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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **COUNCIL** held on 18 January 2023 at 6.00 pm

Present

Councillors

R F Radford (Chairman)
G Barnell, J Bartlett, E J Berry, J Buczkowski, W Burke,
J Cairney, R J Chesterton, S J Clist, Mrs C Collis, L J Cruwys,
N V Davey, Mrs C P Daw, R J Dolley (Vice Chairman),
J M Downes, C J Eginton, R Evans, Mrs S Griggs, P J Heal,
B Holdman, D J Knowles, F W Letch, B A Moore, S Pugh,
D F Pugsley, Mrs E J Slade, C R Slade, R L Stanley, L D Taylor,
B G J Warren, Mrs N Woollatt and J Wright

Apologies

Councillors

R M Deed, Mrs E J Lloyd, Miss J Norton, S J Penny, A Wilce
and A Wyer

Present

Officers:

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy
Chief Executive (S151)), Maria De Leiburne (District Solicitor
and Monitoring Officer), Richard Marsh (Director of Place), and
Andrew Seaman (Member Services Manager)

117 **APOLOGIES**

Apologies were received from Councillors: R Deed, Miss J Norton, S J Penny, A Wilce and A Wyer.

118 **PUBLIC QUESTION TIME**

A Question was received and read out by the Chairman from Roger Davey:

In April of last year the overspend on the Riverside development of the unsightly blocks of flats and houses which disfigure the riverside, was quoted as just over three quarters of a million pounds. Given that in September last year the council gave 3 Rivers a further 2.2 million to keep it afloat my questions are :-

No.1

Given the continuing haemorrhage of public funds to 3 Rivers, how many more millions of pounds of council tax payer's money does the council intend to plough into 3 Rivers?

No.2 Given that it is obvious that the council and some of its officers are incapable of controlling the expenditure on 3 Rivers will the council bring in some forensic accountants or other external body to examine all of the accounts , contracts and any other documents associated with this company.

No.3

Of especial concern must be the way in which the original multi million pound contract for the Riverside site was awarded to EBC (who later pulled out) after a cosy chat, without going out to tender. This is a flagrant breach of the public procurement regulations which 3 Rivers are bound by as a company owned by the council. These regulations insist on at least 3 companies being invited to tender. Even if the councils usual contractors do not wish to tender there are many national firms who I am sure would have tendered had they been asked. Instead the contract was awarded "on a design and build contract 2016 following negotiations with a contractor". This is the response from my freedom of information request

to 3 Rivers in 2019. This alone especially as a councillor and a council officer were directors of 3 Rivers at the time, is I believe another breach of the regulations and surely warrants further investigation by an external body. Why was the contract awarded in this way ?

No.4

Given 3 Rivers record thus far how can the council be sure that the costs for the Bampton and Park road developments are realistic and will not lead to the council taxpayers being saddled with yet more debt?

No.5

Given that this meeting is closed to the people who pay, if and when will the council release all of the information regarding 3 Rivers and the ongoing Riverside site fiasco?

The Chairman thanked Mr Davey for their questions and noted that answers would be submitted in writing.

A Question was received from Paul Elstone:

Question 1

There is an increasing level of public concern over the financial arrangement between the Council and 3 Rivers, including the HIGH debt levels and the impairment of loans. These concerns are borne out by the demonstration outside of Phoenix House this evening and recent press articles, Once more, a meeting about 3 Rivers will be held in secret. For transparency, can the voting tonight be conducted in public with individual votes recorded?

Question 2

External Auditors Grant Thornton have just published a report that identifies problems with 3 Rivers. A write-down of work in progress of £1.6 million, an overstated Tax deferment of nearly £500,000 increasing the loss provision on St Georges Court by £222,000. This is in addition to the already declared £790,000 impairment on the Council's books. Why can't Council see this Company is in increasingly serious trouble?

Question 3

Scrutiny Committee on Monday were told that the Council will not now fund 3 Rivers from external borrowing but will continue to do this from Council funds. With the over £900,000 budget cuts being asked for, how can the Council afford this?

Question 4

When given 3 Rivers current project delivery record. Cost exposures, and impaired loans, all available property development loan market evidence shows that the Council are providing highly preferential interest rates and loan terms to its own Company.

That 3 Rivers are unable to lend from the market something confirmed by the then Cabinet Member for Finance at Cabinet on 6 September 2022. Are the Council worried about the risk of being accused of giving 3 Rivers a significant commercial advantage in any tendering process, especially where public money is involved?

Question 5

Can the S151 Officer both confirm beyond any doubt that there will be no risk of a section 114 Notice being issued as a result of the Council's involvement with 3 Rivers?

The Chairman thanked Mr Elstone for their questions and noted that answers would be submitted in writing.

A Question was received from Belinda Boyles:

Why are you not busy concentrating on affordable houses for people like myself? Also, I would like to know why it is so hard to be prioritised, I lived in Bampton all my life, 34 years,

I've got 2 children sharing a bedroom, a boy and a girl. I have been on the system for 3 years now and I am finding it very hard to believe that my best chance of being able to bring my children up the right way is to move to all the way Plymouth. Where I am likely to get a 3 bedroom house which obviously I need. I just believe that the system is not running as it should.

Cllr R J Chesterton explained that there was a building programme in place, with a site in Tiverton for 70 council houses to be built for social rent and to passive house standards, with other sites planned. Other sites for small scale development across the Mid Devon were being sought. In addition, there was concern over the weighting for local priority through the Devon Home Choice system. A motion had been raised for the next ordinary Full Council meeting which sought to address the current Devon Home Choice system.

A Question was received from Rachel Kelland:

I don't actually live in a council property I am somebody that obviously earns a substantial amount of money between me and my partner and we live in private rented accommodation which is obviously exruciate as you can imagine. I think its okay you sat there saying about all these developments and everything going up but where is it about the locals staying local? Because apart of housing and as far as I get it from the Devon Home Choice and about the housing that was obviously allocated around local areas it was actually under the assumption that local people could stay local. Whereas obviously Belinda here has obviously been waiting for a property for over 3 years and other properties have become available which she been able to bid on but people in like Taunton or anywhere else has obviously been given these properties over certain people who have stayed local, obviously it is not just Belinda or other people that are obviously in this criteria and obviously I understand that obviously you know other people have different circumstances to why they would need a property over somebody else which is absolutely fine but in the same ball court where is the locals staying local?

Cllr RJ Chesterton explained that it was Devon Home Choice who decide the allocations, with a cascading criteria being used. The motion that had been submitted requested a review which would highlight if enough emphasis was put on local need. If Devon Home Choice had not followed protocol this would also be highlighted in the review.

A Question was received from Philip McShell:

I live in Bampton in a council property, bungalow, I was quite infuriated just a moment ago and thought I have to say something for this lady behind me with her 2 children, one is 5 years of age and one is 13 and I just want to comment to the gentleman who stood up and spoke in regard to what the Council are doing and incentives and things. I just wanted to ask how long does this lady have to wait her children are 5 years of age and her other child is 13, how old will they be when problems like this are fixed? People with a situation like this need support and help now, it's no point them waiting year on year out, you know, what reassurance can the Council give to people like this, a young mum struggling to bring up 2 children. What reassurance can the Council give?

Cllr R J Chesterton explained that it difficult for individual cases to be discussed in a public meeting and that if they wanted issues to be raised they were encouraged to get in contact with their Ward Member and the Cabinet Member for Housing.

119 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT

Cllr R L Stanley declared a Disclosable Pecuniary Interest in that he was a Director of the 3 Rivers Development Company Ltd. And from this it was inferred that should any discussion ensue he would need to leave the meeting.

Cllr Mrs S Griggs declared a non-pecuniary interest in that she worked for Seddons Estate Agents.

120 CHAIRMAN'S ANNOUNCEMENTS

There were none.

121 ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC

The following was discussed:

- It was raised that item 6 should be discussed in public.
- The validity of the agenda.
- There was confusion whether Council were to advise or make a decision.
- That the Part 1 elements of agenda item 6 should be discussed in public.

The District Solicitor and Monitoring Officer confirmed that the decision making responsibility for 3 Rivers Developments Ltd rested with Cabinet and could not be vested elsewhere. The Council could not agree or disagree the business plans and cases presented, however, the Council could make its views known to the Cabinet by formal recommendation or could request that Cabinet notes the discussion of Council.

In addition, the District Solicitor and Monitoring Officer explained that the agenda had not changed, the recommendation had been clarified and that Council were to advise Cabinet as opposed to making a decision.

Councillor B Holdman **MOVED** an **AMENDMENT**, seconded by Councillor J M Downes that:

The Council stay in part1 for the debate and for the vote and to also request a recorded vote in part 1.

It was mentioned that:

- It was important for this to be discussed in an open forum and to go into part 2 when appropriate.

The **AMENDMENT** was declared to have **FAILED**.

The Chairman **PROPOSED** that the meeting go into part 2.

Upon a vote being taken, the proposal was declared to have **FAILED**.

The Chairman explained that the Council would remain in part 1 until it was necessary to move into part 2 for item 6.

122 3 RIVERS DEVELOPMENTS LIMITED - BUSINESS PLAN 2023-2028 AND 2 ASSOCIATED BUSINESS CASES

The Council 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 following was discussed:

- Clarification over the impairment figure was sought, to which the Deputy Chief Executive (S151) explained that the figure had been provided by the finance team and had been audited by Grant Thornton. In addition, Grant Thornton were reviewing the 2021/22 accounts and were happy with what had been applied.
- It was asked where the £1.6m figure came from and what it referred to. The Deputy Chief Executive (S151) explained that it referred to an estimate from the property development company of the likely potential loss on the ST George's Court development.
- Clarification was sought over where funds were coming from to fund 3 Rivers Developments Ltd. The Deputy Chief Executive (S151) explained that it was a treasury investment decision, not an expenditure decision. It would be funded by temporary treasury holdings. The Council had decided that greater returns could be made if invested in a third party property development company.
- The report stated there had been no costs for borrowing, but it was asked if there would be future borrowing costs. The Deputy Chief Executive (S151) explained that all lending had been from temporary treasury deposits. There may be a need to borrow from the Public Works Loan Board (PWLB), but if this were to be the case there would still be an interest surplus margin.
- In relation to risk, it was asked when the level of risk would become unacceptable. The Deputy Chief Executive (S151) explained that it would be down to the Council to decide following advice from officers. It was clarified that the overarching financial strategy was decided by Full Council.
- It was asked if the Council had made better returns when compared to original investments. The Deputy Chief Executive (S151) explained that within the table under 3.6 it could be assumed with a 13% return with an estimated impairment that there had been a projected loss of £1.6m there was a profit position at the moment. It was less than anticipated and was skewed by one project, while all other projects were successful.
- It was challenged that interest had been generated and that this was not profit.
- The performance of the business was challenged.

Councillor Mrs N Woollatt **MOVED** that the meeting should be moved into part 2 and that standing orders be suspended. This was seconded by Councillor B G J Warren.

Upon a vote being taken, the **MOTION** was declared to have **CARRIED**.

The Chairman indicated that discussion with regard to the next item, may require the Council 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 Committee 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).

The meeting then returned to open session

It was therefore **RESOLVED** that:

1. Council recommends to Cabinet that neither of the business plans or business cases in their current form be supported.
2. Council recommends to Cabinet that it should consider whether it should continue to fund the company and if so to what stage. It further recommends that independent legal and financial advice be sought to help inform those considerations and explore what options are available.
3. That recommendations 1 and 2 be brought before an extraordinary Cabinet meeting no later than the 27 January 2023.

Note: *report previously circulated and attached to the minutes

The following recorded votes were taken during part 2 of the meeting:

Following the debate, Councillor B A Moore **MOVED** in accordance with Procedure Rule 19.4: that the vote in respect of recommendation 1 shall be by Roll Call. A roll call of Members present at the meeting was then taken.

Those voting **FOR RECOMMENDATION 1**: Councillors G Barnell, J Bartlett, J Buczkowski, W Burke, J Cairney, SJ Clist, L Cruwys, N V Davey, J M Downes, Mrs S Griggs, B Holdman, F W Letch, S E Pugh, L D Taylor, B G J Warren, Mrs N Woollatt, J Wright

Those voting **AGAINST RECOMMENDATION 1**: Councillors R Evans, P J Heal, B A Moore, R F Radford

Those **ABSTAINING** from voting: Councillors Mrs C A Collis, Mrs C P Daw, C J Eginton, D J Knowles,

The **AMENDMENT** was declared to have **CARRIED**.

Those voting **FOR RECOMMENDATION 2**: Councillors G Barnell, J Bartlett, J Buczkowski, W Burke, J Cairney, SJ Clist, L Cruwys, J M Downes, Mrs S Griggs, B Holdman, F W Letch, S E Pugh, L D Taylor, B G J Warren, Mrs N Woollatt, J Wright

Those voting **AGAINST RECOMMENDATION 2**: Councillors R Evans, P J Heal, B A Moore, R F Radford

Those **ABSTAINING** from voting: Councillors Mrs C A Collis, N V Davey, Mrs C P Daw, C J Eginton, D J Knowles,

The **AMENDMENT** was declared to have **CARRIED**.

(The meeting ended at 9.38 pm)

CHAIRMAN

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