

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 18 December 2023 at 5.30 pm

Present

Councillors

R Gilmour (Chairman)
G Westcott (Vice Chairman), D Broom,
E Buczkowski, G Czapiewski, G Duchesne,
A Glover, B Holdman, R Roberts and
S Robinson

Apologies

Councillor(s)

L Knight

Also Present

Councillor(s)

J Buczkowski, S Keable, J Lock, L Taylor, J Wright and
D Wulff

Also Present

Officer(s):

Andrew Jarrett (Deputy Chief Executive (S151)), Maria De
Leiburne (Director of Legal, HR & Governance (Monitoring
Officer)), Matthew Page (Corporate Manager for People,
Governance and Waste), Simon Newcombe (Corporate
Manager for Public Health, Regulation and Housing), Angie
Howell (Democratic Services Officer) and David Parker
(Democratic Services & Policy Research Officer)

Councillors

Online

A Cuddy, M Farrell, C Adcock, F W Letch and J Poynton

Officers Online

Lisa Lewis (Corporate Manager for Digital Transformation
and Customer Engagement, Dr Stephen Carr (Corporate
Manager Performance and Improvement Manager).

47 APOLOGIES AND SUBSTITUTE MEMBERS (00:04:40)

Apologies were received from Cllr L Knight who offered Cllr A Glover as a substitute.

48 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00:05:05)

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

No interests were declared under this item

49 **PUBLIC QUESTION TIME (00:05:28)**

Sarah Coffin (The Chairman read out on Sarah Coffin's behalf)

Ref: Scrutiny Meeting 08/11/2021 (Agenda Item No. 11)

I am writing with reference to the above proposal submitted to Scrutiny by Councillor Barnell and accepted by Committee members; calling for a cross-agency investigation into the various nuisance and planning breaches, arising from the unfettered expansion of farm-fed anaerobic digester (AD) plants and servicing farm operations.

In view of the sheer volume of expert evidence submitted and the ongoing related issues, can the Committee please confirm:

Question 1: Whether a detailed investigation took place, as requested by the proposal?

Answer: Further to the November 2021 Scrutiny meeting, the then Chairman of the Scrutiny Committee wrote to neighbouring authorities in order to consider whether a joint investigation in to AD plants could be progressed with the input of those authorities – this being considered necessary in order to inform any investigation. Ultimately, the investigation did not progress beyond this stage but further work did progress within Mid Devon – including a visit to an AD plant in a neighbouring authority and further and ongoing work relating to AD plants within Mid Devon, led by officers.

Question 2: Whether there was a record of those invited who attended, as well as those who did not?

Answer: This was not relevant as the investigation did not progress.

Question 3: Were any conclusive findings and recommendations published in a closing report and made available to both elected Councillors and the public?

Answer: This was not relevant as the investigation did not progress.

In relation to the following Nuisance/ Enforcement related issues:

Question 4: What 'risk assessment' process was used by Council officers prior to advising elected Members on potential 'legal costs' implications, related to contentious Planning/Enforcement Appeals; who has sight and final decision over interpretation of any 'legal opinion/advice' if obtained?

Answer: Any 'Risk assessment' would vary between applications and will be dependent upon the unique characteristics of any application – as does who, for example, (an officer, members or both) makes final decisions.

Question 5: Does such process include counter consideration of potential lost revenue via 'withheld rates' (escrow account) or 'reduced rates' (Rates Tribunal) awarded to proven 'Nuisance/blight impacted' properties?

Answer: Planning enforcement matters were considered in light of relevant planning legislation and best practice.

Question 6: If Councillors agree 'Planning integrity' requires 'effective Enforcement' and without both, there can be no credible 'Net Zero/Climate' pledge/policy, please grant this review urgently?

Answer: This question relates to both a specific case and policy. Planning enforcement is discretionary and has to be managed from within the Council's limited resources. Nonetheless, Mid Devon District Council is committed to effective and proportionate enforcement and is accordingly focused on addressing the most severe planning breaches. Mid Devon is equally committed to ensuring that net-zero and climate policies are achieved.

Barry Warren

Questions in relation to item 11 on the agenda:

In Section 1, page 82, it states: "It should be noted that within the time constraints the working group has not been able to interview every stakeholder of potential interest nor examine every single document from the previous 7 years related to this topic."

Question 1: Who by, and how were the time constraints decided and set?

Answer: The Leader of the Council in concert with the Chairman of the Scrutiny Committee set the time constraints.

Question 2: Who advised and then decided who should be interviewed?

Answer: The Working Group decided for themselves who should be interviewed, the Working Group had the support of the Policy Research Officer to the Scrutiny Committee but they were not "advised" as you suggest, the Working Group took their decisions on the basis of the process they were going through.

It further states: "However, all the relevant material was made available, etc.

Question 3: Who decided what material was to be made available?

Answer: The Working Group decided, they had access to all material that they requested.

Question 4: As none of the Working Group were members of the last administration or the previous one when 3 Rivers was set up, who decided what material was relevant?

Answer: The Working Group had access to all material and decided for themselves which areas to concentrate on so as not to go over ground previously covered by outside auditors.

Question 5: Did the Working Group listen to any of the audio recordings of 'relevant' meetings as they contained all the discussions and, not just the brief summaries contained in the minutes, some of which have been challenged at times?

Answer: The Working Group did not listen to any audio recordings, although they were well aware that they were available and they could have listened to them but

they did not feel the need to do so, much of the debate happened in Part II for which there would not be audio recordings.

The 10 recommendations are 'For Noting only'.

Question 6: Does not the potential loss of many millions of pounds of public money by MDDC warrant more action or comment than this?

Answer: The Working Party were asked to carry out a "Lessons to be Learned" exercise – it was appropriate that the recommendations were to be noted.

Question 7: Recommendation 8 talks of Trust. Previously, any questioning of the advice being offered by Officers was invariably deemed as 'Criticism' and Members have been intimidated into not questioning officer advice at all. Look where that has got us. Trust can only be achieved if elected Members are able to thoroughly examine, and question, the advice being given by officers in order to gain a fuller understanding of it. Will the Working Group make a further recommendation regarding this?

Answer: The Working Group felt able and confident to thoroughly examine and question the advice given by officers and the resulting recommendation that trust between all stakeholders is a precondition of successful delivery of future development projects satisfies the objective.

Nick Quinn (The Chairman read out on Nick Quinn's behalf)

In relation to Agenda item 11- Working Group Lessons Report on 3 Rivers

There are some factual errors in the wording of the report (not the recommendations).

In the summary section on the first page of the report, the Working Group state that time constraints meant they were not able to see all persons and documents. If more time had been allowed, additional information could have been obtained and used for the double- checking and validation of all points, prior to the publication of this report.

Question 1: Why was the Working Group not given all the time they felt necessary, to complete this task?

Answer: The Working Group do not accept that there are any factual errors on the report and have not been shown any evidence to the contrary. The Working Group had to adhere to a timetable set by the Leader of the Council.

There are statements in the report which are incorrect, and other statements which appear to be incorrect.

Question 2: If evidence is provided to them, will the Working Group correct specific statements in the report?

Answer: As mentioned before, the Working Group do not accept that any of the statements they made are incorrect and are satisfied with the report. The report is

complete and it is too late to submit further evidence.

Question 3: If asked directly to do so, will the Working Group provide the evidence they used as the basis for some of the specific statements?

Answer: No

Lastly: This report is being presented to Scrutiny Committee and is “For noting only”. For the final report to have real value, and to prevent any possibility of a re-occurrence of what had happened, the recommendations would need to be considered and adopted by Full Council.

Question 4: Will the final report be put before Audit Committee, Cabinet and Full Council for acceptance?

Answer: No

Paul Elstone

Questions in relation to Agenda Item 11, The 3 Rivers Lessons Learned Report:

Question 1: Section 1 Summary and Recommendations states

Quote “All relevant material was made available”.

How can this be stated and when the Working Group had been told that Council Officers were threatening Members of the General Public with criminal action, if they provided certain documents?

It seems that former Council Leaders also received veiled threats if they made documents they may have held available.

That despite being fully aware, the current Council Leader failed to intervene to ensure key documents were released.

Question 2: Why were the former Council Leaders not interviewed in person, especially when the Working Group were made fully aware of the threats against them?

Question 3: Evidence is available which conflicts with several statements in the report. Did the Working Group have time to fully fact check the information they were provided with?

Question 4: The Working Group Report identified many and serious governance failings. What the Working Group have failed to do, is to reference who should have prevented these serious failings and how. It should be clear to any anyone with an understanding of the responsibilities of Local Government Statutory Officers, what the full root cause is. It has nothing to do with the various excuses the Public have previously been given including Government policy.

Why was the root cause not directly addressed in the report and something that is a serious omission?

Question 5: There is one email that fully identifies the root cause.

An email written to an MDDC Senior Officer in February 2020 and signed by all the Cabinet Members then, including the current Council Leader and a Deputy Leader.

Yet in the report there is no reference to some very serious concerns even allegations including concerns that there could have been a prima facie case to involve the police. An email that can only be described as explosive.

Was this relevant material given to the Working Group?

If so, and given its importance, how many of the signatories were interviewed and who? It is an email given the full content that warrants being in the public domain.

The Chairman explained that as the questions had not been provided in writing in advance of the meeting and that written responses would be provided to him in the fullness of time.

Kate Clayton-White

Having attended the scrutiny meeting in October I have concerns about the process of establishing 'lessons learnt' from 3 Rivers Developments.

The public want accountability. The fact that you agreed that 5 ex-councillors who made the decisions that led to this mess are allowed to give statements to this committee behind the protection of agreed anonymity is extraordinary. Those Councillors must be accountable to yourselves and the public they were elected to serve. Otherwise, how are you providing the openness and transparency you promised as a new administration?

I have not heard anyone on the streets of Tiverton praise the way this council is handling this matter. Unless you want to continue to be tainted by the actions of previous councillors then you need to be above board and honest with public and demonstrate your new culture of mutual respect. This committee needs to do its job properly – thoroughly scrutinise the actions and decisions of the previous incumbents, make all your findings available to and communicated to the public with absolutely nothing hidden behind part 2 proceedings. Taxpayers deserve to know how and why MDCC got into this mess and who was responsible. Otherwise, any lessons learned report, however well intentioned, will not be worth the paper it is written on.

My questions are

Question 1: Why were the previous councillors, successfully allowed to request that their statements remain in part 2?

Answer: In order to get some of the Councillors to provide meaningful statements and in order to provide anonymity to all, it was agreed by Officers and the Scrutiny Committee that all statements to the meeting of the Scrutiny Committee would remain anonymous. Had we not done so, then it was likely that the statements would be superficial and not helpful to the Working Group.

Question 2: Which of the internal and external reports mentioned in the working party report are available to the public?

Answer: There have been numerous internal and external reports received during the lifetime of the company. The majority of those reports have been in part 1. Clearly there have been a number of commercially sensitive reports which went into part 2. All the part 1 reports are available on the Mid Devon Website.

Mr Goff Welchman

Questions in relation to Agenda Item 11 – the Working Groups’ report into Lessons to be Learned from the 3 Rivers Developments Special Purpose Vehicle (SPV):

Question 1: In the Working Party’s report, you list the lessons learned from it, most of these lessons are actually fundamental to the setting up of any business and requisite for any loans from a credible financial institution. The implication is therefore that these steps were not taken at the outset of 3 Rivers otherwise you wouldn’t be needing to learn lessons from them. There are just four reasons why these steps were not taken: either ignorance, incompetence, negligence or deliberate avoidance, which of these reasons applies to 3 Rivers and its setting up?

Question 2: If the answer to question 1 is ‘none of those’ what reason can you give that you can disclose for such vital lessons in setting up a vast financial enterprise being ignored?

The Chairman explained that as the questions had not been provided in writing in advance of the meeting and that written responses would be provided to him in the fullness of time.

50 **MINUTES OF THE PREVIOUS MEETING (00:30:26)**

The minutes of the last meeting held on 30 October 2023 were approved as a correct record and **SIGNED** by the Chairman.

51 **DECISIONS OF THE CABINET (00:30:58)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 12 December 2023 had been called in.

52 **CHAIRMAN'S ANNOUCEMENTS (00:31:04)**

The Chairman wished everybody a Happy Christmas and asked that everyone be mindful that Christmas is not always a happy time for everybody perhaps due to poverty or the reason that they had suffered bereavement around Christmas, it could be a distressing time so the Chairman asked everyone to look out for their colleagues, neighbours and local residents.

53 **CORPORATE PERFORMANCE REPORT (00:31:36)**

The Committee had before it, and **NOTED**, a report* from Dr Stephen Carr which outlined the Corporate Performance Report for Quarter 2 – July to September 2023. The Performance and Risk reports have been separated out and following a recommendation from an internal audit report, the Performance report would be reviewed by the Scrutiny Committee and then by Cabinet. It will come to Scrutiny Committee every 6 months.

Consideration was given to:

- The increase in the number of Homelessness presentations – due to; supply, cost of living pressures, mortgage failures, income levels and a myriad of other reasons. Best captured in overarching Corporate Risk. The tables showed the sharp end of the current nationwide housing crisis. The Council’s broad Housing Strategy, the Housing Development Programme and the efforts to get in front of the pressure.
- The drop in housing complaints responded to on time – this was due to the comparatively low number and a slight variation affecting overall performance. Performance is affected by a number of factors including staff absence, complexity of the complaint, and reaching an agreement with the complainant to close the case. Sometimes it was better to give a good quality response than a timely one.
- Tree Planting – how many of those trees survived?
- Panier Market – what were the Council doing to support occupancy rates?
- Community Climate and Biodiversity Grants – what was the rough amount per project? What did the numbers mean in the Community Schemes Environmental Graph?
- Fixed Penalty Notices – in comparison against other periods enforcement was up.
- Further detailed responses to the questions raised will be circulated to Members via email.

Note: * report previously circulated

54 **WORK PROGRAMME INCLUDING FORWARD PLAN (00:45:08)**

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

The following was discussed:

The report into Key Performance Indicators in relation to Planning Enforcement was to be brought forward from March to the January 2024 meeting.

Corporate Parenting was discussed, Cllr J Lock and the Corporate Manager for Public Health, Regulation and Housing would produce an Overview of Corporate Parenting in a timely manner once the Corporate Parenting Board for Devon had been able to organise themselves and could give some input.

The Scrutiny Committee reviewed the two proposed Scrutiny Work Forms. It was **RESOLVED** that the original work proposal form continue to be used.

At the meeting in January members of the Scrutiny Committee would be deciding upon which order they would wish to scrutinise Cabinet Members about their portfolios.

Note: * Forward Plan and Work Programme previously circulated

55 **ANNUAL REPORT OF COMPLAINTS AND COMPLIMENTS (00:57:48)**

The Committee had before it, and NOTED a *report from the Corporate Manager for Digital Transformation and Customer Engagement which provided the annual report on Compliments, Comments and Complaints.

The following was discussed:

The report covered two distinct periods. The Local Government Ombudsman annual report which covered the period 22/23 and the last twelve calendar months of monitoring for compliments, comments and complaints.

There had been a significant rise of complaints in a couple of areas; first, housing – as reported to the Homes PDG – the significant rise was due to the housing ombudsman changing the guidelines in which Housing monitor and manage their complaints. There was a focus on listening to Council tenants and therefore a change to the way that the Council were recording, monitoring and responding to tenants and actively encouraging feedback.

The other area where there had been a significant rise in complaints was over refuse and recycling. The monitoring period covered, the new Bin It 123 scheme which was launched in November 2022 and the Council would expect to see an increase in reports for the first six months of the scheme. Those numbers had now gone back down to similar levels before the roll-out of the project. The increase in complaints was comparatively small, approximately 65 complaints in 12 months out of 3½ million collections every year.

Recently the Housing Ombudsman and the Local Government Ombudsman had held a consultation exercise asking for Council feedback on whether the guidelines regarding complaints should be brought closer together. The consultation closed in November 2023 and the Council awaited the outcome which may mean that later in 2024 the Council in other services would need to match what Housing have been doing. The Corporate Manager encouraged all Councillors to look at the Housing Report for the direction of travel.

With regard to referrals to the Ombudsman, a very low percentage of complaints were referred to the Ombudsman and out of the 12 complaints the Ombudsman considered, only 1 was upheld.

Consideration was given to:

- The number of visits to the Council offices, the district coming out of covid lockdown may well have impacted on the increase in numbers from the previous year. However, homelessness, cost of living and consequential requests for hardship payments may have meant that more people were visiting the Council Offices.
- The new Customer Relationship Manager system would accurately record the numbers visiting the office and the reasons for their visit.

Note: * report previously circulated

56 **COMMUNITY SAFETY PARTNERSHIP (01:09:30)**

The Committee had before it, and **NOTED**, a *report from the Corporate Manager for Public Health, Regulation and Housing.

The Corporate Manager particularly mentioned the Serious Violence Duty, a new duty imposed on Community Safety Partnerships. The activity was relatively limited in 2022-2023. The Community Safety Partnership (CSP) had agreed on their priorities for the year going forward. There was a report going to Cabinet about the strategy around the Serious Violence Duty and the Corporate Manager encouraged all Councillors to look at the report.

The Community Safety Partnership (CSP) was no longer funded in that the Council did not receive any money from the Police and Crime Commissioner (PCC) and so the CSP was now a facilitating and enabling partnership which directed other organisations to the funding which the PCC held rather than having that funding direct, this had reduced the activity that the CSP could introduce themselves. The Government had indicated that they would make some funds available to Devon to deal with the Serious Violence Duty but at present the level of funding was not known.

Note: * report previously circulated

57 REPORT OF WORKING GROUP INTO THE LESSONS LEARNED FROM 3 RIVERS DEVELOPMENT LTD (01:14:18)

The Committee had before it, and **NOTED**, a report from the Chairman of the Working Group looking into the Lessons to be Learned from the 3 Rivers Development Ltd Special Purpose Vehicle (SPV). The Chairman of the Working party introduced the report and gave thanks to all members of the Working Group.

Consideration was given to;

- Timescale for the report
- Confidentiality led to more information being given to the Working Group
- The report was on the back of various previous reports into 3 Rivers Development Ltd.
- The Commerciality of any new company being able to go to the market for a loan and the ability of the Council to be able to make commercial loans
- Political consideration in taking on the St George's Court site – the working party had considered this at length and their deliberation had resulted in Recommendation 5 – Public interest regeneration objectives for particular sites should be separately funded from non-commercial sources, for example by the offer of a grant to attract developers. – The development was a social statement as much as a political statement but it was driven by politics.
- A Holding Company containing two subsidiaries one being Teckel and one Non-Teckel.
- The amount of Scrutiny and Investigation the Company had been subject to.
- The costs of the various external reports were already in the public domain and the costs had been included in publicly available accounts.

Note: * report previously circulated

(The meeting ended at 7.03 pm)

CHAIRMAN

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Scrutiny Committee Meeting – Monday 18 December 2023

Responses to Public Questions not submitted in advance of the meeting.

QUESTIONS: Paul Elstone - A Local Resident and Council Taxpayer .

My Questions relate to Agenda Item 11 The 3 Rivers Lessons Learned Report.

Question 1 - Section 1 Summary and Recommendations states

Quote *“All relevant material was made available”*.

How can this be stated and when the Working Group had been told that Council Officers were threatening Members of the General Public with criminal action, if they provided certain documents ?

It seems that former Council Leaders also received veiled threats if they made documents they may have held available.

That despite being fully aware, the current Council Leader failed to intervene to ensure key documents were released.

Response: As far as the Working Group were concerned they were content with all the information that was made available to them from both officers and members of the public (who supplied some of this information directly to members of this group and the Chair of the Committee).

The Council would like to make it explicitly clear that there have been no officer threats. The Council have simply written to 3 members of the public with regard to data protection breaches as advised by the Data Protection Officer and the Information Commissioner Officer

Question 2

Why were the former Council Leaders not interviewed in person, especially when the Working Group were made fully aware of the threats against them ?

Response: It was the Working Group’s prerogative to carry out their investigation however they deemed appropriate. There were no threats contained within the request, it simply stated that any information supplied would be verified by the Council’s District Solicitor.

Question 3

Evidence is available which conflicts with several statements in the report. Did the Working Group have time to fully fact check the information they were provided with?

Response: The Working Group were content with all of their investigations carried out.

Question 4

The Working Group Report identified many and serious governance failings.

What the Working Group have failed to do, is to reference who should have prevented these serious failings and how.

It should be clear to any anyone with an understanding of the responsibilities of Local Government Statutory Officers, what the full root cause is.

It has nothing to do with the various excuses the Public have previously been given including Government policy.

Why was the root cause not directly addressed in the report and something that is a serious omission ?

Response: The working group didn't highlight one specific root cause within their report and made the recommendations they felt were appropriate.

Question 5

There is one email that fully identifies the root cause.

An email written to an MDDC Senior Officer in February 2020 and signed by ALL the Cabinet Members then, including the current Council Leader and a Deputy Leader.

Yet in the report there is no reference to some very serious concerns even allegations including concerns that there could be a prima facia case to involve the police.

An email that can only be described as explosive. Was this relevant material given to the Working Group ?

If so, and given its importance, how many of the signatories were interviewed and who?

It is an email given the full content that warrants being in the public domain.

Response: Council officers are not aware of the email being referred to, but would be happy for you to forward it on to them so we can verify your allegations. We would also be interested to know how you have obtained an internal officer/member email.

Responses from Deputy Chief Executive (S151) Officer

QUESTIONS: Goff Welchman - A Local Resident and Council Taxpayer .

My Questions relate to Agenda Item 11 The 3 Rivers Lessons Learned Report.

Question 1: In the Working Party's report, you list the lessons learned from it, most of these lessons are actually fundamental to the setting up of any business and requisite for any loans from a credible financial institution. The implication is therefore that these steps were not taken at the outset of 3 Rivers otherwise you wouldn't be needing to learn lessons from them. There are just four reasons why these steps were not taken: either ignorance, incompetence, negligence or deliberate avoidance, which of these reasons applies to 3 Rivers and its setting up?

Question 2: If the answer to question 1 is 'none of those' what reason can you give that you can disclose for such vital lessons in setting up a vast financial enterprise being ignored?

Response to questions 1 & 2

Although the working group's (WG) recommendations focused on a number of lessons learned, many/most of these items were in place from the outset of the company. But the WG felt that these points should be reiterated if the Council was ever intending to consider another commercial venture in the future.

For information purposes, the Council undertook a significant amount of internal due diligence and secured external professional advice from a number of parties before setting up the company. It also procured additional expertise during the life of the company, at a number of junctures. This advice encompassed corporate governance, financial performance, risk control measures and business appraisals. Businesses can always learn from past decisions and clearly there will often be a myriad of internal and external events that will have impacted company performance. At this point it is probably worth reflecting that many public and private sector development companies have been adversely affected by the multi-faceted impacts of; Covid19, the issues in Ukraine and the current cost of living crisis (impacting both material prices and supply), none of which appear in your question as potential challenges that may have impacted on business performance.

Your question also appears to place no context on the significant austerity programme that has seen the Council's core Government grant funding decrease by circa £4m per annum over the past 10 years. Which has led many Councils, such as ours, in to exploring other commercial revenue generating opportunities to mitigate some of these funding cuts, which by their very nature will have an inherent level of commercial risk and potential reward.

Response from Deputy Chief Executive (S151) Officer