

Scrutiny Forward Plan Item – 3 Rivers – Draft Terms of Reference

Introduction

Following the decision of full council in September 2023 to move to ‘soft-close’ the council’s wholly-owned development company, a commitment was given that a ‘lessons learned’ process would be undertaken by the council’s scrutiny function to ensure that opportunities were taken to both learn from the past and to ensure better, more-informed decision-making in the future. To be clear, the Leader of the Council has already stated that he has no intention of creating any further council-owned companies in future. However, it is the role of an effective scrutiny function to consider whether better, or more effective, decisions can be made in future.

The basis for this piece of work should be to seek to minimise duplication wherever possible of past and previous reports, of which there have been many. Numerous internal and external reports have been commissioned over the years, at considerable cost to the council, exploring both aspects of governance and finance, in addition to the regular performance and annual reports required by statute. These were received by the various committees of the time and remain part of the record of how the council managed its finance and risk exposure across the years.

The decisions related to this matter span multiple political administrations. Even the decision to wind down the company, starting in February 2023 and concluding in September 2023, span two different leaders, cabinets and councils. As such, it is important to focus on the fact that the decision to soft-close the company was a unanimous one. Whatever the differences of the past, the council has moved from a period of well-evidenced tension on this issue, to a point where it has clarity on its future and unanimity of intent. This provides, perhaps for the first time, an opportunity for genuinely reflective learning and constructive debate on areas that may have been handled better, or which could be used to guide considerations in future.

Decisions taken in relation to the company have been made by a number of different cabinets and councils, and debate, during the 2019-23 administrative term at least, was characterised by frequent change and disagreement, with many councillors (from across all parties and none) repeatedly expressing their frustration with the quality and quantity of discussion in relation to this item. Therefore, with a new administration now in majority control, there has been a commitment to moving the discussion back to a more open and reflective position, realigning the culture back to one of mutual respect and tolerance, and specifically to ensure learning from the handling of this across all administrative settings to guide better decision making in future.

Terms of Reference

The scrutiny committee accepts the work of previous internal and external auditors and reviewers, and acknowledges the efforts made by multiple administrations to ensure high quality decision-making.

However, in order to robustly meet its objectives as a critical friend, the committee wishes to exercise its scrutiny function in specific areas:

- While performance and financial risks were regularly considered, were these used to genuinely inform debate and shape decision-making?
- The committee has heard that the tone of council debate was not always as respectful as members may have liked. The feedback from almost all members of

that time was that the whole thing as a subject became toxic; as a collective members complained of the abusive and disrespectful language used in debate, and individual members complained of bullying language and tactics. This resulted in support being brought in from the Local Government Association (LGA). How much, or how badly, did this context impact on the quality of debate and/or the quality of decisions?

- There are some interesting examples of governance challenge and tension; whether these be linked to the planning committee refusing to determine a planning application because of the applicant, the council's own company being awarded costs because of the unreasonable conduct of its parent council, or the shareholder declining to make timely decisions. All had cost and consequence. Navigating these governance challenges was always going to be required in one way or another, but in a 'chicken and egg' metaphor, did these governance challenges come from an underlying lack of confidence/understanding of the relationship between the two entities, or did an increasing lack of confidence or hesitancy come from experiencing these types of challenges? Could this have been mitigated better / more effectively?
- Did the council exercise the correct level of control over its company, and when exercising 'control' were the subsequent commercial impacts always considered? How could this tension between profit ambition and council ambition be better managed in future?
- With respect to the development St George's, how much of the current position has been down to market conditions and economic shocks, and how much has been down to the performance of the company/council?
- The financial updates to cabinet, audit and council were frequent and described progress and implications. Would it have helped to define acceptable thresholds for cost expansion in advance? Bearing in mind that even the latest budget agreed by full council decided to continue the work at the company's most contentious site, was there ever a point where a decision could/should have been made to walk away and cut any losses? (See final line of query, which feels pertinent to inform thinking in future.)
- The council had identified company failure (alongside reputational issues) as a strategic risk from the outset, but with numerous internal and external review points across the life of the company, was the risk of 'owning' the decision to wind up the company (or any specific site) perceived as greater than the risk of continuing? How does the council manage and weigh any equivalent risk in future?

Conclusion

In summary, a comment during the debate at full council made the observation that 'it has taken a change of political makeup to change the direction of travel', and while it might be easy to comment on the challenging political balances of the time, it is nevertheless the role of scrutiny to look in more detail at what can be learned from this episode in order to consider whether more effective decisions can be made in future.