

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 19 February 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, F J Colthorpe, C Harrower, S Keable,
J Lock and D Wulff

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leiburne (Director of Legal, HR & Governance (Monitoring Officer)), Richard Marsh (Director of Place & Economy), Dean Emery (Corporate Manager for Revenues, Benefits and Recovery), Paul Deal (Corporate Manager for Finance, Property and Climate Change), Matthew Page (Corporate Manager for People, Governance and Waste), James Hamblin (HR Business Partner), Sarah Lees (Democratic Services Officer) and David Parker (Democratic Services & Policy Research Officer)

Councillors

Online

A Glover, L G J Kennedy, F W Letch and L Taylor

Officers Online

68 APOLOGIES AND SUBSTITUTE MEMBERS (0:03:55)

There were no apologies for absence.

69 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (0:04:05)

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

70 PUBLIC QUESTION TIME (0:04:17)

The following members of the public asked questions:

Goff Welchman

My questions refer to 3 Rivers, about which I have asked previous questions, but have received replies which were, in my opinion vague. In view of my time limit, I'll just summarise, by number of each lesson learned, the ones to which I would like to receive an exact reply.

The Chairman commented that many of these questions, or similar variants had been answered over the past year and a fairly detailed response was provided to Mr Welchman at our last meeting. However, to ensure further transparency she would allow these additional follow up queries.

Question 1. Lesson 1/. Were two external directors with relevant specialised skills, who were unrelated to the Council, in place from the outset?

Response: As confirmed on numerous occasions directors were appointed with the relevant specialised skills from the inception of the company - this decision was made by the Council after securing external professional legal and financial advice.

The Council did make 2 external appointments following additional advice at significant cost. It would be interesting to reflect how these additional overheads placed further financial viability pressure on the company at a time when their pipeline of potential development opportunities was being constricted.

Question 2. Lesson 3/. How was the board independent, when 3 directors were a Councillor and 2 Council officers, and exactly when was external banking advice sought, and from whom?

Response: At the outset, all directors were either seconded or recharged to the company - as was and is the case with many Council controlled trading entities. The Council was very clear on maintaining ethical walls and division of duties to minimise risk, both perceived and real.

Again professional external advice was secured prior to the Council making these appointments. External banking advice was secured when the company was set up - this came from NatWest Bank.

Question 3. Lesson 4/. Safeguarding and auditing of loans. Is it true that a 3 Rivers director, who was also a Council officer, requested loans, which were then signed off by another senior Council officer? Were there any checks or audits in place to safeguard these taxpayers' funds?

Response: There was clear separation of duties and a number of officers involved in the authorising of loans to the company. All sums related to invoices received from external suppliers were checked prior to releasing any payment.

As part of these checks, Council officers only ever approved amounts that were in full compliance with the approved sums agreed in business cases and the ultimate business plan agreed by the Council. These were also linked to approved loan agreements.

Question 4. Lesson 5/. Was St George's Court properly put out to tender, or was it just handed to 3 Rivers even before the company was fully set up?

Response: St George's Court was awarded to 3 Rivers by the Council as one of its earliest developments. It was then up to the company to decide how it would contract these works. The company isn't subject to the same procurement rules as the Council.

Question 5. Lesson 6/. When MDDC loans were made to 3 Rivers, was a full and proper risk assessment carried out, and if so, where is that recorded and approved?

Response: As explained in the answer to Lesson 4, the loan verification was agreed to amounts approved in company business cases and the business plan. These documents included all relevant risk assessments and updates against these risks were provided by the company to the Council at regular intervals.

Question 6. Lesson 9/. Was an agreed exit strategy in place right from the beginning, and if so, how was it approved, and by whom?

Response: No formal exit strategy was agreed by the Council. However, regular financial/risk reporting was provided to meetings for members to consider. Then a decision point to annually continue to invest, or not, would be made in the Council/Cabinet agreement, or not, of the company's annual business plan.

Responses from Deputy Chief Executive (S151) Officer

Nick Quinn

My first question relates to Agenda Item 9 – Establishment Update.

When the interim Establishment update was presented to Scrutiny on 14 August 2023, I asked if the Council had an organisation chart showing the areas of responsibility and reporting lines of all posts.

Councillor Gilmour responded by saying that the end of year Establishment report, set for February, would be the time for a formal structure chart - *“and that is something that, as Chair of Scrutiny, I would like to see happen”*.

I asked if the chart would be published and Councillor Gilmour replied “Yes”. The meeting minutes show that: *“The Chairman, in response, confirmed that one would be prepared and published”*.

My Question is: Why has this not been done?

My second question relates to the Agenda item 11 - Planning Enforcement.

The proposed Enforcement Policy confirms that nothing will be done for the vast majority of reported breaches, but I would like to ask about one where something can be done.

A Planning Inspector has issued a decision on an appeal regarding a planning condition at the Anaerobic Digester plant at Red Linhay, outside Tiverton.

After commenting on "... *the alleged inaction since the earlier grant of permission for the anaerobic digester with the corresponding condition*", the Inspector made the decision that:

The noise assessment, and any works required as a result, must be completed within 6 months of this decision.

If this is not done, then: "*the use of the anaerobic digester shall cease until such time as a scheme is approved and implemented*".

My Question is: If the noise assessment and works required, at Red Linhay, have not been properly completed by 12 July 2024 - will this Council issue an immediate Stop Notice on this site?

The Chairman thanked Mr Quinn for his questions and indicated that as the 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 from the report and documents the subject of Item 11 on your agenda.

The main heading of the report is 'Local Enforcement Plan Mid Devon District Council 2024' yet all the rest of the documentation is referred to as 'Local Planning Enforcement Policy'.

1. Is it a plan or a policy?

Ms Doyle had sent all members of Scrutiny Committee a very detailed response to the document which I hope you have all read as she raised issues which I would have raised. I was the Chairman of the working group which prepared the original report and recommendations on Planning Enforcement and this current document is not what we envisaged since it contained a lot of words but not a lot of policy that can or would be implemented.

2. I ask that this committee gives full attention to the document, and public comments, before recommending its acceptance by Cabinet?

Members had always been told by officers that there was no need for Planning Committee to oversee Planning Enforcement as this would be covered by the relevant Cabinet member. Paragraph 7.1 on page 11 of the document made reference that the *Service Lead of Legal may refer a matter to Planning Committee*.

3. Would the Planning Committee have an opportunity to see the policy document and have any say on the content?

In the report the word ‘**proportionate**’ appears six times in relation to action to be taken.

4. How is ‘proportionate’ or ‘proportionately’ interpreted by Officers at MDDC when deciding on actions?

I have received a letter from the Council alleging data breaches in relation to my use of emails. The letter accuses me of using my personal email account to write to officers in relation to non-enforcement of planning conditions some 5 months after I ceased to be a councillor! I understand a number of former councillors have also received letters including one who had forwarded a bus timetable from his Council email account! These actions must have taken considerable Officer time and resource to put together and it could be construed as discriminatory, intimidatory and bullying.

5. In the light of stated staff shortages, does this look like proportionate action and proper use of resources?

The Chairman thanked Mr Warren for his questions and indicated that as the questions had not been received two clear days in advance of the meeting that a written response would be provided.

Louise Doyle

QUESTION 1

In January, I asked the Authority to share with certain elected Members (appointed by Scrutiny or Planning) how they had categorised, investigated, resolved and closed cases in the past couple of years? In response, the Authority refused stating “enforcement activity is legally privileged”. I recognise the confidentiality of the requested spreadsheet would not contain personal info (why would it) confidentiality would be maintained. Further, Councillors are GDPR compliant.

This request was important because (oddly) 95% of cases are being categorized as low. Low means...

1. Minor tweaks to developments with permission or permitted development
2. Satellite dishes and
3. Some Advertising

Can I ask the Chair to please establish a working party to review cases before any revised Enforcement Plan is assessed by Enforcement given its ambition that 95% of cases moving forward will not be investigated.

QUESTION 2

I would like a complete response to my question 3 of January explaining the discrepancy in figures quoted to Scrutiny Committee in July versus those recorded at the Dept of Levelling Up re Notices.

QUESTION 3

In Jan, Committee was told that planning officers issuing template letters would mitigate having one enforcement officer/300 cases. I asked how many officer hours would be made available. The Authority had no figures. To what extent was this solution explored before being put to Scrutiny?

QUESTION 4

The Authority has been asked to improve their enforcement service by Scrutiny Committee.

How does having one enforcement officer in order to save £35K improve the service?

QUESTION 5

The Authority has put forward a revised Enforcement Plan. Is there a reason that the Authority has not clearly identified each of those changes to the Plan for members (ie this is what used to say and this is what it now says) with the impact or benefits of those change explained?

QUESTION 6

Why have the Authority swapped out the Enforcement Plan 2018 that has been on the website for 6 years with a revised version of the same at this point when members will need to compare.

QUESTION 7

The proposed Plan seeks to drop timelines/targets out of the Enforcement Plan for site visits and investigation periods

How will this result in an improvement to the enforcement service?

QUESTION 8

The Authority used to report against the same targets/performance indicators to Planning Committee.

Why was valuable reporting on performance scaled back, and why?

QUESTION 9

The proposed Enforcement Plan states that Low Priority cases will not be investigated when there are other higher priority cases (which is at all times). How will putting in place a plan to cut investigations so significantly improve the service?

QUESTION 10

The proposed Plan seeks to drop the Highest Priority category. How will this result in an improvement to the service?

QUESTION 11

The Plan places Breaches of Condition that are not impacting residential amenity or trees in the low category and therefore not being investigated. This undermines those “necessary” Conditions and is a green light for non-compliance by developers?

QUESTION 12

The Authority suggests the revised enforcement plan is similar to East Devon’s. The East Devon plan has timelines, targets and a commitment to investigate low/med/high breaches. Does the Authority, therefore, accept that the two approaches/services are chalk and cheese?

The Chairman thanked Ms Doyle for her questions and indicated that as the questions had not been received two clear days in advance of the meeting that a written response would be provided.

Paul Elstone

Question 1

My question relates to the Scrutiny Committee Workplan and concerns MDDC Pay Policy

A question I asked at Cabinet on the 6 February 2024 was worded along these lines: *“How can the grossly excessive pay increases of circa £24,000 or 33 percent and by circa £18,000 or near 21 percent be considered, in any circumstances, a decision that would not stand up to any scrutiny in private business”.*

When the Cabinet debated then voted to approve the proposed pay policy changes there was obvious unease. This resulting it is believed the Cabinet Member for Finance voting against the proposal and both of the Deputy Leaders abstaining.

It was evidenced that other Members did not support the proposals.

It is on record that the Council Leader in part justified these gross salary rises based on them being new Job's.

In the real business world being new jobs, there would be high level scrutiny including performance and competency check requirements. This given the magnitude of the role and salary changes. That the jobs would be externally advertised to see if there are better candidates.

Therefore, will this Scrutiny Committee fully investigate/scrutinise the merits or otherwise of the salary rise proposals?

Question 2

Can the Solicitor and Monitoring Officer please detail what is this Council's legal position when the perpetrator of a planning breach is shown beyond any doubt as providing repeated false and misleading information to the Council in support of avoiding enforcement? This for substantial financial gain.

Question 3

I has been stated by the Scrutiny Committee Chair that and I quote *“we will bring Enforcement up to scratch in the next 12 months”.*

At a Cabinet Meeting in June 2016 and in a report about Planning Enforcement Improvement and a report prepared by the current MDDC Chief Executive. Many of the things said then and proposed now are the exact same.

That rather than seeing any improvements the enforcement situation has gone backwards.

So, what is different given the same Executive Management and same if not much bigger problems? The public need to see tangible results.

Therefore, why should the Scrutiny Chair's statement be believed?

The Chairman thanked Mr Elstone for his questions and indicated that as the questions had not been received two clear days in advance of the meeting that a written response would be provided.

Sarah Coffin

My questions relate to Agenda Item: 11 – Enforcement.

Unfortunately, the Enforcement review merely reaffirms my own experiences from decades of interaction with this Council; Mid Devon pays lip service to providing a democratic and balanced Planning administration. All the proposed changes would do was ensure the enforcement waiting list continues to grow but in an orderly catalogued manner.

Given the declared importance of Enforcement issues within the Report is there an independent allocation within the budget, for Enforcement, or does it get included within the general Planning costs?

If the latter, I am sure Councillors will agree that intelligent and correctly worded Planning Approvals become even more imperative and can only be achieved via inclusive rather than selective assessment of all relevant facts?

Are Councillors aware that the Enforcement Notice EP/21/090/AN, served on 15 December 2021 by this Council, for the placement of an effective cover on a slurry/digestate pit, to prevent harmful organic emissions invading nearby homes; is still not in place?

Do Councillors appreciate that during this long delay caused by repeated broken promises, affected neighbours have been and are still subject to the risks of long time exposure; to what are acknowledged as hazardous emissions detrimentally affecting their wellbeing?

In view of time passed, investigation costs incurred (2017/18) by all relevant health/emergency/regulatory agencies and Scrutiny Committee, into complaints of fissured tongues, breathing difficulties, eye irritation, heart problems and digestion issues; why has Mid Devon not prosecuted the offending farmer/AD operator for non-compliance or fitted an effective cover on his behalf and claimed full reimbursement, as is permitted via the Environment Act?

The Chairman thanked Ms Coffin for her questions and indicated that as the questions had not been received two clear days in advance of the meeting that a written response would be provided.

71 MINUTES OF THE PREVIOUS MEETING (0:28:01)

The minutes of the meeting held on 18 December 2023 were approved as a correct record and **SIGNED** by the Chairman.

The minutes of the last meeting held on 15 January 2024 were approved as a correct record and **SIGNED** by the Chairman.

72 **DECISIONS OF THE CABINET (0:28:56)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 6 February 2024 had been called in.

73 **CHAIRMAN'S ANNOUNCEMENTS (0:29:07)**

The Chairman had no announcements to make.

74 **WORK PROGRAMME (0:29:13)**

The Clerk to the Scrutiny Committee took the Committee through the Work Plan for 2024 – 2025. He pointed out that various regular reports had been added and that the Committee would hear from two Cabinet members about their portfolios at the next four meetings of the Scrutiny Committee. He also pointed out that there was plenty of room within the plan to add other matters to scrutinise.

75 **WHISTLEBLOWING ANNUAL REPORT (0:32:26)**

The Corporate Manager for People, Governance and Waste gave a verbal report that Mid Devon District Council had received no whistleblowing reports in the past six months until recently when a whistleblowing incident had been raised. That incident was now being investigated.

Discussion took place with regard to:

- Concern about the absence of whistleblowing and whether there was an environment that inhibited people from whistleblowing. The Corporate Manager for People, Governance and Waste replied that the Council promoted a culture of openness and transparency and whistleblowing incidents were treated properly and confidentially.
- The recent whistleblowing incident was the first occurrence of this nature for at least five years.
- The distinction between a complaint/grievance and whistleblowing. Whistleblowing was where there was an issue cited that was of public interest and concern.
- Whether there was an expected number of grievances annually. The Corporate Manager for People, Governance and Waste said that that depended upon a number of factors, particularly what was happening within the Council at a particular point in time as well as other factors. The Corporate Manager said he was happy to look at what data could be potentially shared with Members in future reports but would need to ensure that both data protection and appropriate levels of confidentiality were maintained around any statistics published.

76 **ESTABLISHMENT UPDATE (0:39:54)**

The Committee had before it and **NOTED** a report on the Establishment.

The Corporate Manager for People, Governance and Waste replied to the question from Mr Quinn that, the Establishment report made clear on the front cover that a full establishment structure chart would be circulated once the current consultation on the Corporate Management Team had been completed.

The Operations Manager for Human Resources introduced the Establishment Update. The three key metrics were, sickness, agency spend and staff turnover.

- Sickness was at its highest for four years and new ways of working were being found such as inoculations being offered to members of staff.
- Agency spend this year was down by 37% year on year.
- Staff turnover was down by 3.7% year on year with the current projections for 23/24 down by 16.5%. Initiatives and new ways of working continued including the rollout of Mental Health Champions across the Council, reviewing employee benefits and supporting staff with access to seasonal vaccinations.
- Work was underway on the staff survey action plan.
- The negotiations for the 2024/25 pay award had begun.

Discussion took place regarding:

- The fact that the Council's use of agency staff had decreased.
- Greater scrutiny and discussion about the establishment.
- Vacancies were reviewed on a weekly basis to decide whether they should go forward for recruitment or delay the appointment. There had been a shift in the market with the workforce preferring secure employment rather than agency work.
- Whether there was a correlation between delays in filling staff vacancies and staff sickness – the Operations Manager for Human Resources said that he would investigate that further. However, Mid Devon District Council's sickness levels ran very similar to other Councils across the country. Trends and patterns were being looked at. Further recruitment training was being offered to managers to make sure that they recruited the right person with the correct experience.
- The calibre of applicants and how they were recruited.
- The Appraisal process varied from organisation to organisation, roll out of the new process would be this year so that employees could understand how they were contributing to the Council. The Appraisal Policy should be collaborative.
- Managers will involve employees with the setting of objectives although managers may set the focus or direction. On the whole it is a collaborative process, but employees are encouraged to give their views so that it should be a beneficial process both to manager and member of staff.
- Mental Health – there were a cohort of staff across the Council who were 'Mental Health Champions' and the Champions themselves received support from an Employee Assistance Programme staffed by people who were trained counsellors. However, on a one to one structure the first point of call for any staff member should be their line manager, it was important that staff felt that they were able to raise issues.

- Staff Survey – how did staff who did not have their own e-mail address get a chance to respond? Staff were employed over a variety of services meaning that some staff did not use a lap-top or iPad on a day to day basis, for that reason they would not have an e-mail address. The strategy for dealing with those staff was that they had regular team meetings (or toolbox talks). Updates were provided through the “LINK” which was printed for their staff rooms.
- What proportion of the staff worked from home and from that could one extrapolate sickness between those who worked from home and those who worked at Phoenix House? It was confirmed that hybrid working was 50% across the organisation. For those that could work in this way 90% had signed up for it but of those, a lot at different times prefer to be in the office. Presenteeism – staff may be unwell but continued to work from home despite specifically not being required to do so. With regard to sickness absence and the split between staff that work in a hybrid way and those that work on site - that data would be available with the next Establishment report.
- “I love my job” ethos – melding of the organisation’s needs with employee’s aspiration, generating a sense of belonging.
- Apprenticeships – both traditional apprenticeships and upskilling apprenticeships were available for all staff to enable them to do more.

77 MOTION 564 - INCLUSIVITY AND COMMUNITY ENGAGEMENT (1:05:35)

Councillor Westcott introduced the report from the Inclusion and Diversity Working Group which followed on from Motion 564 passed by Council in 2021. The first discussion with women Councillors had taken place. Discussions had taken place around the appointment of those candidates who work. The Group had not restricted themselves to just looking at issues faced by women candidates, they had also looked at disability access in conjunction with the Equality Diversity and Inclusion (EDI) Group chaired by the Corporate Performance and Improvement Manager.

The interim conclusions of the working group were that there should be training on protected characteristics, more interactive training for the Chairs and Vice Chairs of committees regarding inclusivity which might include more experiential things like the ice-breaker sessions that Councillors had at the start of their training, the Group would also like the questionnaire to be put to all Members regarding the timing of meetings and removing obstacles to any group.

The Chairman thanked the group for the work that they had done so far.

Discussion took place with regard to:

- Whether the group were consulting with officers as well as Members about meeting times.
- That the Council should lobby Central Government to allow Members to vote when attending meetings on-line.

The Recommendations of the Working Group were:

- Democratic Services arrange in house training for all Councillors in protected characteristics
- In addition to the existing training for chairs and vice chairs, they should receive interactive training in inclusive practices. Following the assessment of current training completed by Members currently under way, Democratic Services are preferably requested to source and commission a suitable external agency to offer this training to Councillors and officers.
- The working group should work with Democratic Services to conduct a survey of all councillors on their views on increasing inclusion and diversity, and any preferences about timing of meetings.
- Further conversation should take place on how best to mitigate obstacles for women, people with caring responsibilities and other defined groups in becoming Councillors and in fulfilment of their role.

A vote was taken on whether to accept the recommendations made in the report which was **CARRIED.**

78 **PLANNING ENFORCEMENT (1:19:13)**

The Director of Place and Economy introduced the Planning Enforcement Policy Update. The aim of the update was to bring the Planning Enforcement Policy up to date and to provide clarity. The Policy had been through the Planning Policy Advisory Group (PPAG) and the Planning Committee.

Discussion took place with regard to:

- Lower priority cases would be investigated when commitments to higher priority cases allowed.
- There were a lot of discrepancies and a lack of detail.
- The impact upon human lives and the cost to the Council of failing to enforce planning decisions.

Councillor Duchesne made the following proposal: In the light of what we have heard today and the detailed comments made by members of the public, who clearly have had time to go into this matter in far greater detail than we have been able to, may I suggest that this policy is not ready to be passed to Cabinet and that it should be returned to the Planning Policy Advisory Group where it can be discussed and amended as required. All Councillors are able to attend PPAG so I suggest that we all attend the meeting that will be discussing that and make sure that our concerns are dealt with.

Councillor Gilmour seconded the proposal.

Councillor Buczkowski proposed an amendment that the policy was sent to Cabinet rather than back to PPAG so that it could be discussed and Cabinet could refer it back to PPAG if necessary.

Councillor Knight seconded the amendment.

Discussions took place regarding:

- The role of the Scrutiny Committee was to scrutinise not just to pass on to Cabinet. Once it had been revised by PPAG it should be brought back to the Scrutiny Committee. The Director of Place and Economy had no problem with that approach and wanted the policy to be a robust document. There were no legal time constrictions which had to be complied with.
- Key Performance Indicators to be added to the policy.
- If this was referred back to the PPAG it might be a waste of time as the last time that this policy was before the PPAG it was a well-attended meeting, lots of good points had been made at that meeting and the recommendation bringing this document to the Scrutiny Committee had been unanimous.
- The administration had inherited a legacy and were only nine months in place, there was still a lot of work to do. The budget they had inherited had a black hole of just under one million pounds, that hole had been plugged without loss of staff and the staff were motivated.
- The PPAG would stay involved and not ignore planning enforcement.

The amendment was not supported.

The original proposal was voted upon and was **CARRIED**

(The meeting ended at 7.05 pm)

CHAIRMAN