

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 15 January 2024
at 5.30 pm

Present

Councillors

R Gilmour (Chairman)
G Westcott (Vice Chairman), D Broom,
E Buczkowski, A Cuddy, G Czapiewski,
G Duchesne, M Farrell, B Holdman,
L Knight, R Roberts and S Robinson

Apologies

Councillor(s)

Also Present

Councillor(s)

J Buczkowski, S J Clist and D Wulff

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy
Chief Executive (S151)), Maria De Leburne (Director of
Legal, HR & Governance (Monitoring Officer)), Richard
Marsh (Director of Place & Economy), Paul Deal
(Corporate Manager for Finance, Property and Climate
Change), Laura Woon (Democratic Services Manager) and
David Parker (Democratic Services & Policy Research
Officer)

Councillors

Online

A Glover, S Keable, J Lock and L Taylor

Officers Online

58 APOLOGIES AND SUBSTITUTE MEMBERS (0:03:50)

There were no apologies for absence.

59 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0:04:01)

Members were reminded of the need to make declarations of interest where appropriate. There were no interests declared under this item.

60 PUBLIC QUESTION TIME (0:04:09)

The following members of the public asked questions:

Goff Welchman

In the written response to my questions at the previous Scrutiny meeting (which are being reported to you at this meeting) the S151 Officer, Mr Jarrett, stated that many/most of the Working Group's "lessons learned" were in place from the outset of the 3RDL company - but he was not specific. Would the Committee Chair, please ask the S151 Officer, Mr Jarrett, to inform me exactly which of the "lessons learned" were already in place from the outset of the company?

Response:

As has been confirmed on numerous occasions, prior to setting up the company, the Council has:

Secured legal, financial and banking advice.

Visited a number of Councils that had already set up similar entities.

Appointed 3 directors who had a cross section of construction (both residential and commercial) and financial experience.

Received briefings and reports to ensure clarity of understanding and decision making.

The company's accounts have been audited by external auditors.

In 2019/20, further financial and governance advice was secured from external parties – all recommendations made by these bodies and other Council meetings were implemented.

Regular performance/risk reports were provided to the relevant Council meetings.

Prior to the soft close decision further independent financial advice was obtained regarding the ongoing viability of the company.

I believe this shows that the Council undertook sufficient due diligence prior to setting up and during the commercial life of its wholly owned development company.

Response from Deputy Chief Executive (S151) Officer

Louise Doyle

QUESTION 1 – KPIs

The Enforcement service is not meeting the needs of residents, or creating public confidence, or acting as a deterrent, I believe that needs to change. The Local Planning Authority's (LPA) approach appears to be enforcement averse, going beyond expediency or discretion or regularisation first.

Reporting new or closed or total case numbers is not a KPI

Will the LPA be creating measurable objectives, targets, timelines it can be measured against?

QUESTION 2 – TRANSPARENCY OF CASE MANAGEMENT

Can a spreadsheet/breakdown of cases for the last two years be provided to Scrutiny or Planning so that elected members can have an insight into how cases are being categorised, investigated and closed?

QUESTION 3 – ENFORCEMENT NOTICES ISSUED

The LPA advised Scrutiny in July that 25 Notices had been recently been served. The DLU figures for the year to September showed 15. Which data is correct please? How many Notices have been issued since and the total case numbers being quoted, are they opening numbers at the start of the quarter or closing numbers?

QUESTION 4 – ENF POLICIES 1-6

Does the LPA consider that it is working and planning to work in the future based upon what it is proposing today in alignment to Mid Devon's Enforcement Policies ENF 1 to ENF 6? I believe there is a disconnect and can anybody tell me what happens to the revised enforcement plans that was handed to the DM at the end of 2022.

QUESTION 5 - 95% LOW PRIORITY CASES

The Enforcement Plan categorises Low Priority Cases as very minor breaches. 95% of cases are being categorised as low. That, to me, is surprising. Can the LPA confirm that all 260 low cases sit squarely within the description given to "low priority" in the Enforcement Plan? How is "limited harm" being defined?

QUESTION 6 – WHAT HAPPENS TO 95% LOW PRIORITY CASES?

The LPA states it must prioritise high-risk/impact breaches because it is not equipped financially or in terms of staff to address every breach. What exactly does this mean in real terms in respect of the investigation and resolution of low or medium priority cases, which represent 98% of cases?

QUESTION 7 – BREACHES OF CONDITIONS

Planning Conditions are to mitigate or control some aspect of a development. Each is required to meet the 6 Tests including being necessary. When Conditions are then promptly breached or not discharged - impacting on amenity - why is the LPA not enforcing what the LPA considered to be necessary at the grant of consent?

QUESTION 8 – FROM BAD TO WORSE

Who made the decision in the autumn to run enforcement service and 300 cases with one officer and now with a temp and template letters?

Upon what rationale will that provide an effective service?

How many hours per week of planning officer time will be made available to deal with enforcement matters?

QUESTION 9 – ATTRACTING & RETAINING TALENT

The enforcement salary on offer is £16 to £17.50 an hour. This is not going to attract or retain talent in Mid Devon. The temp enforcement officer job is being offered at £40 - £50 an hour. Wouldn't it be better to invest in full time staff at a far more generous salary?

The Chairman pointed out that as an LPA, Mid Devon District Council does not have a statutory duty to enforce but does it as it believes that it has a duty of care to its residents. The Chairman further, indicated that as these questions had not been

received two clear days in advance of the meeting that a written response would be provided.

Barry Warren

My questions are prompted by the content of Item 10 on your agenda – Planning Enforcement.

In paragraph 1.2 of the report it states that ‘planning enforcement is an important part of planning activity’. It also states that it ‘is discretionary and must be proportionate’.

Question 1 - Who decides what is proportionate and who uses the discretion – that is the officer name and/or position?

Response:

Matters relating to planning enforcement are guided by relevant legislation, policy and case law. Enforcement officers will typically consider cases in order to understand pertinent facts and establish a position in terms of the path that the LPA will pursue in seeking to redress any alleged breach and the proportionality of any enforcement actions. Ordinarily, this would then be discussed with the line manager with further input from more senior officers, as required.

Obviously, given the legalistic nature of enforcement work, legal input may also be secured in supporting the LPA to reach a view on alleged breaches. This can include the commissioning of external legal opinion, if deemed appropriate or necessary.

Question 2 - Is there any elected member input to these decisions?

Response:

Where possible, officers seek to keep Members informed in terms of progress in relation to alleged breaches.

Input or involvement from elected Members is not sought in relation to planning enforcement given the sensitive legal nature of the work. Obviously, Member involvement can sometimes be secured where an application for regularisation comes forwards and is determined via the planning committee.

Question 3 - What guidelines and/or policies are used that are set out for the public of Mid Devon to see and understand?

Response:

The Council’s planning enforcement policies are set out on the Council’s website. The enforcement policy is due for review, which is in progress.

In paragraph 1.3 it advises that in the majority of cases landowners/developers comply with regulations and restrictions. To enable that statement to be put into perspective:

Question 4 - In the first two quarters of 2023 how many planning applications were received and how many separate reports of planning breaches were made to MDDC?

Response:

In the first two quarters of 2023, MDDC received 567 planning applications (of various types) and, as per the report, received 165 reports of planning breaches.

In paragraph 2.3 is a table giving the number of cases which are classified as 'Low', 'Medium' and 'High'.

Question 5 - Who makes these classifications – that is the officer name and/or position?

Response:

In the first instance, Enforcement Officers will determine how a case is classified. This will be based on a view as to the specific details relating to the case, informed or supported by site visits or requests for additional information, as required. Cases are regularly reviewed with line managers and it could be possible for the classifications to be adjusted following conversation with managers or where the situation materially changes.

Question 6 - Is there any elected member input to these decisions?

Response:

As before; there is not direct elected Member input in to the classification of cases owing to the legally sensitive nature of planning enforcement.

Question 7 - What guidelines and/or policies are used in making these decisions that are set out for the public of Mid Devon to see and understand?

Response:

This is set out within the Council's enforcement policy which is on line.

Question 8 - Are the 'informants', elected members or members of the public, advised as to the classification and action or non-action taken?

Response:

Complainants are not automatically notified of the classification level of the case. Members can be updated on progress on specific cases, should they wish to be.

In the report to Scrutiny Committee of the 17th July 2023 at Paragraph 2.4 a table sets out the recommendations of the Working Group. Recommendation 1 has failed as there are now no Planning Enforcement Officers.

Question 9 - What is the current position with regard to recommendation 2 – have we a planning solicitor?

Response:

Yes; the Council has an interim Planning Solicitor. Ref: recommendation 1 – the recommendation did not fail, as the Council did recruit officers – the situation has simply now changed in that the recruited officer has resigned. Nonetheless, the Authority does have interim resource in the form of agency cover with an interim officer due to join the authority imminently.

Recommendation 6 was not implemented as the Director of Place advised that this was not necessary as it could be carried out by the portfolio holder for Planning and Economic Regeneration.

Question 10 - How many planning enforcement cases since July 2023 have been referred to this member and how many cases has he enquired or intervened in?

Response:

The response in July 2023 advised that the recommendation had been discharged through the continuous improvement cabinet portfolio which existed under a previous Council administration. Enforcement activity is now overseen by the Cabinet Member for Planning and Economic Regeneration. Enforcement cases are not referred to the Member as standard; but the Member is kept informed on high profile or high risk cases and is obviously able to enquire after any other enforcement cases, as they see fit.

Recommendation 8 in relation to the Local Enforcement Plan was not actioned and in the July report it was stated that it would be presented for approval in the autumn of 2023.

Question 11 - Where is this document please?

Response:

The document is in draft form but its progression was delayed owing to both work pressures and changes in resources. Work has been continuing and the updated policy is expected to come forwards for review and approval soon, but the item does not currently appear to be on the current Forward Plan. Officers will ensure that this is re-entered on to the plan.

Question 12 - Finally. Is it the case that ‘financial considerations’ are driving planning enforcement decisions in MDDC rather than proactive enforcement as needed?

Response:

It is the case that the Authority is reasonably seeking to balance the competing pressures of managing within its budgets and continuing to provide a robust enforcement service. It is not the case that the Authority is solely considering planning enforcement from a financial perspective as, if this were the case, the Authority could possibly determine to seek to manage without any dedicated enforcement officers.

Responses from the Director of Place and Economy

Paul Elstone

My questions relate to Agenda Item 10 Planning Enforcement.

Question 1.

When deciding on if a planning breach is to be placed into the high priority category, is any consideration given to the number of complaints received and particularly if the complaints are raised by affected Town and Parish Councils plus the Grand Western Canal Joint Advisory Committee etc?

Response: The severity of a planning breach is determined by the nature of the alleged breach, rather than the number of complaints received or who the complaint/report is received from.

Question 2.

Is any consideration given when determining the high priority category to the numbers of MDDC residents impacted by the planning breach and which can be many hundreds even thousands?

Response: Although the priority of a planning breach is determined by its severity, as set out before, each case will be judged on its own facts and officers will be mindful as to the extent of the impact of a breach. It could therefore be the case that a matter was determined to be of a higher severity where impact or harm accrued to more residents.

Question 3

It is known to many including Members this Scrutiny Committee that there is at least one applicant's planning condition breach or should I say breaches that has been ongoing since 2018 and to which my questions 1 and 2 fully relate.

Yet no visible enforcement action has been implemented. Even recently I was advised in an email from an MDDC Officer that there is no current intention to do so. I feel confident it is known by the Director of Place, the planning breaches to which I refer.

Will the Director of Place please fully investigate this position and report back as to why no enforcement action has been taken despite these planning breaches having major, far reaching and increasing impacts on a wide section of the Mid Devon Community?

Response: I believe I know of the case to which Mr Elstone is referring and I would simply say that this case is in hand and being dealt with by the LPA.

Responses from the Director of Place and Economy

The next two questions relate to answers received to my question of the Scrutiny Meeting of the 18th December 2023

Question 4

Answer to Question 1 states.

Quote:

"The Council would like to make it explicitly clear that there has been no officer threats"

The MDDC Officer letter I refer to in my question, the last sentence says the following.

I ask that any further disclosures cease with immediate effect. If this does not occur then we will have no alternative but to take further action which may include a court application for an injunction//reporting for a criminal offence under S170 Data Protection Act 2018.

Will the Committee Chairman agree that the answer to my Question 1 be struck out as it is not fact and can be considered defamatory.

Question 5

The answer to question 5 says:

“Council officers are not aware of the email being referred to”.

Are the current Council Leader and Deputy Leader also saying they are not aware of the document in which they are both named. A document dated the 17th February 2020 and directed to this Council’s CEO ?

The Chairman indicated that as these last two questions had not been received two clear days in advance of the meeting that a written response would be provided.

Kate Clayton-White

I attended the Scrutiny Committee Meeting held on Monday 18th December during which I asked 2 questions relating to 3 Rivers Developments Ltd during my 3 minute’s worth of thoughts and comments about the Council’s and the Scrutiny committee’s handling of the matter.

However while my questions and subsequent answers are included in the minutes, my comments are not.

On 22nd Feb2023 (Full Council Meeting), 16th March 2023 (Economy PDG) and 4th April 2023 (Cabinet Meeting) I made comments and asked questions about the Council’s proposed increase in car parking charges. In each case, my comments and questions were both published in the minutes.

My question is as follows:

Why were my comments missed out of the minutes of Monday 18th December? I emailed them to you on 18th December along with the questions.

(Or does the Scrutiny Committee operate a different minutes recording system to other committees?)

I would like my full comments to be included in the minutes.

Response: The Constitution of Mid Devon District Council states that “the minutes shall contain a condensed written record of questions and statements and they are not supposed to be particularly complex so they are not necessarily a verbatim record of what goes on at every meeting. The Chairman did, however, agree to look at the minutes again to see whether some of Ms Clayton-White’s comments should be included.

Response from the Chairman

Nick Quinn

A Statement by N Quinn - Local Resident

I wish to express my disgust at the way this Administration is behaving and the lack of proper oversight by this Scrutiny Committee.

When the Leader and the Chair of Scrutiny Committee were elected, both spoke about the Openness and Transparency that they were going to champion.

Your Chair of Scrutiny said: *"I can tell you right now, there is no accountability without transparency and I will not tolerate lack of transparency or lack of accountability"*
Since then there was the review into 3 Rivers, which was hamstrung by the terms of reference written by Officers and a timescale set by the Leader - both of which were agreed by Chair of Scrutiny.

Although the report was published, the review was lacking in both transparency and accountability.

Last July, Council passed Motion 593 requiring *"an open and transparent review of leisure pricing"*.

These new leisure prices are already being charged – but they are based on a secret external report; that was put into a secret Officer report; which was discussed, in secret, by Community PDG before being approved, in secret, by Cabinet.

I asked Cabinet why this had not been done Openly and Transparently, as required by Motion 593. The Leader told me *"It was 'Open and Transparent' because all 42 Members had the opportunity to see all the secret papers"*.

It is in your remit to *"scrutinise decisions made, or actions taken, whether by the Cabinet or another part of the Council or any of its Committees"*.

It seems to me that the promises of transparency and accountability are just hollow words and that this Scrutiny Committee, which is supposed to be a public guardian, is failing to do a proper job.

Thank you

The Chairman responded that after the 3 Rivers Developments – Lessons Learned report (which had all been in part 1), had been delivered she deliberately went around the committee and asked each member if they had any questions, bearing in mind that this was a cross party committee, she had given all Members the chance to raise questions publicly and therefore she had shown the openness and transparency that had been promised. With regard to the Community PDG some of the leisure pricing had to be dealt with in part II due to the commercial sensitivity.

61 **MINUTES OF THE PREVIOUS MEETING (0:38:54)**

It was AGREED that the minutes of meeting held on 18th December 2024 would be approved at the next meeting of the Scrutiny Committee on 19 February 2024.

62 **DECISIONS OF THE CABINET (0:43:33)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 9th January 2024 had been called in.

63 **CHAIRMAN'S ANNOUNCEMENTS (0:43:40)**

The Chairman wished everyone a Happy New Year.

64 **WORK PROGRAMME (0:43:45)**

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

The following was discussed:

- Staffing levels and staff morale – this would fall within the Establishment report coming to the Scrutiny Committee on 19.02.24
- Motion 564 – Inclusivity and Community Engagement – Does Local Government work for women? – reporting back on 19.02.24
- Protecting Rivers and Seas (Motion 583) coming back to Scrutiny Committee on 18 March 24. The Director of Place and Economy was asked to invite representatives from South West Water and the Environment Agency.
- The order in which Cabinet Members would be asked to present their portfolios was agreed as follows:
 - Cabinet Member for the Working Environment – 19.02.24
 - Cabinet Member for Planning and Economic Regeneration – 18.03.24
 - Cabinet Member for Community and Leisure – 15.04.24
 - Cabinet Member for Finance – 17.06.24
 - Whenever St George’s Court was transferred to the Housing Revenue Account (HRA) the Cabinet Member for Housing and Property Services should be invited to present his portfolio and other Cabinet Members moved back appropriately.

Note: *report previously circulated

65 **REGULATION OF INVESTIGATORY POWERS ACT (RIPA) REPORT (0:54:55)**

The Director of Legal, HR & Governance and Monitoring Officer gave a verbal report to confirm that Mid Devon District Council had received no requests under the RIPA regulations.

RIPA reports referred to covert surveillance in anything where an offence would attract a sentence, if convicted, of over 6 months imprisonment. Fly Tipping might be such an offence where covert surveillance might be used. Any application would be dealt with by the Director of Legal, HR & Governance and Monitoring Officer.

RIPA reports were audited by the Investigatory Powers Commissioners Office.

66 **MDDC BUDGET 2024-25 - REVIEW (0:58:04)**

The Committee had before it and **NOTED** the *Medium Term Financial Plan update for 2024/25 – 2028/29.

The Cabinet Member for Finance introduced the report mentioning that it was a report that covered five years across all funds and examined how the Council would strategically manage its finances to support the delivery of the priorities listed in the Council’s Corporate Plan 2020-2024 and in future years beyond that which will be covered by the future emerging Corporate Plan. The budget had to be affordable and

be able to manage net spending within affordable limits. The Cabinet and Policy Development Groups had been kept updated and there had been dedicated engagements with business and public consultation within the budget element through the resident's survey.

Consideration was given to:

- The £90,000 shortfall would be taken from earmarked reserves.
- Business Rates still had to be finalised but it was hoped that this would impact positively on the accounts and so the shortfall may be less than £90,000.
- Community and Environment PDG's still had to consider whether any further savings could be made.
- The unfair terminology used by Central Government relating to "Core Spending Power" and the "Funding Guarantee".

Note: (i) *report previously circulated.

(ii) Councillor David Broom arrived at 18.38hrs.

67 **KPI'S ON PLANNING ENFORCEMENT (1:10:46)**

The Committee had before it and **NOTED** a *report on Planning Enforcement within Mid Devon.

Consideration was given to:

- A Review of KPI's.
- Officer Resource.
- The permanent Planning Enforcement Officer had recently resigned, the Development Management department were now trying to recruit a permanent replacement but such professionals were hard to recruit across the nation. There was a limited pool of candidates across the country due to this being a subset of Planning Officials. An agency Planning Enforcement Officer had been recruited to join the Council on a temporary basis.
- The implementation of the new Planning Enforcement Policy, as requested by a working group of the Scrutiny Committee. The draft policy could go through the Planning Policy Advisory Group (PPAG) or straight to Cabinet for approval depending upon the situation. The Chairman asked that it should be reviewed by the Scrutiny Committee.
- The East Devon District Council Planning Enforcement model was being used as the base for the new enforcement policy.
- Rates of pay and provision of professional development opportunities to attract staff.
- The existing High Level cases would be picked up by the new Planning Enforcement Officer, but as they were more complicated matters, they took longer to deal with and so it was impossible to put a time scale on how quickly the backlog could be cleared.
- The current predicament had not had any bearing on response times for the various classifications. The number of cases overall was creeping up.
- Publicising those cases that had been prosecuted to send a message to others that Mid Devon District Council was not a soft touch – the recent success requiring the offender to demolish a building had been publicised but publishing regular case studies could be challenging.

- Planning Breaches did not bring in any income, the Council had some power over fee setting of retrospective planning applications but it could never raise enough revenue to cover its costs.
- Mid Devon DC was now the top performing authority in the South West for processing planning applications within eight weeks.
- During the last Council 50% of Planning Committee decisions that were taken against the advice of officers were overturned at appeal. Planning Appeals took a lot of officer time and resources and took officers away from front line tasks. Enforcement performance did have scope for improvement but it was now in a much better position to be managed.
- Within classifications, there are four classifications but only three are shown on the schedule, because the Highest category was included within the Higher Category

Note: *report previously circulated

(The meeting ended at 7.02 pm)

CHAIRMAN