

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 24 August 2023 at 5.30 pm

Present

Councillors

R Gilmour (Chairman)
G Westcott (Vice Chairman), D Broom, E Buczkowski, Mrs F J Colthorpe, A Cuddy, G Czapiewski, M Farrell, B Holdman and S Robinson and G Westcott

Apologies

Councillors

R Roberts

Also Present

Councillors

J Buczkowski, G Duchesne, L Taylor, J Wright and D Wulff

Present

Officers:

Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leiburne (District Solicitor and Monitoring Officer), Andrew Seaman (Member Services Manager) and David Parker (Member Services & Policy Research Officer)

27 **APOLOGIES AND SUBSTITUTE MEMBERS (0.03.40)**

Apologies were received from Cllr R. Roberts

Cllrs S. Clist, L. Cruwys, A. Glover, S. Keable, L. Knight and J. Lock attended by Teams

28 **DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0.04.01)**

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

29 **PUBLIC QUESTION TIME (0.04.23)**

Three members of the public raised questions which were accepted.

Nick Quinn raised the following questions:

Question 1:

A "Part 2" report by the Deputy Chief Executive called "*Creation of a Property Development Company*" was discussed and approved by Cabinet on 30/03/2017. It was subsequently released under FOI.

Would you please confirm that the development at the rear of the Town Hall, St Georges Court, was put forward in this report as the first project for 3 Rivers?

Answer:

The Deputy Chief Executive (S.151) answered that it was a categorical yes.

Question 2:

Regarding the fees of the Architectural Practice that designed St George's Court and did the plans for it (*Mikhail Riches*). Was it the Council, or 3 Rivers, that ultimately paid for this work?

Answer:

The Deputy Chief Executive (S.151) answered that back in 2019, when that contract was awarded to Mikhail Riches, it was the Council who had contracted with Mikhail Riches for the scheme. However, when the scheme transferred to 3 Rivers all of the intellectual property, the plans and therefore the costs were fully transferred across to 3 Rivers, so ultimately 3 Rivers paid for that work.

Question 3:

The outcomes of external reviews into 3 Rivers were reported to Cabinet in June 2020. These showed there were problems with the company at that time - but the Company was allowed to continue in operation. Now, in 2023, another external review has resulted in the Cabinet recommending the wind-up of the Company. Can it be publicly explained why the Cabinet decided not to wind-up 3 Rivers in 2020, when any loss is likely to have been less?

Answer:

The Deputy Chief Executive (S.151) answered; the two external reviews in 2020 did not show that there were problems with the company, they were commissioned by an incoming cabinet administration to confirm that the company had all the correct legal and financial controls and governance in place and that is exactly what those two external commissions came back to the cabinet with. They came up with 33 recommendations and all the recommendations in the two reports were adopted and recommended by cabinet and approved by Full Council.

At the same juncture the Council agreed to continue with the property development company investment. In 2023 the Council had asked the S151 officer to commission an external review into the financial viability of the company. That is what he did and that was part of the considerations made by cabinet at its recent meeting. As far as the explanation as to why the cabinet decided not to wind up 3 Rivers in 2020, the cabinet had asked for and received advice around governance of the company, it was happy with that advice and it decided to continue with its investment in the company, three years later the financial position along with things like Covid, cost of living crisis etc. had changed the economic outlook of many things in the world including the development business.

The Cabinet Member for Finance added that closing the company was not a recommendation that was included within the report that was received in 2020 and to remind members of the public that the council had a different administration now and that the Council was being asked look back at a decision made three years ago by a different cabinet and indeed by a different set of Councillors and it was impossible to know what had been in the minds of the cabinet at the time. The Cabinet Member reiterated that the recommendations that were in the 2020 report were not to wind the company up at that time.

Paul Elstone asked the following questions:

Question 1.

At the Cabinet Meeting of the 16th August 2023 reasons were given by the S151 Officer as to why 3 Rivers had failed so disastrously and primarily due to St Georges Court. However, the S151 Officer failed to mention the following, namely. At the November 2019 Cabinet Meeting and in response to the S151 Officer announcing a

massive financial impairment figure linked to St Georges Court, a 3 Rivers Director said the following: I quote verbatim from the meeting voice recording. “the only problem being in the first year where we have taken on St George’s Court scheme there was obviously no profit on it. If that had been a profitable project, to be honest, if 3 Rivers had taken it on a commercial basis it would, (then after a pause he says) sorry had been offered it on a commercial basis, it would not have taken it. So, we are delivering a project that the Council wanted to see done, that was likely to only break even”.

The 3 Rivers Director making this statement was in fact the very same S151 Officer. My question: Please fully explain where was the required level of S151 Officer good financial governance which the position demands? In fact, please explain where there was any governance at all?

Answer:

A written Answer will be provided.

Question 2

There were expert and professional persons available and who specialise in business company wind-ups.

Therefore, in full consideration of the foregoing, his question was:

How can any reasoned and rational decision makers conclude that the S151 Officer was the best person to lead the 3 Rivers company wind-up this including disposal of assets?

Answer:

The Cabinet Member for Finance stated that the S151 Officer had a statutory duty to ensure the proper finances of the Council and it was unimaginable that he would not be involved in such a significant winding up of a company such as 3 Rivers. He could not see how the Council would be able to take this action without the involvement of the S151 Officer. He further commented that the S151 Officer is a professional of the Council, an officer of the Council and that the Council needed to reply upon his very good advice. The S151 Officer is under a statutory duty and if he was not leading this then the Council would very likely be acting unlawfully.

Barry Warren asked the following questions:

Question 1. (a) What was the date of the notification of the call in please?

(b) Has the date of the ‘call in’ and the timing of the notification been compliant with the timescales as set out in law and the MDDC Constitution?

(c) Is this late notification considered to be in accord with the policy to achieve openness and transparency?

A recent press report contained the following quote when speaking of Officer advice: *“Councillors can only act and decide matters on the basis of advice they are given and if the advice they are given is flawed then that is how major faults can quickly develop in the structure.”*

Cabinet had a report from the Deputy CEO (S151) which put forward 3 recommendations. At the end of that report is a section headed Statutory Officer

sign-off and it contains the details of Statutory Officer Andrew Jarrett; Chief Officer Stephen Walford and Statutory Officer Maria De Leburne.

Question 2. In the light of this reason for 'call in', and latest advice/comment by the District Solicitor, were Cabinet given full, detailed and reliable advice on which to make their decisions?

Question 3. Bearing in mind the criticism voiced by the Cabinet Member for Finance, for continued support of investment in 3 Rivers by past Members, is there any record, anywhere, that the S151 Officer ever voiced his disagreement with any of the 3 Rivers Investment Proposals, Business Plans or Business Cases, before they were approved by Members?

The Chairman stated that written Answers will be provided.

The Deputy Chief Executive S151 responded, with regard to the sign off of the report by the three chief statutory officers of the council, that that was normal practice for the sign off of every single Council report so that although a single officer may write a report there was never a single officer who would sign off a report. The Cabinet Member for Finance added that in respect to question 2, If Cabinet had made a decision to wind up 3 Rivers the financial consequences of that decision are outside of the power of cabinet, it would be outside of the budget and policy framework, that is why it is a recommendation to Full Council to take that course of action. The Cabinet Member thought that it was entirely correct for the recommendation to be called to Scrutiny.

30 DECISIONS OF THE CABINET (0.24.28)

A Decision made by the Cabinet on 16 August 2023 in respect of the following report was called in for consideration by Councillor R Gilmour.

3 Rivers Options Appraisal Report

1. Cabinet recommend to Full Council a "soft closure" of 3 Rivers Development Ltd. over a sensible short term period in order to minimise any potential financial exposure and maximise returns from company assets.
2. Delegated authority is given to the Deputy Chief Executive in conjunction with the Cabinet Member for Finance to deliver/instruct all necessary activities in order to deliver a "soft closure" and maintain timely decision making in order to protect the Council's position during this process.
3. That the Deputy Chief Executive, in discussion with the Cabinet Member for Finance procure any additional professional advice required to protect the Council's position and maximise the return to the Shareholder and minimise any potential further losses.

The reason for the call in was:

- The decisions are outside of the Budget & Policy Framework.

The Chairman read a statement which included the following:

- That this Extraordinary Scrutiny Committee Meeting had been called today to identify whether the decision of Cabinet to recommend “soft closure” of 3 Rivers Development Ltd, and any losses or costs that would be incurred by Mid Devon Council.
- That any decision of the Cabinet or of the Full Council around the future options for 3RDL was projected to carry a cost for Mid Devon residents.
- That the Committee’s objective was to learn any lessons that need to be learned to prevent a repeat of this scenario in the future. As those who do not remember the past, are condemned to repeat it.
- That the Committee was not here to assign blame, rather to ensure that the blameless – the residents – were not left to pick up the bill for similar failures in the future.
- That no matter how well-meaning, humans were fallible. This was why we build procedures and controls around decision making. One such role was the role of Scrutiny, with the defined role in our Constitution and, more widely, as Councillors of this Council to speak up and ask questions to ensure good decision making.
- The majority of the current Councillors had no part in the decision making process around 3 Rivers Development Ltd, until the future options decision be presented to Full Council lessons must be learnt from the past to ensure the Council does not repeat the mistakes of predecessors.
- Time should be set aside on the Committee’s Work Programme to talk to previous Cabinet members, senior officers and other relevant parties to learn lessons.

RESOLVED that:

1. Time be set aside in the Work Programme for a “3 Rivers lessons learned” exercise and that any recommendations that come out of that be reported back to cabinet.
2. A “3 Rivers – Lessons to be learned” issue take place over one or two meetings in November and any recommendations sent back to Cabinet by the end of December 2023.

(Proposed by the Chairman, Cllr R Gilmour)

(The meeting ended at 6.07 pm)

CHAIRMAN