

Public Document Pack

Mid Devon District Council

Scrutiny Committee

Monday, 13 February 2023 at 2.15 pm
Phoenix Chambers, Phoenix House, Tiverton

Next ordinary meeting
Monday, 20 February 2023 at 2.15 pm

Please Note: This meeting will take place at Phoenix House and members of the Public and Press are able to attend via Zoom. If you are intending to attend in person please contact the committee clerk in advance, in order that numbers of people can be appropriately managed in physical meeting rooms.

[Join the Zoom meeting here](#)

Meeting ID: 867 0665 8860
Passcode: 463581

Join by Skype for Business
<https://us06web.zoom.us/j/86706658860>

Membership

Cllr S J Clist
Cllr G Barnell
Cllr E J Berry
Cllr W Burke
Cllr L J Cruwys
Cllr Mrs S Griggs
Cllr F W Letch
Cllr Mrs E J Lloyd
Cllr S Pugh
Cllr R F Radford
Cllr Mrs E J Slade
Cllr B G J Warren

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

- 1 **APOLOGIES AND SUBSTITUTE MEMBERS**
To receive any apologies for absence and notices of appointment of substitute Members (if any).
- 2 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT**
To record any interests on agenda matters.
- 3 **PUBLIC QUESTION TIME**
To receive any questions relating to items on the agenda from members of the public and replies thereto.
- 4 **DECISIONS OF THE CABINET** *(Pages 5 - 190)*
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

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 is:

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.

Stephen Walford
Chief Executive
Monday, 6 Friday, 3 February 2023

Meeting Information

From 7 May 2021, the law requires all councils to hold formal meetings in person. The Council will enable all people to continue to participate in meetings via Zoom.

If you want to ask a question or speak, email your full name to Committee@middevon.gov.uk by no later than 4pm on the day before the meeting. This will ensure that your name is on the list to speak and will help us ensure that you are not missed. Notification in this way will ensure the meeting runs as smoothly as possible.

Please note that a reasonable amount of hardcopies at the meeting will be available, however this is a limited number. If you are attending the meeting and would like a hardcopy of the agenda we encourage that you notify Member Services in advance of the meeting to ensure that a hardcopy is available. Otherwise, copies of the agenda can be found on our website.

If you would like a copy of the Agenda in another format (for example in large print) please contact Andrew Seaman on: aseaman@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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COUNCIL
18 JANUARY 2023

3 Rivers Developments Limited – Business Plan 2023–2028 and 2 associated Business Cases

Cabinet Member: Councillor Bob Deed – Leader and Councillor Clive Eginton – Deputy Leader

Responsible Officers: Deputy Chief Executive (s151) – Andrew Jarrett

Reason for Report: To review the Business Plan(s) and 2 associated Business Cases.

RECOMMENDATION: That Council considers and approves one of the two Business Plans submitted by the company and the 2 associated Business Cases.

Relationship to Corporate Plan: 3 Rivers Developments Limited's (3Rivers) key aims are to: increase the level and quality of housing units within the District and look to help regenerate sites/areas in need of assistance and generate future returns in order to grow the business and to recycle monies made back to the Council to mitigate some of the cuts in Government funding.

Financial Implications: The key financial considerations are identified within the report and there are two detailed part 2 consideration papers that focus on the overarching risk, financial implications and the operational consequences of a decision that doesn't support either of the 2 submitted Business Plans.

Legal Implications: This report is prepared in accordance with the Shareholder Agreement, Company's Memorandum and Articles of Association. In addition the aforementioned part 2 papers that have been produced include details of the legal implications that would need to be considered in the event that neither of the 2 Business Plans are supported.

Risk Assessment: All commercial lending to 3rd parties, will by default, expose the lender to a degree of financial risk. Risk identification, mitigation and control measures, financial processes, audit regimes, etc. embedded by both the lender and borrower can all reduce/control associated risk levels. The Council will always consider risk vs return in all lending activities in enters into and identify/evaluate the potential level of total exposure. When reviewing these risks the Council will consider: demonstrable track record of delivery and financial forecasting (costs and sales), company qualifications/skills/knowledge, information from 3rd parties, prevailing housing market factors, local/regional supply issues, etc.

And ultimately risk vs reward set against other investment opportunities.

This report includes additional part 2 papers that further address the risk implications to the Council. These seek to ensure that members are advised on all areas of risk and additionally respond to questions raised when this item was considered at Cabinet, where a more comprehensive risk analysis was requested.

Equality impact assessment: No direct equality issues identified for this report.

Impact on climate change: 3Rivers is a commercial organisation and where deliverable sustainable options are available they are utilised; however, as a commercial organisation it is acknowledged that there is currently a significant cost differential on build options and what the market will sustain plays heavily in the choices made, bearing in mind the mandate to return target levels of investment return (profit).

1.0 Introduction

- 1.1 An initial Business Plan provided by the company was reviewed by meetings of both the Scrutiny and Audit Committees back in November 2022. Feedback and comments from these meetings was provided to the Cabinet.
- 1.2 Subsequent to this feedback discussions were held with some members of the Cabinet and the company to propose revisions to the previously submitted Business Plan.
- 1.3 This revised Business Plan and the one previously submitted were both included on the Cabinet agenda for consideration at their meeting on the 3 January 2023 along with 2 Business Cases for projects in Bampton and Tiverton.

2.0 Cabinet 3 January 2023

- 2.1 After reviewing the Business Plans which also included the ability to ask questions of the 3 company Directors. The Cabinet decided to refer the 2 Business Plans and 2 Business Cases to a special meeting of Full Council.

3.0 The 2023 – 2028 Business Plan

- 3.1 After reflecting on the 2 aforementioned meetings the Cabinet fed back to the Company the considerations identified in paragraph 1.1 and then requested an amended Business Plan shown as the (Addendum).
- 3.2 Therefore, the Cabinet now have 2 Business Plans from the company to consider. Which are quite similar in funding requested for 2023/24, but have a different make-up in terms of project size/profile and level of future projects.
- 3.3 Any company Business Plan that projects in to the future, especially at the current juncture, is subject to change/revision, especially the further you move in to later years. What the Business Plan provides is a general overview of company ambitions, areas of focus, metrics it will use to judge itself by and report on, risk appetite and mitigation measures and finally an overarching budget envelope for the period.

- 3.4 This financial envelopes of both plans provide a reasonably accurate budget forecast for 2023/24 and the projects that they are already committed to. Thereafter, the budget makes sound commercial estimates over the potential sums that will be required to keep the company viable and deliver the level of returns back to the Shareholder.
- 3.5 The total loan request for 2023/24 in both plans is circa £22.1m and then varying levels of loan exposure during the remainder of the 2 plans. This funding envelope will see the culmination of St Georges Court, Tiverton and another site in Bampton, plus a number of new sites currently under consideration and then an estimate for potential new developments that are being explored. In addition there is the ongoing provision for the company's working capital requirements.
- 3.6 Embedded within the company's Business Plan, reference is made to the annual interest payments that will be made back to the Council and Members should also be aware of the recharged costs that the Council makes to the company. These relate to officer time, office accommodation, IT support, etc. To put this in to context the table below summarises these transactions since the company's inception. For completeness, it also includes all financing costs and any loan impairments.

Financial transactions between 3Rivers and Mid Devon DC

	2017/18 2018/19	2019/20	2020/21	2021/22	2022/23 Actuals as at 31/10/22	Total
Revenue Items £k						
Gross Interest Rec'd	71.4	251.0	496.4	558.4	525.5	1,902.7
Direct Cost external of Borrowing	0	0	0	0	0	0
Dividends Paid	0	0	0	0	0	0
MDDC Recharges	170.2	97.2	103.8	15.6	0.6	387.4
Total	241.6	348.2	600.2	574.0	526.1	2,290.1

	2017/18 2018/19	2019/20	2020/21	2021/22	2022/23 Actuals as at 31/10/22	Total
Loans £k						
Advanced	2,612.9	6,998.2	1,741.7	4,581.4	4,087.6	20,021.8
Repaid		-550.0	-640.0	-1,208.7	0	-2,398.7
Loan Movement	2,612.9	6,448.2	1,101.7	3,372.7	4,087.6	17,623.1
Impairments		-790.0				-790.0

Notes on the Table:

- i) *The loans repaid figures relate to a VAT refund in 2019/20 and sale proceeds from the Threwstones, Tiverton and The Orchard, Halberton developments.*
- ii) *The impairment relates to £617k St Georges Court (estimated loss) and £173k working capital charge. This figure was reviewed and carried forward in to the 2020/21 end of year Accounts. The 2021/22 level will be reviewed as part of the External Audit process – which is still ongoing.*
- iii) *The ‘Costs of Borrowing’ refers to any external costs arising from the Council making use of external financing facilities such as PWLB. None has been incurred. The ‘opportunity cost’ over this timeframe has been minimal with interest on savings rates at such low levels.*

3.7 The above table details the direct financial benefits that accrue from the Council’s investment in 3 Rivers. However, Members should also be aware that other indirect benefits are obtained. For example:

- ✓ Increased Council Tax and Business Rate receipts
- ✓ Extra New Homes Bonus revenue
- ✓ Some control over timetable and quality of development
- ✓ Some influence over affordable/social housing delivery numbers
- ✓ Regeneration potential
- ✓ Greater use of local supply chains and contractors

3.8 The Business Plan also specifically focuses on key areas of company activity; ongoing governance, the prevailing market, risk, success metrics, future strategy and includes a progress overview of 2022/23 and its goals for 2023/24.

4.0 Risks

4.1 Many of the discussions surrounding the Council funding of 3 Rivers focus predominantly around risk and reward. As much of these considerations/deliberations will be of a commercially sensitive nature two part 2 papers have been provided in order to identify and then evaluate associated risks as requested by the Cabinet. It should be noted that in order to facilitate an extensive view on quantification/quantum of risk, further work may be required in order to fully evaluate and then quantify the financial, legal and operational magnitude of any decision not to support either of the two submitted Business Plans and determine what risks and cost exposure any next steps/decisions may incur.

5.0 Conclusion

- 5.1 Any investment decision ultimately has to be evaluated by the concept of risk vs reward. This decision will be affected by an investor's appetite for risk, the profile, size and scope of other investments, prevailing market conditions and past performance experience.
- 5.2 All investments have a degree of risk, but the Council must decide how it wants to structure its portfolio of investments, both in the short and longer term, in full regard that market conditions will have both positive and negative impacts.
- 5.3 There is no risk-free option here, as decisions to invest in the Council's company contain risk, as does any decision to not invest. While quantification of these risks (and their impacts) will be an exercise in estimation, forecasting and assumption, in principle the balance of risk must be weighed between the risk of not achieving the investment returns as forecast and the risk of removing this income potential from the Council's budget.

Contact for more information: Andrew Jarrett, Deputy Chief Executive (S151)

Circulation of the report: Leadership Team and Cabinet

List of Appendices

- Appendix 1 – 3RDL Business Plan 02/11/22**
- Appendix 2 – 3RDL Business Plan Addendum 16/12/22**
- Appendix 3 – 3RDL Project Appraisal - Bampton**
- Appendix 4 – 3RDL Project Appraisal - Park Rd**
- Appendix 5 – Financial Risk Analysis**
- Appendix 6 – General Risk Analysis**

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CABINET
3 JANUARY 2023

3 Rivers Developments Limited – Project Appraisal (5 Levels, Bampton)

Cabinet Members: Councillor Bob Deed – Leader
Councillor Clive Egerton – Deputy Leader

Responsible Officers: Deputy Chief Executive (S151) – Andrew Jarrett

Reason for Report: To provide Cabinet with a business case for a second development scheme at Bampton which is included in the company's recent Business Plan.

RECOMMENDATION: That Cabinet approves the company's business case for 5 Levels, Bampton development.

Relationship to Corporate Plan: 3 Rivers Developments Limited's (3Rivers) key aims are to: generate future returns in order to grow the business and to recycle monies made back to the Council to mitigate some of the cuts in Government funding, increase the level and quality of housing units within the District and look to help regenerate sites/areas in need of assistance.

Financial Implications: The Council has a duty to obtain value for money. All financial interactions between the Council and 3Rivers are carried out at commercially evidenced rates and subject to individual loan agreements. An overall project GDV return of 9.7% has been estimated and interest payments to the Council would form part of the overall estimate of £900k already included in the 2023/24 draft budget.

Legal Implications: None to this report. However, this report is prepared in accordance with the Shareholder Agreement, Company's Memorandum and Articles of Association and currently Approved Business Plan.

Risk Assessment: Detailed within the report.

Equality impact assessment: No equality issues identified for this report.

Impact on climate change: 3Rivers is a commercial organisation and where deliverable sustainable options are available they are utilised; however, as a commercial organisation it is acknowledged that where there is a significant cost differential and what the market will sustain that this plays heavily in the choices made.

1.0 Introduction

1.1 The Cabinet are considering as part of this agenda the updated Business Plan 2023/24 from 3Rivers Development Ltd. Included within that plan is an estimated amount for this project. It was also agreed at Cabinet in July 2020 that any development with an estimated build cost in excess of £1m must be

brought to Cabinet for consideration. This consideration would include a detailed business case report from the company.

2.0 Business Case - Bampton

- 2.1 Attached to this report is the confidential company business case for a residential development of 9 market houses in Bampton. This overall appraisal includes estimates regarding: scheme build costs, contingency sums, sales predictions, overall project returns, risk issues, etc. As members can see from the attached report, all project costs and revenues have been produced with the benefit of assistance from professional organisations operating with local market knowledge/experience.
- 2.2 The Council's Deputy Chief Executive (S151) has reviewed the company's business case and all the attached paperwork and is assured that all estimated project costs and potential receipts have been produced to the best of the company's ability and has utilised external advice where appropriate.
- 2.3 The business case estimates a potential return of 9.7% GDV and would deliver interest payments which form part of the aggregate budgeted sum of £900k currently included in the 2023/24 draft budget.

3.0 Conclusion

- 3.1 Members will be aware that this project is included in the company's business plan for 2023/24.

Contact for more information: Andrew Jarrett, Deputy Chief Executive (S151)

Circulation of the report: Leadership Team and Cabinet

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CABINET
3 JANUARY 2023

3 Rivers Developments Limited – Project Appraisal for Park Nursery, Tiverton.

Cabinet Members: Councillor Bob Deed – Leader
Councillor Clive Eginton – Deputy Leader

Responsible Officers: Deputy Chief Executive (S151) – Andrew Jarrett

Reason for Report: To provide Cabinet with a business case for a 6 unit residential development scheme in Tiverton which is already included in the company's current Business Plan 2022/23.

RECOMMENDATION: That Cabinet approves the company's business case for the Park Nursery, Tiverton development.

Relationship to Corporate Plan: 3 Rivers Developments Limited's (3Rivers) key aims are to: generate future returns in order to grow the business and to recycle monies made back to the Council to mitigate some of the cuts in Government funding, increase the level and quality of housing units within the District and look to help regenerate sites/areas in need of assistance.

Financial Implications: The Council has a duty to obtain value for money. All financial interactions between the Council and 3Rivers are carried out at commercially evidenced rates and subject to individual loan agreements. An overall project GDV return of 11.5% has been estimated and interest payments to the Council would form part of the overall estimate of £900k already included in the 2023/24 draft budget.

Legal Implications: None to this report. However, this report is prepared in accordance with the Shareholder Agreement, Company's Memorandum and Articles of Association and currently Approved Business Plan.

Risk Assessment: Detailed within the report.

Equality impact assessment: No equality issues identified for this report.

Impact on climate change: 3Rivers is a commercial organisation and where deliverable sustainable options are available they are utilised; however, as a commercial organisation it is acknowledged that where there is a significant cost differential and what the market will sustain that this plays heavily in the choices made.

1.0 Introduction

1.1 The 2022/23 3River's Business Plan includes provision for a development at Park Nursery, Tiverton. However, as this development exceeds £1m it needs to be considered, on an individual scheme specific basis, as per earlier Cabinet approved recommendations.

2.0 Business Case – Park Nursery, Tiverton

- 2.1 Attached to this report is the confidential company business case for a residential development of 6 market houses on the site known as Park Nursery in Tiverton. This overall appraisal includes estimates regarding: scheme build costs, contingency sums, sales predictions, overall project returns, risk issues, etc. As members can see from the attached report, all project costs and revenues have been produced with the benefit of assistance from professional organisations operating with local market knowledge/experience.
- 2.2 The Council's Deputy Chief Executive (S151) has reviewed the company's business case and all the attached paperwork and is assured that all estimated project costs and potential receipts have been produced to the best of the company's ability and has utilised external advice where appropriate.
- 2.3 The business case estimates a potential return of 11.5% GDV and would deliver interest payments which make up the aggregate budgeted sum of £900k currently included in the 2023/24 draft budget.

3.0 Conclusion

- 3.1 Members will be aware that this project is already included in the company's business plan for 2022/23.

Contact for more information: Andrew Jarrett, Deputy Chief Executive (S151)

Circulation of the report: Leadership Team and Cabinet

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Extracts from Draft Minutes – Cabinet 31 January 2023

Minute 121 - 3 RIVERS DEVELOPMENTS LIMITED - BUSINESS PLAN 2023-2028 AND ASSOCIATED BUSINESS

The Cabinet received a *report from the Deputy Chief Executive which asked Members to review the business plan of 3 Rivers Developments Ltd. As well as 2 business cases for a second development scheme at Bampton and a business case for a 6 unit residential development scheme in Tiverton which were included in the 3 River's Developments Ltd recent Business Plan.

The Deputy Leader indicated that discussion with regard to the next item, may require the Cabinet to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet would need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

THEREFORE it was **RESOLVED**: That, in accordance with Part I of Schedule 12A to the Local Government Act 1972, the press and public be excluded from the meeting for item 6 for the reason set out below:

- Information under paragraph 3 (contains information relating to the financial or business affairs of any particular person including the authority holding that information).

(Proposed by the Deputy Leader, Chairman)

Clarification was sought as to whether the business before Cabinet was valid. The District Solicitor & Monitoring Officer reassured those present that it was legitimate for the contents of item 4 on the agenda to be discussed by Cabinet.

The meeting then returned to open session.

It was therefore **RESOLVED** that:

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.

(Proposed by Cllr C J Eginton and seconded by Cllr S J Penny)

Reason for Decision: As stated in the report as well as following recommendations from Full Council.

Note: *report previously circulated and attached to the minutes