

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 21 September 2022 at 2.15 pm

Present

Councillors

S J Clist (Chairman)
G Barnell, J Buczkowski, L J Cruwys,
S Pugh, R F Radford, Mrs E J Slade and
A Wilce

Apologies

Councillor(s)

E J Berry, Mrs S Griggs and F W Letch

Also Present

Councillor(s)

Mrs E J Lloyd, Mrs C P Daw, R M Deed, C J Eginton,
B A Moore, B G J Warren and Mrs N Woollatt

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)), Richard Marsh (Director of Place), Jill May (Director of Business Improvement and Operations), Paul Deal (Corporate Manager for Finance), Matthew Page (Corporate Manager for People, Governance and Waste), James Hamblin (HR Business Partner), Fiona Keyes (Operations Manager for Revenues Benefits & Recovery), Carole Oliphant (Member Services Officer) and Jessica Rowe (Member Services Apprentice)

22 APOLOGIES AND SUBSTITUTE MEMBERS

Apologies were received from Cllrs Mrs S Griggs, E J Berry and F W Letch who was substituted by Cllr J Buczkowski.

Cllr Mrs E J Lloyd attended via ZOOM.

23 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0.03.18)

Members were reminded of the need to make declarations where appropriate.

24 PUBLIC QUESTION TIME (0.03.38)

Mr Quinn, a local resident stated:

Regarding Agenda Item 6 – Decision of the Cabinet: 3 Rivers Funding

1. The wording of the Cabinet Decision does not make it clear where the funds for the increased loans, of £2.28M, will come from.

Question 1: Will the increased loans be funded by a reallocation within the agreed budget funding of £19.66M for 2022/23 - or an addition to that sum?

2. The level of public interest in 3 Rivers, and this decision, is high. Based on the published report, the public asked Cabinet some very pertinent questions about this funding request.

Question 2: Why have Scrutiny Committee only been provided with a Minute extract which contains the answers given to most of the Public Questions - but does not contain any of the Questions they asked?

3. Public questions were asked about the lack of Audit and Scrutiny input to this loan request and Risk. The only statement regarding risk was given verbally, at Cabinet, by Cllr Moore - who said: "Were Cabinet not to approve these loans, to cease funding the projects prior to completion, there would be a sudden and significant threat to the Council's investment".

Given the gravity of that statement, the lack of any mention of risk in the published report suggests that risks are not being properly acknowledged.

Question 3: Will Scrutiny please include, in any recommendation to Cabinet, a request for a proper consideration of risk before any re-appraisal of this funding decision is undertaken?

4. In the Cabinet Minute extract before you, Cllr Moore states that 3 Rivers' projected spend for 2022/23, including the extra loans, would be considerably less than the total figure budgeted by Council. You should note that Cllr Moore's figures were only "projected" and were only given verbally - his words are unsupported by any published information.

Cllr Moore also forgot to mention that the Council approved this budget total, on the basis of an agreed Business Plan for 6 development projects – some of which are now not being undertaken - and that this funding request covers more than 10% of that approved total.

Question 4: Will Scrutiny Committee please consider, in their deliberations, whether sufficient, reliable, information has been put forward to justify this significant Cabinet key decision?

Mr Elstone, a local resident stated:

QUESTION 1

Do the majority of this Scrutiny Committee agree with business focused members of the General Public?

That MDDC are becoming INCREASINGLY and UNACCEPTABLY exposed to a risk of 3 Rivers SUBSTANTIAL BAD DEBT
Especially CONCERNING in these AUSTERE TIMES.

QUESTION 2

Why are MDDC Cabinet so easily prepared to lend a further near three million pounds to 3 Rivers and without an updated business plan in place?

Especially as it is understood that the revised Business Plan is due for release in October.

Additionally, without the results of the 3 Rivers Internal Audit being made available.

This with internal auditors being engaged on or before May 2022.

QUESTION 3

Can the Scrutiny Committee Members understand why members of the General Public find it totally unacceptable even outrageous that 3 Rivers supported by the MDDC Cabinet are wanting to borrow substantial additional funds due to the St Georges Court project overspend?

This given the extra funds to be in part used to pay for the construction of a parking court that has been completed yet does not have planning permission.

Additional funds that are it seems will be very likely to be added to the already seven hundred- and ninety-thousand-pound St Georges Court impairment amount.

QUESTION 4

Given the urgency in MDDC calling a special Cabinet Meeting tomorrow to discuss the out- come of this Scrutiny Committee Meeting with regards to 3 Rivers funding advance.

Can this Scrutiny Committee understand why members of the General Public now consider that 3 Rivers is a company in serious FINANCIAL DISTRESS and may even be trading INSOLVENTLY?

QUESTION 5

Will this Scrutiny Committee be minded to refer the 3 Rivers Funding request to a Special Full Council Meeting and as the MDDC Constitution, paragraph (i) of page 130 permits ?

This given the increasing concerns about the MDDC Cabinets apparent lack of proper due diligence in determining the full risk to lending a further substantial amount of funds to 3 Rivers and for the reasons given.

QUESTION 6

Do the majority of this Scrutiny Committee agree that 3 Rivers are causing MDDC significant reputational damage?

Reputational damage that the MDDC and 3 Rivers Shareholder Agreement said should not be allowed to happen.

Hannah Kearns, a local resident provided the following questions which were read out by the Chairman:

QUESTION 1

Given key purposes of the Scrutiny Committee are to “ensure the public are consulted where changes are proposed” and to “encourage public involvement by providing accessible information”.

CAN and WILL the Scrutiny Committee do anything to address the serious lack of OPENESS and TRANSPARENCY, including by way of incomplete or evasive answers to PUBLIC QUESTIONS or by way of no answers at all, in respect of MDDC’s business dealings with 3 Rivers?

This lack of transparency appears to have worsened over the last 2 years in line with MDDC's increasing exposure to very substantial, and potentially bad debt.

QUESTION 2

Is it appropriate that MDDC conceals just about anything of significance from the public in its dealings with 3 Rivers. MDDC appearing to hide behind 3 Rivers being a so-called "Arm's Length Company"? An assertion that is clearly at odds with the fact that MDDC is both the 100% shareholder of 3 Rivers, and by far and away its major, if not sole, creditor. (Currently £15 million pounds of credit extended and due to rise to £18 million if 3 Rivers latest funding request is fully agreed.)

QUESTION 3

Are the Committee Members aware that Croydon Council's Local Housing Company, Brick by Brick Limited, a 3 Rivers equivalent, was one of the main contributors to Croydon Council requiring a Section 114 notice and Government intervention, upon being brought to the verge of bankruptcy with Brick by Brick owing over £200 million to them?

Brick by Brick incurred gross project overspends and project delays, and operated with a lack of openness and transparency in not declaring the full extent of issues or taking recommendations fully on board.

Croydon Councils' Auditors – Grant Thornton – (the same auditors as retained by MDDC) stated that there was "Collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken".

Are the Committee aware that from the perspective of the general public, MDDC seem to be walking the same path?

QUESTION 4

Are Scrutiny Committee Members aware that several councils have wound up their Local Housing Companies, after various issues and concerns; amongst them Liverpool, Merton (Wimbledon), and East Devon?

The Chairman stated that all the questioners would receive a written response.

25 **MINUTES OF THE PREVIOUS MEETING**

The minutes of the last meeting were not approved and it was **RESOLVED** that:

The minutes of the meeting held on 25th July 2022 shall be amended at item 15 to include the exact form of the motion proposed and seconded as required by the Mid Devon constitution 20.2.

(Proposed by Cllr G Barnell and seconded by Cllr L J Cruwys)

It was **AGREED** that the minutes would be amended and be brought back to the next meeting for approval.

26 **CHAIRMAN'S ANNOUNCEMENTS (0.20.59)**

The Chairman asked for Members involvement in an up and coming Participatory Budgeting spotlight review.

27 DECISIONS OF THE CABINET (0.21.59)

Call in – 3RDL Funding Request – By Cllr S J Clist - Chairman

At the Cabinet on 6 September 2022, Members considered the funding request that has been received from 3 Rivers Development Ltd.

Following discussion with various Officers, including a detailed conversation with the Monitoring Officer on Thursday 8 September, I am requesting that this item is called into the next Scrutiny meeting. I believe the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision Making).

Reason for call in:

Principles of Decision Making –

- Consideration of alternative options. The report presented to Cabinet did not set out alternative options or the option not to proceed. Cabinet did not therefore consider all options or viable alternatives.
- The report presented to Cabinet did not fully consider the risks involved. There was no detailed analysis of financial risk or otherwise. The report was not presented to Scrutiny or Audit in advance of the decision.
- I am therefore asking that Cabinet reconsider the decision, taking into account alternative options and a full risk analysis.

Advice from the Interim Monitoring Officer:

I have received a request for Call-In from Cllr Simon Clist as Chairman of Scrutiny Committee, thus meeting the threshold in rule 19(f) of the Scrutiny Committee etc. Procedure Rules.

The overarching rules of call-in must still be observed, namely:

1. Call-in by Scrutiny should only be used in exceptional circumstances. These are where members of Scrutiny Committee have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision-making) (rule 19 preamble);
2. Members who wish to call-in a decision are required to seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of the advice they have received when deciding whether or not to proceed (rule 19 (f)); and
3. When the relevant Cabinet minutes are put before the Scrutiny Committee, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend and speak (rule 19 (h)).

The principles of decision of decision-making – Article 15

Article 15.2 provides that all decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes;
- (f) Consideration of any alternative options; and
- (g) The giving of reasons for the decision and the proper recording of those reasons

Call-In – 3 Rivers Developments Limited – Funding Request:

The above rules and principles apply. In this instance, from the reasons advanced, I can see that the first and primary reason put forward is that alternative options should have been considered (Article 15.2 (f)) i.e. the alternative option of not proceeding with the recommendation or viable alternatives. That is a principle of decision-making. As to whether the concern about alternative options for funding is an exceptional circumstance, I will leave that to the Committee. I would confirm that there is sufficient reason in accordance with the constitution for this decision to be called in.

There are other areas of concerns raised in the call-in that I will leave to be discussed by the Scrutiny Committee.

Discussion took place and consideration was given to:

- That the papers had been published within the 5 day requirement and the supplement papers had been published as a matter of urgency.

At this point the Committee wanted to discuss specific matters concerning the exempt information provided to the Cabinet and it was agreed that the matters would be discussed in closed session and therefore:

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information)

(Proposed by the Chairman)

Note: Cllr A Wilce requested that his vote against the decision be recorded.

Returning to open session the following was considered:

- A reminder of the decision made by the Cabinet
- The risks that were considered as part of the decision
- Alternative options considerations made by the Cabinet
- The lending funding levels
- That the Cabinet, with input from the Scrutiny and Audit Committees had previously agreed to 33 recommendations to ensure that tight governance was in place with the Council's dealings with 3 Rivers Developments Ltd

It was therefore **RESOLVED** that: The Scrutiny Committee were of the opinion that the updates contained in the Cabinet papers of 6th September were of such significance that the Committee believed that they constituted a new business plan rather than a simple update and therefore the Committee recommended that Cabinet, before reaching a decision on further borrowing, ensured that the agreed due diligence and governance steps were carried out, namely that the business plan was reviewed by the Audit Committee and that they were given the opportunity to comment on any risks and mitigations and that the opinion of the Audit Committee would be taken into account when making any further lending decisions.

(Proposed by Cllr J Buczkowski and seconded by Cllr L J Cruwys)

Note:

- A proposal that the decision by the Cabinet was accepted was not supported (Proposed by Cllr R F Radford and seconded by Cllr Mrs E J Slade)
- Cllr S J Clist requested that his abstention from voting be recorded.

28 **ESTABLISHMENT 6 MONTH UPDATE (2.04.59)**

The Committee had before it, and **NOTED**, a *report from the Corporate Manager for People, Governance and Waste providing the 6 month Establishment update.

The Officer outlined the contents of the report and stated the increased lost days due to sickness, turnover and the increased vacancies.

Consideration was given to:

- The amount of vacancies nationally and the shortage of key workers
- A pay offer was being negotiated
- Staff engagement and development
- Skills analysis
- Whether the recruitment process could be improved
- The apprenticeship scheme was a credit to the council
- There were regular meetings with South West Councils to share best practice

Note: *report previously circulated and attached to the minutes

29 **COLLECTION OF DEBT**

The Committee had before it, and **NOTED**, a *Collection of Debt report from the Corporate Manager for Revenues, Benefits, Corporate Recovery, Planning (DM) and Corporate Fraud.

The Principal Officer for Revenues and Benefits outlined the contents of the report and stated that the collection of debt was governed by statute.

She explained that the Council was in the upper quartile of neighbouring districts and that every effort was made to contact customers before any enforcement action was taken.

Consideration was given to:

- Vulnerable customers were referred to welfare officers
- There was a balance in supporting customers and collecting the Council's debt.

It was agreed the Cllr G Barnell would liaise with officers to investigate the service and explore options that he would bring an update report back to Committee for consideration.

Note: *report previously circulated and attached to the minutes

30 PLANNING CONSULTANTS (2.32.41)

The Committee had before it, and **NOTED**, a *report from the Director of Place regarding Planning Consultants.

The Officer explained that the report had been prepared at the request of the Committee and that generally the Council employed consultants to carry out the best possible work.

He explained that there was an absolute shortage of skilled staff and that although the Council had joint working with Building Control, this hadn't alleviated the staff shortage issue.

He further explained that the Council would continue to grow talent through apprenticeship schemes and upskilling local residents.

Note: *report previously circulated and attached to the minutes

31 PLANNING ENFORCEMENT WORKING GROUP RECOMMENDATIONS - UPDATE (2.46.42)

The Committee had before it and **NOTED**, the *Planning Enforcement Officer Review of Recommendations report.

The Director of Place introduced the report and stated that it was a positive situation and that the team were working well. He agreed to bring a further update to Committee in 3 months time.

Note: *report previously circulated and attached to the minutes

32 EXAMINE THE SERVICE BEING PROVIDED BY THE LEGAL DEPARTMENT (2.50.46)

The Chairman advised the Committee that he had deferred the item and that if Members wished to have an item added to the agenda that he expected a written report to be provided which outlined the matters to be discussed and a background of the item.

33 WORK PROGRAMME (2.53.28)

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

The Scrutiny Officer gave the following updates:

- Bio-energy industry: The Chairman has requested that the Policy/Research Officer explore the option to visit an anaerobic digester plant. Further details will be sent by email.
- Spotlight Review on Participatory Budgeting: an all member email has been sent out to ask for other members to join the review group.

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

(The meeting ended at 5.13 pm)

CHAIRMAN