

CABINET
09 JULY 2020

3 Rivers Developments Ltd Feedback from Scrutiny & Audit

Cabinet Member(s): Leader, Cllr Bob Deed
Responsible Officer: Chief Executive, Stephen Walford

Reason for Report: At the Cabinet meeting of 10th June 2020 Cabinet resolved to strengthen the governance arrangements between the Council and its wholly-owned development company. As part of this, the Cabinet requested Audit and Scrutiny Committees to consider the available reports and refer back any additional recommendations to Cabinet for their consideration.

Relationship to Corporate Plan: 3 Rivers Developments Limited's (3RDL) primary objective is to generate returns, to grow the business and to recycle monies back to the Council to mitigate some of the cuts in Government funding. In addition, it provides an extra supplier of housing into the market, operating at a level of quality (as per the business plan) that is consistent with the Council's ambitions regarding housing delivery.

Budget and Policy Framework: It should be noted that if these measures collectively take the annual budget for 3RDL outside of that approved by Council, they will need to be costed and approved as a budget revision by (Full) Council. However, at this point, it is estimated that they will fall within the current approvals – this can be revisited when the budget is reconsidered, likely later this calendar year.

Financial Implications: There are financial implications relating to the implementation of the totality of the changes previously recommended. However, the additional recommendations in this report are likely to only have minimal additional financial impact.

Legal Implications: Any changes to the nature of the procedural relationship may require some legal changes via the formal shareholder agreement describing the relationship between the two legal entities.

The Cabinet may wish to reflect on the relationship between their previous resolutions and recommendations 1, 4 and 12 in Appendix A. Whilst it is possible to manage actual and potential conflicts of interest in respect of those appointed to the Board of Directors, including via pre-authorisation in the shareholder's agreement, it is a challenge.

Neither officers nor members are able to put themselves in a situation where their duty to the council conflicts with their duty to the company. This is an easier situation to resolve so far as officers are concerned - as their duty to the council arises from their terms and conditions of employment: the council, as their employer, is able to amend the terms and conditions, so that when officers are acting in their role as a director of the company they act in the best interests of the company.

It can be far more complex for a member to have a role as a director with a council owned company: whilst this can and sometimes is done (i.e. it is not unlawful), the issues that arise must be properly understood. An elected member has a duty to act in the best interests of the council at all times; and this duty cannot be avoided. This would mean that an elected member who was also a director would need to ensure that they excluded themselves from any decision-making by the council which affected the company; and that as a director they excluded themselves from any decisions that related to the Council.

Equalities Impact Assessment: None specifically identified.

Risk Assessment: The assessment and management of risk has been the key driver behind this suite of decisions. The recommendations were arrived at by the Council's Scrutiny and Audit Committees in the context of their respective discussions and consideration of risk; the recommendations are the advice from those two committees to ameliorate risk from their perspective.

Climate Change: This report considers advice from two committees back to Cabinet, at Cabinet's request. The recommendations relate to the Council's relationship with its wholly owned property development company. Irrespective of the build standards applied by the company in its commercial activity (or indeed the Council's ambitions on improving the emissions of current and future development), it should be recognised that virtually all development has a negative impact on Carbon emissions.

1.0 Introduction

- 1.1 This report has been brought back to Cabinet as a consequence of the additional recommendations from the Council's Scrutiny and Audit committee.
- 1.2 There was a clear debate at the start of each committee meeting about how to deal with restricted information while maintaining transparency. Members queried whether future reports could be written in a way that did not require the appending/inclusion of any restricted items in order to ensure that these could be discussed in public.
- 1.3 The resolutions of the Cabinet on 10th June were not called in, and have been duly made. The various recommendations from Scrutiny and Audit are outlined in appendix A. This appendix has been marked confidential Part 2 simply because the recommendations are not in the public domain – the discussions at Scrutiny and Audit took place in Part 2 (removal of press and public) and Part 1 minutes do not, by this Council's convention, include the actual resolutions reached in Part 2. It was not thought appropriate in this report to override the convention or the minutes of those Committees, but the Cabinet may conduct the business at its meetings as it sees fit.
- 1.4 Coming as the recommendations do after comprehensive debate at Cabinet previously, there has been no need to refer back to any restricted papers or information in this report. Of course there is nothing to stop members moving

into restricted session if, in order to debate the recommendations, they wish to refer back to previous reports or other material as necessary.

2.0 **Background**

2.1 3RDL was incorporated in April 2017. The Cabinet meeting of 10th June 2020 considered a range of proposals arising from external reviews of the Council's relationship with its wholly-owned company. As part of the recommendations approved at that meeting, the Cabinet also resolved to seek the view of the Council's Scrutiny and Audit committees to ensure that any additional recommendations could be put back to Cabinet on 9th July.

3.0 **Recommendations**

3.1 The recommendations in Appendix A came from both Scrutiny and Audit committees for Cabinet's consideration.

Appendices

Restricted Appendix A – List of additional recommendations from Scrutiny and Audit Committee

List of Background Papers:

None