

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **AUDIT COMMITTEE** held on 27 June 2023 at 6.15 pm

Present

Councillors

E Buczkowski, Mrs F J Colthorpe, J M Downes, G Duchesne,
L G J Kennedy, L Knight and S Robinson

Apologies

Councillors

M D Binks, C Connor, J Frost and R Roberts

Also Present

Councillors

D Broom, R Gilmour, B Holdman, S Keable, J Lock and D Wulff

Present

Officers

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)), Matthew Page (Corporate Manager for People, Governance and Waste), Paul Deal (Corporate Manager for Finance, Property and Climate Change), Dean Emery (Corporate Manager for Revenues, Benefits and Recovery), Dr Stephen Carr (Corporate Performance & Improvement Manager), Angie Howell (Member Services Officer) and Sarah Lees (Member Services Officer)

Also in

Attendance

Ken Johnson and Tony Rose (Devon Audit Partnership)
Peter Barber, Julie Masci and Andy Nichols (Grant Thornton)

1. **ELECTION OF CHAIRMAN**

RESOLVED that Cllr L Kennedy be elected Chairman of the Audit Committee for the municipal year 2023/2024.

2. **ELECTION OF VICE CHAIRMAN**

RESOLVED that Cllr L Knight be elected Vice Chairman of the Audit Committee for the municipal year 2023/2024.

3. **START TIME OF MEETINGS**

It was **AGREED** that the start time of meetings for the remainder of the municipal year be 5pm on Tuesday evenings.

4. **APOLOGIES**

Apologies were received from:

- Cllr M Binks who was substituted by Cllr Mrs F J Colthorpe
- Cllr C Connor who was substituted by Cllr E Buczkowski
- Cllr J Frost
- Cllr R Roberts

5. PUBLIC QUESTION TIME

The following questions were asked during Public Question Time:

Barry Warren Council Tax Payer. Former Leader of Council for a short while.

My questions relate to Agenda Item 12 starting on page 83 of the bundle.

My questions are mainly directed to the Devon Audit Partnership Officers please.

1. On the third line of the introduction you report '*We agreed the review would include*'. **Who were 'WE' please?**
2. Was I consulted on the Terms of Reference?
3. On 16th February 2023 did Mr Middlemass write an email to the S151 Officer, Mr Jarrett, as the result of the then Leader, Councillor Deed, raising concerning issues?
4. In that email were the words "*I envisage we do a quick piece of work to help allay some basic concerns related to the payment of funds from MDDC to 3 Rivers*" and "*I suggest we meet to discuss the terms of reference for our work in the next few days.*"
5. Does that give confidence that a thorough independent review of concerns is going to be carried out?
6. At the bottom of page 85 you refer to advice given. Do you have evidence that I received such advice as I have no recollection?
7. In relation to the matter referred to on page 89 reference is made to information given by the Managing Director of 3 Rivers and the S151 Officer – a former Director of 3 Rivers. Did you enquire of anyone else as I and others received a totally different explanation at the time of a Director giving permission for the bricks to be borrowed?
8. Were you told that I had reported to the Chief Executive my witnessing a tradesman attempting to purchase materials through the 3 Rivers account?
9. On page 90 reference is made to the resignation of the 3 Rivers Financial Director. Did the investigations reveal the email from that Director to a number of people dated 31st January 2023 in which he set out a lot of detail and then wrote "*All of this places me in the position that I have to resign as a Director of 3 Rivers Developments Limited and St George's Court (Tiverton) Management Limited. I will lodge the resignations promptly at Companies House. I will also advise Simpkin Edwards, Hall & Scott, Absolute PR and Paul Steele Accountants of my resignation.*"

In response, the Chairman stated that none of the Members of the new Committee were qualified to answer the questions, he therefore asked if any of the officers could? Mr Tony Rose from the Devon Audit Partnership (DAP), stated that he would like to check what had been said against the records held by Paul Middlemass, the

Audit Manager. Much was down to interpretation. If there was more evidence available regarding the statements already made then DAP needed to have sight of that. Certain comments made had, in his view, been taken out of context. The fraud allegations had been investigated based upon the evidence available at the time. DAP would be happy to look into this further if new evidence was available.

The Chairman stated that that was as far as his Committee could go but answers would be arranged from the sources that had been mentioned.

Paul Elstone (a local resident)

My questions relate to agenda items 11 and 12. - Devon Audit Partnership - DAP's Internal Audit 2022/23 and the Investigation of 3 Rivers.

QUESTION 1:

In an email to DAP dated 24th May 2023, I stated that there was one allegation of fraud and four allegations of unethical conduct that warranted investigation. Will DAP explain why they did not investigate the fraud allegation actually made, or the ethical conduct allegations?

QUESTION 2.

After a request by DAP to provide evidence. This in respect of the fraud allegation, I stated the following: *"I have been blocked by MDDC Officers in getting a copy of the Viability Assessments in question despite I believe having a legal right as defined in a 2020 High Court Judgement"*.

Why is this not mentioned in the DAP Report?

Why did DAP not follow up on this?

QUESTION 3

Page 13 of the report references a former and long-standing Council Leader saying, "The public do not know the Machiavellian things that have gone on from a finance point of view".

Why was this statement not investigated in any way by DAP?

QUESTION 4

Were DAP, or for that matter Grant Thornton made aware, by the MDDC Monitoring Officer or others, that in an email dated the 25th January 2023, the 3 Rivers Finance Director raised serious concerns with MDDC Officers about MDDC under reporting the level of 3 Rivers bad debt in its accounts?

QUESTION 5

Were DAP made aware by the MDDC Monitoring Officer or others that in the 3 Rivers Finance Directors resignation email dated 31st January 2023 he states Quote *"I do not accept his response. I have sought legal advice regarding possible defamation"* unquote, this was said in response to the MDDC Officers reply in respect of MDDC's failure to properly report the level of 3 Rivers bad debt ?

QUESTION 6

Given the information now at hand, including from previous Leaders of this Council, will this Audit Committee now recommend to Full Council that the DAP Internal Audit plus the Fraud Investigation Report be rejected ?

That another, more wide-ranging, investigation be implemented?

Mr Ken Johnson, also from DAP and a fraud investigator, asked the questioner to let him know if he had any further information that pointed to a criminal offence.

The Chairman asked that the senior officers and DAP liaise over the questions raised and if there was any necessity to take any further action then this would happen and a reply given in due course He reiterated the fact that his Committee was new and 'this was all they could do'.

Nick Quinn Local Resident

My first question relates to Agenda Item 12 – The DAP 3 Rivers Report.

It is apparent from how the 'Removal of Materials' allegation has been treated, that this is a quick 'skate over' report.

The report confirms there was unauthorised removal of materials from the St George's site, which was reported to the S151 Officer and to the Board of 3 Rivers.

However, DAP accepted the Managing Director's explanation, as fact - without seeing any evidence of an investigation or action.

This proven lack of proper procedures and management control at 3 Rivers should have raised questions: "was this an isolated incident?", or "what else has happened that has not been recorded?".

The report shows the allegation was true and that 3 Rivers' management practices are flawed - a combination that should merit further investigation.

Question 1: With the admission that materials were removed from St Georges Court and a proven lack of proper management control or records, will this Committee ask for a proper investigation into this matter?

My last question relates to Agenda Item 15 – Grant Thornton's Annual Report

This report contains a number of comments concerning the problems of 3 Rivers but the worst of these are aimed at Elected Members of this Council.

The Executive Summary states: "*we observed the emerging escalation of ineffective decision making in respect of the process for approving the 2023/24 business plan of 3 Rivers*" and this "*raised concerns about the Council's ability to take timely decisions in the best interests of the Council*".

I believe these critical comments are misdirected.

Given the risks associated with the very late, and obviously poor, Business Plans; the escalating losses and likely loan impairments - Elected Members, including this Audit Committee, made positive decisions not to support any of the Business Plans presented to them.

Question 2: Will this Committee seek, from Grant Thornton, a Full Explanation for the critical comments regarding Elected Member decisions, contained in this report?

Mr Johnson (DAP) stated that he had obtained no evidence of criminality despite the comments made and reiterated his advice to the questioner that if he suspected criminal activity it should be reported to Devon and Cornwall Police

The Chairman reiterated the point that if anybody had any direct evidence they should take it to the official Police investigators as they were responsible for looking at criminality and further suggested that perhaps in future this is where any allegations should go. He again asked that senior officers liaise with DAP over any questions raised.

Note: Copies of the public questions would be sent to DAP in order for any that had not been answered during the meeting to be addressed and clarity given.

6. DECLARATION OF INTERESTS UNDER THE CODE OF CONDUCT

No interests were declared under this item.

7. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 28 March 2023 were **NOTED** and signed by the Chairman.

8. CHAIRMAN'S ANNOUNCEMENTS

The Chairman had no announcements to make.

9. CORPORATE RISK REPORT (00:35:00)

The Committee had before it, and **NOTED**, a report * from the Corporate Performance and Improvement Manager providing Members with a quarterly update on the Corporate Risk Register.

Discussion took place regarding:

- Why the Cullompton Relief Road had a risk rating of 25 but only 1 action against it. The Corporate Manager for People, Governance & Waste stated that he would look this and come back to the Committee.
- The effect of the cost of living crisis and whether risks in relation to this were accurately scored. It was explained the current risk rating reflected the risk to the Council. The Risk Register was reviewed on a regular basis by the relevant officer groups and updates brought to every Audit Committee for further review.
- There would always be some risks shown as significant depending on the national and local circumstances at the time. Some risks would go up and down the rating scale and some would disappear and reappear depending on influencing factors at the time. Some risks were unexpected such as Covid 19.
- A question was asked as to why the Culm Garden Village was not rated with a higher risk. The officer explained that he would speak to the relevant service area and get back to the Committee with an explanation.

Note: * Report previously circulated.

10. PERFORMANCE OUTTURN REPORT FOR 2022/23 (00:42:00)

The Committee had before it, and **NOTED**, a report * from the Corporate Performance and Improvement Manager providing Members with an update on performance against the Corporate Plan and local service targets for 2022/23.

Note: * Report previously circulated.

11. DAP INTERNAL AUDIT ANNUAL REPORT FOR 2022/2023

The Committee had before it, and **NOTED**, the Annual Audit Report 2022 – 2023 from the Devon Audit Partnership.

The contents of the report were outlined with key highlights referred to as follows:

- The different categories of assurance were explained.
- During the year there had been some audit reports providing limited assurance, for example, in the areas of Leisure and IT. Where this occurred follow up audits were scheduled during 2023/2024 in the expectation that improvements had been made.
- DAP were working to finalise the Cyber Security audit.
- There had been a specific piece of work in relation to 3R.
- There was a focus on areas of financial control.
- The assurance map was referenced. This was designed to aid efficiency and effectiveness and also showed areas of good practice.
- In relation to Customer Services, feedback from the public had generally been either 'satisfied' or 'nearly satisfied'. The pie chart in relation to this also showed areas for challenge or issue.
- The overall opinion from DAP was one of 'Reasonable Assurance' on the controls in place across the Council.

Consideration was given to:

- DAP had to comply with Public Sector Internal Audit Standards and had to do a self-assessment against these every year.
- There were no significant fraud issues within the Council at the current time.

Note: * Report previously circulated.

12. DEVON AUDIT PARTNERSHIP (DAP) INVESTIGATION OF 3 RIVERS (00:56:00)

The Committee had before it a report * from the Devon Audit Partnership looking at the process to agree loans from the Council to 3 Rivers and whether it was part of a formal business process where approval was provided by Members. It also reviewed the fraud allegations and considered whether further investigation or examination was merited or possible.

The following was highlighted:

- The report detailed what areas of evidence were looked at.
- Some differences in values had been detected but the reasons why had been provided.
- They had looked into the allegations of removal of building materials and had not found any criminality.
- They had concluded that there had not been any fraud or corruption.
- Simpkins Edwards, a financial firm, had been employed to aid the investigation.
- Not everything had been found to be 'perfect' for example notes in relation to 'land' could have been more thorough.

Consideration was given to:

- Lots of questions had been asked in relation to 3R why had the auditors only chosen to focus on those of a couple of individuals? It was explained that focus had been given to the questions asked of this Council by the public.
- The Chairman stated that DAP had followed the remit given. There had been no evidence of wrong doing and it was time to move on. If individuals still had evidence which had not been investigated then they needed to seek a different route to have them addressed.
- Allegations made had been unsubstantiated by DAP.
- In addition to the work undertaken by DAP, which had looked at performance, a full options appraisal was being conducted by Francis Clark and the report would be available towards the end of August and would be presented to the Cabinet.

The Chairman of the Scrutiny Committee requested that the Audit Committee defer any decision in relation to this report until after the Scrutiny Committee had had a chance to discuss it. Accordingly, a proposal was made by Cllr J Downes, seconded by Cllr S Robinson to defer making a decision until after the next Scrutiny Committee. This was not supported.

Therefore:

The Audit Committee **AGREED** that the report be **NOTED**.

(Proposed by the Chairman)

Note: * Report previously circulated.

13. **DAP MANAGEMENT ACTIONS REPORT (01:10:00)**

The Committee received and **NOTED** a report * from the Devon Audit Partnership focussing on the clearance of internal audit recommendations.

The contents of the report were outlined and discussion took place regarding:

- The low, medium and high risk categories were explained.
- Cyber Security had already been mentioned within the meeting as needing a follow up audit and further review during 2023/2024.

- The Committee were directed to focus on the 'High Priority' column where there were overdue recommendations. They would see this table at each of their meetings going forwards.
- The Deputy Chief Executive (S151) gave the Committee an assurance that the Cyber Security area was receiving a great deal of focus with a management group being established, including two IT managers, the relevant Cabinet Member and himself, in order to address the issues of concern.

Note: * Report previously circulated.

14. **DEVON AUDIT PARTNERSHIP COMMITTEE REPRESENTATION (01:17:00)**

The Committee had been asked to provide the names of two representatives to join the Devon Audit Partnership Committee.

It was **AGREED** that the Chairman, Cllr L Kennedy, and Vice Chairman, Cllr L Knight, be the representatives.

15. **GRANT THORNTON AUDITOR'S REPORT AND MID DEVON DISTRICT COUNCIL FOR 2021/2022 (01:18:00)**

The Committee had before it and **NOTED** a report * from Grant Thornton considering whether, during the financial year 2023/2023, the Council had put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.

The following was highlighted within the report:

- The role of the external auditor was explained, particularly in relation to their responsibilities in providing an annual opinion on the financial statements and Value for Money.
- Commentary had been provided in relation to 3R and comments had been made in the report regarding recent events and the delay with the Business Plan being approved. Further analysis would be undertaken during the 2022/2023 audit.
- Final sign off of the 2021/2022 accounts had been delayed due to the availability of a new Pension Valuation during the already delayed audit. This needed to be restated in the accounts. It was hoped this could be resolved in the next few weeks.
- No significant issues or weaknesses had been found in the accounts and their opinion was that the Council did have effective arrangements in place to manage its finances. They had made some improvement recommendations which would be followed up.
- Initiatives needed to be brought forward to address gaps in the Medium Term Financial Plan.
- Reference was made to the positive findings of the Local Government Association following the Peer Review.
- Performance information could include more operational measures, for example, monitoring the performance of key contracts.

In response to a question from the S151, Grant Thornton confirmed the 2021/22 Financial Statements are expected to come back to the August meeting for final approval.

Note: * Report previously circulated.

16. GRANT THORNTON'S 2022/2023 AUDIT PLAN (01:40:00)

The committee had before it, and **NOTED**, a report * from Grant Thornton presenting an overview of the planned scope and timing of the statutory audit of Mid Devon District Council's financial statements.

The following was highlighted within the External Audit Plan:

- The Committee were informed that Julie Masci would be returning and taking over from Peter Barber as the Engagement Lead for Grant Thornton.
- The report set out the initial planning, risk assessment work and key messages.
- Risks in relation to the Group Accounts would be analysed including any minimal risks of intentional bias.
- Expenditure would receive specific attention as well as trading income.
- The evaluation of land and buildings and the assumptions made towards these would also be assessed in terms of risk.
- Detailed work would be undertaken in the area of Pension Liability.
- Financial sustainability was a common risk factor across all local authorities especially in relation to budget gaps identified in the MTFP.
- ISA 315 would give a broader understanding of the IT environment but would require additional work.

The external auditors were thanked for their clear and comprehensive report.

Note: * Report previously circulated.

17. IDENTIFICATION OF ITEMS FOR THE NEXT MEETING (01:47:00)

The Committee had before it, and **NOTED**, the items identified for the next meeting. In addition to these the following was requested to be on the agenda for the next meeting:

- An update in relation to Cyber Security
- Grant Thornton's final opinion in relation to the 2021/2022 accounts
- Corporate Performance Report

(The meeting ended at 8.05 pm)

CHAIRMAN