how to ensure all staff know how to regulate the temperature in meeting rooms. Consideration should also be given to ensuring understanding needs of staff not working in an office space, and whether the current unisex toilets could be changed.
3. That MDDC has an awareness raising campaign on the menopause to normalise the issue and make staff aware of the support available. This could be through posters, internal communications and utilisation of the Wellbeing Ambassadors.
4. That a MDDC work place policy on the menopause is drawn up, agreed and promoted to all staff. The policy should help signpost support and links to other relevant policies as well as include clarity around: options available for staff experiencing symptoms; how to log time taken off; options for flexible working including the ability to work out of hours if needed.
5. That all line managers receive menopause in the workplace training. This will help ensure line managers are clear about the symptoms and impact of the

menopause, as well as the support available to staff. A booklet for staff and line managers should also be produced as guidance on options available.

6. That an online forum is set up, for staff and/or line managers as a safe space to discuss with other employees problems and issues they are having

(Proposed by the Chairman)

Reason for the Decision – To enable the recommendations of the Working Group to be progressed.

Note: *Report previously circulated and attached to the minutes

166 **SCRUTINY OFFICER UPDATE (3.10.24)**

The Scrutiny Officer provided an update to Members on areas she had been working on and stated:

- Following requests at the last meeting, Members will have received information on the budget of the Tiverton Town Centre Manager; and have updates on the Council's sickness absence and the percentage of staff completing online learning. The Cabinet Member for the Working Environment and Support Services also provided information regarding office and non-office based accidents.
- Members also asked for an update on the number of complaints relating to fly tipping – Confirmation has been received that due to the way they were recorded, this has been done manually. This is currently being collated and the team has apologised for the delay.
- Members were reminded that there was a meeting with Neil Parish MP on Monday 22nd February at 10.30am. Members were thanked for their questions and were reminded that Mr Parish requested questions in advance and that the deadline had now passed.
- The Chairman of Scrutiny and Audit hoped to have a meeting with Cllr Moore and Cllr Evans to discuss how to take forward some of the discussions that had taken place in the 3RDL briefing a few weeks ago.

167 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING (3.12.22)**

The Scrutiny Officer was asked to provide a written update to Members of the Committee on the status of rural broadband.

(The meeting ended at 5.39 pm)

CHAIRMAN