Public Question Time

Barry Warren

My questions relate to items 5 and 6 on the agenda with particular reference to their relationship to 3 Rivers Development Limited. In the Treasury Management Review at Paragraph 7.2.2, on page 24 of the papers, reference is made to the payment of interest up to 31 March 2023.

Question 1.
Are the Company currently making interest payments to Council?

Answer
Yes

In the Outturn Report at paragraph 3.6.11, on page 37 of the papers, reference is again made to interest paid.

Question 2.
If the Company has not sold any properties since The Orchards in Halberton, is it not therefore a fact that 3 Rivers are paying interest to the Council out of loans from the Council?

Answer
Yes, through the working Capital loans

In Paragraph 3.5.7, on page 36 of the papers, it is reported that Council agreed to commission an external 3 Rivers option appraisal. An amount of £30k was included in the Revised 2023/24 Budget for this review. I am aware that the last Cabinet agreed, with Officers, the terms of reference for that review and directed that the reviewer be appointed before the election date (of 4th May 2023) in order that the results of the review would be available early for the new Cabinet to consider.

Question 3 (a).
Was that review commissioned by the due date and when will it report?

Answer
No

Question 3 (b).
If not commissioned by the due date has it been commissioned since that date and when will it report?

Answer
Yes it has been commissioned and will take approximately two months to complete

Also in paragraph 3.6.12, on pages 37 & 38 of the papers, there are a number of potential actions.

Question 4.
Are these Officer suggestions or do they come from an independent source?

Answer
These are not options from officers or independent consultants, but the possible variations that would require the impairments to be updated. The funding of the impairment is the decision of the S151 Officer.

Paul Elstone

Question 1.
This report shows that MDDC Officers have increased the 3 Rivers loan impairment by £4.5 million pounds. At the Audit Committee Meeting of the 2nd August 2022 a briefing paper provided by MDDC Officers stated the following. A review of the impairment provision was undertaken which concluded that no further, or indeed reduction, in impairment was required.

Also, the latest Business Plan indicates the company will break even in 2023. This bullish statement has proven very far removed from reality with the total 3 Rivers debt Impairment now over £5.3 million pounds. This is more than a quarter of the £20.5 million pounds currently owed by 3 Rivers to MDDC. This points to Insolvency.

Will this Cabinet Committee Immediately commission a wide-ranging external investigation into what has gone so very seriously wrong and why?

Answer
An independent review of the options for the company going forward has been commissioned.

Question 2.
The report says, “To mitigate the financial impact of the impairments the Council will use the leisure VAT refund”. This nearly £3 million VAT refund is only available, after a court case. HMRC have accepted that Leisure Services provided by Councils is VAT free. But this is not MDDC money to spend in any way it wants.

MDDC have been charging customers VAT and sending it to HMRC. This money has been sent back to MDDC who now have a legal and ethical obligation to return the money to the people that they overcharged.

Will Cabinet please reject this report and ask that Leisure Services take whatever steps they reasonably can to identify those customers who were wrongly charged VAT and return the overcharged amounts to them?

Answer
The report was approved without alteration.

The potential refund has not been received yet – but we have accrued for it in the 2022/23 accounts. Our claim is being audited by HMRC. The announcement of the HMRC ruling pre-dates the review of the 3R impairments –there is no direct correlation between the two events.

We have engaged and received advice from our VAT advisors, HMRC and other Local Authority leisure providers, and are considering how to treat the refund, once it is ultimately received.

There are many issues to be considered including Unjust Enrichment and the administration of refunding would be extremely difficult and very resource hungry. Over 12 years of fees attracting VAT could result in thousands of individual refunds, mainly of a small amount (less than £5). Financial records covering a large element of this timeframe will not be available, therefore many customers would not be able to evidence their claim and so there is no proof on which to agree a refund. The cost of administering such refunds would appear commercially not viable/sensible for the council – i.e. combined the cost of the refunds and the cost to administer it could well exceed the funding available.

This can be compared to where a car park users “overpays”, i.e. pays £3 instead of £2.80 as they didn’t have the right change. HMRC deemed this additional 20p to be a donation and is legitimately not refunded.

Such a donation is important given the £1.4m subsidised cost of delivering the leisure service across the district. The service income has not yet recovered to pre-pandemic levels. If the charge were to be reduced by the 20% VAT now not levied, it would significantly increase that subsidy and call into question the ability to deliver this discretionary service. This is not in the best interest of anyone.

This decision helps our corporate VAT position with regards to partial exemption as we are only allowed to fully recover all input tax if our total income has no more than 5% exempt income in it. Leisure used to get us quite close to this level as coaching and block bookings were treated as VAT exempt. This problem will now reduce as more leisure activities become a non-business activity, leaving the Council less likely to breach the 5% threshold and be unable to recover significant input tax on exempt supplies (c£300k+ pa).

Arguably, this may be why the government have agreed to uphold the claim – to relief pressure on local authorities and ensure no further leisure centres close.

Question 3.
My final question. A related question to my question number 1. It is known that the 3 Rivers Financial Director was concerned about the MDDC Group Accounts being imprudent in terms of not reporting appropriate impairment numbers amongst other things. This because in March 2022, 3 Rivers reported to MDDC that they needed to increase project impairment to £1.4 million. This should have been reported to the Audit Committee amongst others at that time. Will this Cabinet Committee implement an external investigation into this whole situation?

Answer
As per the answer to Q1, an independent review of the options for the company going forward has been commissioned.

Nick Quinn

In paragraph 3.6.12 – it is stated that: "the Council has considered its outstanding loans to 3Rivers …... and has concluded that it needs to impair some of the loans". The loan impairment figure given in the report is more than £4.5Million!

Question 1.
What was the date of the meeting of the Council, at which this matter was considered and this conclusion reached?

Answer
The Council's loan impairments is a matter for their Section 151 officer to determine and will then be subject to review during the annual audit process. Any impairment calculation made by the Section 151 will be based on all available information held at the time in question the overall impairment estimate was included in the annual outturn report considered by the Cabinet at its meeting on the 6 June 2023.

This report is for the 2022/23 financial year - up to the end of March 2023. There was never any public mention of the likely impairment of 3 Rivers loans during this year. Now, more than £4.5M needs to be impaired!

Question 2.
Which loans are being impaired and how was the specific amount of this impairment arrived at?

Answer
Currently 4 3Rivers loans are being impaired – 2 development loans and a working capital loan. The impairment was based on the likely level of repayment based on all information held.

Also in paragraph 3.6.12 - it is stated that “the Council will use the leisure VAT refund”, and some earmarked reserves, “to mitigate the financial impact of the impairment”. In Recommendation 3, Cabinet is being asked to approve the use the earmarked reserves for this purpose, but there is no approval requested to use the leisure VAT refund.

Question 3.
Doesn’t using the £3Million leisure VAT refund, for this purpose, also require specific approval?

Answer
When the Cabinet is recommending the use of ear marked reserves (either in or out) it is good practice to formally recognise this. All in year transactions are considered in the main recommendations of the report and are therefore considered in there aggregation. As the VAT refund has still not been settled/refunded to the Council a decision on how it is to be deployed has not yet been finalised.

The Council has already impaired £790,000 of loans to 3 Rivers. The Public have been told that the loans remain outstanding - but it seems they are being “written-down” over a five year period. The concept of impairment and “write-down” is confusing to the public, as is the timing of this impairment – just when the Council has received a £3Million refund.

Question 4.
Isn’t this impairment just a way of “writing-off” another £4.5Million of Public Money loans to 3 Rivers - while some cash is available?

Answer
The Council has to consider all of its live loans as at the 31 March, each year, to consider whether any impairment is required. Any impairment is an estimate about the likelihood of less than full recovery. The Council will have to consider precisely how it mitigates the potential loss made by 3Rivers, both now and in to the future, once it makes a decision on its company’s ultimate direction. It is mere coincidence that HMRC have made an announcement regarding VAT on Council leisure activities at the end of the financial year at the same time as other detailed financial consideration are made. These should in no way be linked as the Council will have to consider a number of means by which it can absorb the current losses of its development company.

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