

APPEAL BY WADDETON PARK LTD

APPEAL REFERENCE: APP/Y1138/W/22/3313401

**LAND AT HARTNOLLS FARM, TIVERTON**

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DAVID SEATON

REBUTTAL TO ARRON BEECHAM'S PROOF OF  
EVIDENCE

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OUTLINE PLANNING APPEAL FOR THE EXTENSION TO  
THE EXISTING BUSINESS PARK FOR UP TO 3.9HA OF  
EMPLOYMENT LAND AND UP TO 150 RESIDENTIAL  
DWELLINGS WITH ASSOCIATED OPEN SPACE AND  
INFRASTRUCTURE (WITH MEANS OF ACCESS TO BE  
DETERMINED ONLY).

AUGUST 2023



PLANNING

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## **1. Introduction**

- 1.1 This rebuttal has been prepared in response to Arron Beecham's (AB) Proof of Evidence (PoE). It addresses matters of housing supply only.

## 2. G&T Pitches/The Housing Requirement

2.1 In response to the appellant raising a point about G&T completions the Council have changed their position on the matter. These changes are summarised below (Table 1).

**Table 1 – 5 year housing land supply requirement figure for 2022 - 2027**

	<b>Requirement</b>	<b>MDDC (CD25)</b>	<b>MDDC (AB's PoE)</b>	<b>Differences between CD25 and AB's PoE</b>
A	Local Plan Review housing requirement – policy S3 (overall/pa)	7,860 (393 pa)	7,860 (393 pa)	0
B	Total requirement over plan period to date (2013 – 2022) [A(pa)*9]	3,537	3,537	0
C	Completions over plan period to date 2013 – 2022	3,160	3,124	-36
D	Shortfall over plan period to date 2013 – 2022 [B-C]	377	413	+36
E	Basic 5 year requirement 2022 – 2027 [A(pa)*5]	1,965	1,965	0
F	5 year requirement with shortfall 2022 – 2027 [E+D]	2,342	2,378	+36
G	5 year requirement with shortfall applying 5% buffer 2022 – 2027 [F*1.05]	2,459	2,497	+38

2.2 The council have therefore changed their position on:

- 'Completions over plan period to date 2013 – 2022' (C minus 36)
- 'Shortfall over plan period to date 2013 – 2022' (D plus 36)
- '5 year requirement with shortfall 2022 - 2027' (F plus 36)
- '5 year requirement with shortfall applying 5% buffer' (G plus 38)

## **Apparent reasons for the changes**

### *Completions to date*

- 2.3 It appears that the 36 unit reduction has been made to the 'Completions over the plan period to date' by AB due to his acceptance that 36 G&T pitch completions were erroneously included in the Council's supply data (see appendix 1).
- 2.4 However, the revised FoI (CD64, received on 14/08/2023) amends the G&T pitch completions figure to 42 pitches. AB accepts that the Council's practice has been to count G&T pitches as part of the completions figure (as demonstrated by his acceptance of that 36 completions should be removed).
- 2.5 However, the amended FoI figure has not been used in AB's PoE. AB asserts (in an e-mail dated 25/08/2023, attached as appendix 1) that only 36 of the historic G&T completions have been counted, but does not disclose the historic completions data to evidence this assertion. Accordingly, without such disclosure I cannot accept that, for some unexplained reason, only 36 of the 42 pitch completions were counted by the Council. This point needs to be evidenced by the Council if they wish to rely upon it (which is their current position i.e. AB uses a 'completions to date' figure of 3124 in the table at paragraph 1.1 of his summary, on page 3 of his PoE).
- 2.6 If the revised G&T figure from the FOI is used, the 'completions over plan period to date' (C) figure would be 3,118 dwellings (3,160 - 42 = 3,118). This is the figure that I have used in both my Housing Supply PoE and this rebuttal.

### **Inconsistency of the completions figures used elsewhere in the PoE**

- 2.7 Also, elsewhere in his PoE, the incorrect figure of 3,160 'completions over plan period to date' has been used (see table at paragraph 5.3, and the text

at paragraphs 5.4 and 7.1 at pages 7 and 14 of AB's PoE). This figure is obviously different to the figure of 3124 used at paragraph 1.1 of his PoE.

2.8 At paragraph 5.4 of AB's PoE he claims that the total completions over the plan period are 3,160. At paragraph 5.5 he goes on to claim that

*"This matter is not in contention between the Council and the Appellant and is therefore set out within the Housing Statement of Common Ground."*

2.9 Patently the figure of 3,160 dwellings is not agreed (for the reasons set out in Section 3 [paragraphs 3.4 – 3.12] of my Housing Supply PoE and as clarified in this rebuttal). Please note that the draft Supplementary Statement of Common Ground (Housing) (CD8), has not been signed and is subject to ongoing negotiation.

### 3. New Baseline Data (unconsented allocations and consented windfalls)

3.1 Also, AB has introduced new housing data (at Appendix A to his PoE) compared to CD25 (contrary to what was indicated at the CMC).

3.2 There has also been a change in baseline 5YHLS data used by AB in his PoE. I have noticed the following changes to supply figures:

**Table 2 – Changes in Supply figures between CD25 and AB’s PoE (Appendix A)**

Component of Supply	MDDC CD25	AB’s PoE	Difference
Unconsented Allocations	153	140	-13
Consented Windfalls (1-4 dwellings)	393	434	+41
Consented Windfalls (5+ dwellings)	242	236	-6
<b>TOTAL DIFFERENCE</b>			+22

3.3 These supply changes have occurred on the following sites in AB’s PoE:

**Table 3 – Differences in sites between CD25 and AB’s PoE (Appendix A)**

LPA ref:	Address	LPA CD25 5YHLS	AB’s PoE 5YHLS	Difference
<b>Unconsented allocations</b>				
CU1-CU6	North West Cullompton; Phase 2: Codex 315 dwellings	50	0	-50
SA1	Fanny’s Lane, Sandford	0	13	+13
<b>Consented windfalls (1-4 dwellings)</b>				
	1 – 4 dwellings	393	434	+41
<b>Consented windfalls (4+ dwellings)</b>				
20/02128/FULL	Pleasant Streams, Uffculme, Cullompton	6	0	-6
<b>Total (4+ windfalls)</b>		242	236	-6
<b>Total Consented Windfalls</b>		635	670	+35

3.4 I make the following comments on these changes.

### **Unconsented Allocations**

#### *SA1 – Fanny’s Lane, Sandford*

3.5 This site was not previously included in the 5YHLS data originally provided (CD25). This site introduces 13 dwellings to the 5YHLS.

3.6 This site was consented in April 2022, so should therefore have be categorised as a “consented allocation” (due to the site having permission, and development having commenced). I do not dispute this site being included in the 5YHLS calculation, and I have therefore amended my calculation accordingly (see table 4, page 10, of this rebuttal).

#### *CU1 – CU6 North West Cullompton, Phase 2: Codex 315*

3.7 This site has been removed from the 5YHLS (compared to CD25), which removes 50 dwellings from the 5YHLS.

3.8 It should be noted that this site was disputed by the Appellant in the draft Supplementary Statement of Common Ground (Housing) (CD8) and the LPA now agree that this site should be removed. I concur with its’ removal.

### **Consented Windfalls**

3.9 Table 2 of CD25 identifies that 635 dwellings will be delivered on consented windfall sites. This breaks down to 242 dwellings on sites of 5+ dwellings, and 393 dwellings on sites of 1-4 dwellings.

3.10 Table 2 of AB’s PoE states that 670 dwellings will be delivered on windfall sites (an increase of 35 dwellings).



*5+ dwelling sites*

- 3.11 I have deduced that the only change made on sites containing 5+ dwellings is the removal of "Pleasant Streams, Uffculme, Cullompton" (ref. 20/02128/FULL), which permitted 6 G&T sites. It should be noted that this site was disputed by the Appellant in the SSoCG (Housing) (CD8) and the LPA agreed that it should be removed.
- 3.12 Thus, on sites of 5+ dwellings, there is a total figure of 236 deliverable dwellings in AB's PoE (compared to 242 dwellings in CD25). This change is agreed.

*1-4 dwelling sites*

- 3.13 However, on windfall sites of 1-4 dwellings, incomplete data has been provided in Appendix A(3) of AB's PoE to evidence AB's amended position. Only one page has been provided, with the last legible site on the list being "Holes Cottage, Bary Close, Cheriton Fitzpaine, EX17 4JH". In appendix A3 of CD25, Holes Cottage is approximately 1/4 of the way through the list of sites. I cannot therefore interrogate the Council's amended position.
- 3.14 However, I have calculated the amended figure by subtracting the number of dwellings on windfall sites of 5+ dwellings (236) from the total number of dwellings on windfall sites (670). This identifies the total number of dwellings on windfall sites between 1-4 dwellings as 434 ( $670 - 236 = 434$ ).
- 3.15 When compared against the number of 1-4 dwelling windfall sites in CD25 (393) this identifies that a total of 41 dwellings ( $434 - 393 = 41$ ) have been included on windfall sites of 1-4 dwellings.
- 3.16 The aggregated figure of an increase of 35 dwellings across all windfall sites masks the increase of 41 windfall dwellings on the 1-4 unit element of the 670 total consented windfall figure.
- 3.17 In my housing delivery PoE I apply a 10% non-delivery rate on the unimplemented dwellings element of sites of 1-4 dwellings. However, due

to being provided incomplete data, I do not have the figures for “commenced” and “unimplemented” units. Therefore, I have been unable to fully analyse this data and apply this non-implementation allowance to a proportion of the 1-4 units figure (since appendix A(3) to AB’s PoE no longer provides this breakdown). This information has been requested from the Council but, to date, no reply has been received.

### **Revised 5YHLS calculation:**

3.18 Due to my acceptance of the deliverability of 13 dwellings on site SA1, Fannys Lane, I have produced the revised calculation (below in Table 4).

**Table 4 – Breakdown of 5YHLS**

5YHLS Requirement	<b>2,503</b>
<b>Components of Supply</b>	<b>PCL Assessment</b>
Unconsented allocations	21
Consented allocations	1472
Consented windfalls (1-4 dwellings)	368
Consented windfalls (5+ dwellings)	191
Communal accommodation	9
Windfall allowance	0
<b>Total</b>	<b>2,061</b>
<b>Supply Duration</b>	<b>4.12 Years</b>

#### **4. Further Inconsistencies in the Council's Case/Data**

- 4.1 Within AB's PoE I also note there is a further factual inconsistency.
- 4.2 I note that different completion figures have been used at different places within AB's PoE. For example the table following paragraph 5.3 (page 7) sets out that net completions for 2021-2022 are 238 dwellings, whereas the table following paragraph 6.22 (page 13) sets out that net completions for 2021-22 are 278 dwellings. I note that figures for years 2015-2021 are consistent.
- 4.3 Thus there is an unexplained discrepancy of 40 dwellings in 2021/22. I believe the figure of 238 to be correct (subject to the deduction of G&T completions which is embedded within these figures) and the figure of 278 (for 2021/22 in the table at paragraph 6.22) to be erroneous.

#### **Comments on AB's Letter of 23/08/2023 (Annex b to Additional Statement of Common Ground dated August 2023)**

- 4.4 Within the Housing Land Supply section of AB's letter dated 23/08/2023 (pages 5 and 6), the first sentence of paragraph 2 states that

*"No change has been made to the base data",*

This statement is, evidentially, not correct.

## 5. Deliverability Assessment

5.1 Appendix C of AB's PoE introduces some further information on sites that the Council rely upon for their 5YHLS position.

5.2 In my opinion Appendix C of AB's PoE fails to provide satisfactory deliverability evidence for a number of sites that I dispute. These sites are:

- CU1-CU6 – North West Cullompton; Phase 2: Codex 315 dwellings
- TIV16 – Blundell's School
- 15/01822/MFUL – Alexandra Lodge, 5 Old Road, Tiverton
- 20/02128/FUL – Pleasant Streams, Uffculme, Cullompton

5.3 Of the sites that I have challenged in my Housing PoE (Table 2, Page 15), the following sites have further information included in Appendix C:

- TIV10 – Roundhill (pdf p.39 of Appendix C)
- TIV9 – Howden Court (pdf p.40-41 of Appendix C)
- TIV1-TIV5 Eastern Urban Extension, Tiverton (pdf p.43 of Appendix C)
- Creedy Bridge, Crediton (aka. CRE5 Pedlerspool, Exhibition Road, Crediton: ref. 17/00348/MOUT & 22/00063/MARM) (pdf p.52 of Appendix C)

5.4 I make the following comments on this additional information:

### **TIV10 – Roundhill & TIV9 – Howden Court**

5.5 Appendix C contains correspondence (8<sup>th</sup> August 2023), confirming that the site is in the ownership of MDDC and subject to feasibility work.

5.6 MDDC have recently confirmed that their housing delivery vehicle, 3 Rivers Developments Ltd (3RD) has been recommended for "soft closure" following

an Extraordinary Meeting of the Cabinet (on the 16<sup>th</sup> August 2023, page 7, appendices 2 and 3). The meeting minutes define soft closure as allowing:

*"the Company to complete the two current projects and then sell all of the properties and its assets for the best value in the shortest amount of time."* (page 2, appendix 2)

- 5.7 Therefore, a "soft closure" would not permit the development or investment in any future sites.
- 5.8 I understand that 3RD were the developer earmarked to deliver this site (as the site is owned by MDDC and is allocated for 100% affordable dwellings). Now, with no developer involved, there is no evidence to support the Council's position.
- 5.9 Furthermore, the points I make in my Housing Supply PoE (p.18-20) regarding current site constraints and the lack of a planning application on the sites remains valid. The Council's evidence base does not meet the normal standards for a determination of deliverability.

### **TV1-5 Eastern Urban Extension, Tiverton**

- 5.10 This map does not add any additional information to the Council's case for including the site in the 5YHLS.
- 5.11 Furthermore paragraph 6.6 of AB's PoE refers to Appendix C as the detailed responses from "*information request sent out to developers, site promoters and landowners*". Having reviewed the map, it doesn't appear to be correct. This map does not appear to be from any of these above three sources, and does not have any information regarding the author. It appears to be a summary of consents, possibly/probably prepared by a Council employee, masquerading as comments made by developers?
- 5.12 Therefore, the points in my Housing Supply PoE (p.20-21) remain valid. The Council's evidence base does not meet the normal standards for a determination of deliverability.

### **Creedy Bridge (CRE5 Pedlerspool)**

- 5.13 The proforma is undated, however was filled in before March 2023 as it discusses the need for an extensive review of the RM application (ref. 22/00063/MARM) The RM application was validated in January 2022, so I expect that this proforma was likely completed around May 2022.
- 5.14 In May 2022, the Bank of England interest rate was 1%. Currently (August 2023), that rate is 5.25%. This represents an increase of 4.25%, which will have a major impact on housing demand, and therefore, housing delivery rates (in a negative manner as production slows to meet sales demand).
- 5.15 Thus, whilst I acknowledge that an RM consent has since been issued (in March 2023) the changing economic context evidences the position I have taken regarding the inflated delivery rates on the site in my PoE (pages 21-22).

### **Alexandra Lodge**

- 5.16 I consider that development has stalled (see my PoE, pages 23-24). I find it noteworthy that there is no developer response provided in Appendix C of AB's PoE, and consider that this is further evidence of the stalled nature of the site. The available evidence base does not meet the normal standards for a determination of deliverability.

## **6. Comments on the Lack of Robustness of the Housing Supply 5 years +**

6.1 Section 7 of AB's PoE discusses the robustness of the Council's Housing Land Supply Position.

6.2 At paragraph 7.3, AB states that:

*"The Council's monitoring data confirms a pipeline of 1,652 homes in total, of which 639 have commenced and 1013 remain unimplemented with planning permission. Whilst much of this is factored into the Council's housing land supply position, it is evidence of a strong pipeline of development that is coming forward in Mid Devon. Therefore, should it be found that the Council is unable to demonstrate five year housing land supply, this is unlikely to persist for an extended period..." (my underlining).*

6.3 The term "pipeline", whilst undefined, appears to be the aggregation of current on site development and unimplemented permissions. "Much of" this pipeline has also already been counted into the Council's 5YHLS.

6.4 Additionally, anything in the "pipeline" that has not been counted in the 5YHLS has failed to meet the definition of a deliverable site in accordance with Annex 2 of the Framework and paragraph 68-007-20190722 of the NPPG.

6.5 As set out at section 8 of my PoE (pages 26 – 29) I believe that the Council have taken a 'rose tinted' view of potential delivery beyond the current 5 year assessment period and that there is little/no prospect of any significant delivery from the main applications at Cullompton and Tiverton in accordance with the Councils proposed trajectory.

6.6 Therefore, there's nothing in this point and it, again, seeks to 'gloss over' any interrogation of deliverability.

## **7. Conclusion**

- 7.1 I can only conclude that the Council's information is inconsistent and incomplete. Allied to a 'rose tinted' approach to the deliverability assessment, I submit that the Council's evidence cannot be relied upon.



**Appendix 1**  
**G&T Sites in 5YHLS**

## Will Ridalls

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**From:** Arron Beecham <abeecham@middevon.gov.uk>  
**Sent:** 25 August 2023 16:57  
**To:** Sarah Smith; Tristan Peat; Leanne Buckley-Thomson; Planning Appeals; tony@aspburyplanning.co.uk  
**Cc:** David Seaton; Charles Banner QC; Robert Williams; Wordsworth, Robert; Clare Mirfin; Peter Cox  
**Subject:** RE: Appeal Reference: 3313401 Land at Hartnolls Farm, Tiverton

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Sarah / David,

Further to my email below, please also see below my comments in respect of the Housing Statement of Common Ground:

It is suggested that paragraphs 2.3 and 2.4 are amended to read:

“The Council’s 5YHLS data previously included G&T pitches within the deliverable housing supply figure and recorded 36 completions between 2013 – 2022. The parties agree these should be deducted. The Council’s updated position is set out at Appendix A of Mr Beecham’s proof of evidence”.

Just to clarify the G&T position, I note that the FOI response issued by the Council notes 42 completions. Whilst this is correct, in that there were 42 G&T permissions between 2013 – 2022, only 36 of these had previously been counted in the HLS completions figures.

Regards,  
Arron

Arron Beecham | Principal Housing Enabling and Forward Planning Officer | Mid Devon District Council | Phoenix House | Phoenix Lane | Tiverton | EX16 6PP  
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**From:** Arron Beecham



**Sent:** 25 August 2023 14:01

**To:** Sarah Smith <s.smith@pclplanning.co.uk>; Tristan Peat <tpeat@middevon.gov.uk>; Leanne Buckley-Thomson <lbt@no5.com>; Planning Appeals <appeals@middevon.gov.uk>; tony@aspburyplanning.co.uk

**Cc:** David Seaton <d.seaton@pclplanning.co.uk>; Charles Banner QC <cbanner@keatingchambers.com>; Robert Williams

<RWilliams@cornerstonebarristers.com>; Wordsworth, Robert

<ROBERT.WORDSWORTH@planninginspectorate.gov.uk>; Clare Mirfin <Clare.Mirfin@pinsentmasons.com>; Peter Cox <pcox@acarchaeology.co.uk>

**Subject:** RE: Appeal Reference: 3313401 Land at Hartnolls Farm, Tiverton

Dear Sarah,

Thank you for your email. We have considered the draft SoCG and mindful of the bank holiday we wanted to issue our comments as soon as possible.

Please find attached response with our initial comments.

Regards,  
Arron

Arron Beecham | Principal Housing Enabling and Forward Planning Officer | Mid Devon District Council | Phoenix House | Phoenix Lane  
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**From:** Sarah Smith <[s.smith@pclplanning.co.uk](mailto:s.smith@pclplanning.co.uk)>

**Sent:** 25 August 2023 10:16

**To:** Arron Beecham <[abeecham@middevon.gov.uk](mailto:abeecham@middevon.gov.uk)>; Tristan Peat <[tpeat@middevon.gov.uk](mailto:tpeat@middevon.gov.uk)>; Leanne Buckley-Thomson <[lbt@no5.com](mailto:lbt@no5.com)>; Planning Appeals <[appeals@middevon.gov.uk](mailto:appeals@middevon.gov.uk)>; [tony@aspburyplanning.co.uk](mailto:tony@aspburyplanning.co.uk)

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**Subject:** Appeal Reference: 3313401 Land at Hartnolls Farm, Tiverton

Please see attached an addition SoCG that has been discussed between the respective barristers.

**Sarah Smith**

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**Appendix 2**  
**Minutes of Cabinet Meeting 16/08/23**

## MID DEVON DISTRICT COUNCIL

## MID DEVON DISTRICT COUNCIL

**MINUTES** of an **EXTRAORDINARY MEETING** of the **CABINET** held on 16 August 2023 at 5.15 pm

### **Present**

#### **Councillors**

L Taylor (Leader)  
J Buczkowski, S J Clist, S Keable, J Lock, and D Wulff

### **Also Present**

#### **Councillors**

D Broom, E Buczkowski, Mrs F J Colthorpe, G Czapiewski,  
G Duchesne, R Gilmour, C Harrower, B Holdman, L Knight,  
and S Robinson

### **Also Present**

#### **Officers:**

Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leburne (District Solicitor and Monitoring Officer), Andrew Seaman (Member Services Manager) and Sarah Lees (Member Services Officer)

Nick Harris a Director at Francis Clark was also present.

## 27. **APOLOGIES (00:03:16)**

Cllrs N Bradshaw, M Farrell, M Fletcher, A Glover, L Kennedy, F Letch, N Letch, J Poynton and J Wright attended the meeting via Teams.

## 28. **PUBLIC QUESTION TIME (00:05:59)**

### **Paul Elstone**

#### **Question 1:**

Recommendation 1 uses the terms “soft closure” and “over a sensible short term”. It is fully considered that these terms are both vague and ambiguous. For complete transparency, can the Cabinet Member for Finance categorically state that it is not the intention of this Council to invest any more funds into 3 Rivers Development in order to build any further projects?

The Cabinet Member for Finance responded by explaining that it may be helpful to summarise all of the options identified by Francis Clark that will be considered by Cabinet and in turn Full Council.

Firstly, Do nothing / No action: This option keeps the company in existence and “trading” until all developments are complete and properties sold, this could be up to 3 years and ongoing overheads would be incurred during this time. This option offers around a 22% less than expected financial return than a “soft closure”.

Secondly, Administration: This could be considered a “hard closure” and the Council would appoint administrators to liquidate the company and its assets, this would hand over complete control from elected representatives to administrators. The negativity associated with administration would also likely affect the value of the company’s assets and likely affect the reputation of MDDC. This option offers around a 37% less expected financial return rather than a “soft closure”.

Thirdly, Soft Closure: This would allow the Company to complete the two current projects and then sell all of the properties and its assets for the best value in the shortest amount of time. While the intention would be to complete this in the most expeditious way, the Council may wish to give guidance on a timescale. This option offers the best expected financial return for the Council.

Finally, Creditors Voluntary Liquidation: It is unlikely that this would, in fact, be an appropriate option given that the Council has committed to fund the two in-flight projects and, in any event, would deliver the worst return for the Council. This option offers around a 45% less than expected financial return than a “soft closure”. There are no plans, or indeed intention, from this Cabinet to start any further projects via 3 Rivers Developments Limited, this is in keeping with the previous resolution of Full Council.

### **Question 2**

What does “over a sensible short term” really mean. There must be a firm decision point. Can the Cabinet Member for Finance say what the decision point is?

The Cabinet Member for Finance responded by explaining that the intention of this Cabinet is to maximise the financial return to the Council and in turn the local residents. The recommendations seek to avoid the risk of a so called fire sale of assets for below market value, balanced with the need to minimise the risk and exposure of having a long drawn out process. Once a decision is made by Cabinet and in turn Full Council, the recommendations allow for a detailed pathway to be put in place that will be formulated with the guidance of professional advisors.

### **Question 3**

At what point will the 3 Rivers £300,000 per annum overhead payments cease?

The Cabinet Member for Finance responded by explaining that at this point, and before a decision is made by Full Council, it is impossible and would be wrong for me to give a definitive date. But as explained in my answer for question two, it is not the intention to have a long drawn out process and it is the intention to maximise the financial return for the Council.

### **Question 4**

The MDDC Deputy CEO and S151 Officer was a Founding Director of 3 Rivers between April 2017 and January 2021. During which time in my opinion, and that of many including Council Members that there have been a series of disastrous financial decisions which have been taken, fully involving 3 Rivers. Disastrous decisions which are now very seriously impacting on this Council’s finances and will likely do so for years to come.

Decisions that have already required loan impairments – bad debts - of £5.3 million and should a former Conservative Cabinet Member be believed could reach £10 million. Decisions namely but not limited to: 1. The St Georges Court Tiverton Development, 2. The Knowle Lane Cullompton land purchase. The role of an S151 Officer requires high standards of governance amongst other things. With the disastrous failure and ongoing exposure of 3 Rivers this governance has been seriously lacking. Therefore, how can the Cabinet Member for Finance, or for that matter this Cabinet more broadly, have any confidence that the MDDC Deputy CEO and S151 Officer is the right person to lead the 3 Rivers Company wind-up?

The Cabinet Member for Finance responded by explaining that the decision that is made by Full Council will be implemented by this Cabinet, led by the Leader and myself, with decisions being made by elected representatives, on and supported by the advice of professionals, including the officers of the Council. The Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council's Financial Affairs. For the record, and complete avoidance of doubt, I have complete confidence in the Council's Chief Financial Officer to correctly and properly discharge this function.

## **Nick Quinn**

### **Question 1.**

The public have never been allowed to see "Confidential Information" about this Council Owned Company. Now, we are told that 3 Rivers owes the Council more than £21M of Public Money and Cabinet are recommending closing it down – but we still cannot see the papers that have led to this course of action. Recommendation 1 in the report is to "Soft Close" 3 Rivers over a "Sensible Short Term Period" - but neither of these statements are specific. Would Cabinet please explain what "Soft Close" means, and what they consider a "Sensible Short Term Period" to be?

The Cabinet Member for Finance responded by explaining that a soft closure would allow the Company to complete the two current projects, and then sell all of the properties and its assets for the best value in the shortest amount of time. While the intention would be to complete this in the most expeditious way, Council may wish to give guidance on a timescale.

### **Question 2.**

Concerning Recommendations 2 and 3. The closure of 3 Rivers should not be managed by an Officer/Member partnership. It is recognised, in these recommendations that they are inexperienced in this field and will not be able to make the necessary progress without costly, expert help. 3 Rivers Developments was set up as a Private Limited Company, with the Council as the sole Shareholder. Surely, closing down this Company should be done in the same way as the closure of any other Commercial Company that has failed its shareholders. Professional Administrators should be brought in to manage the closure and told to obtain the maximum possible benefit for the shareholders.

Will Cabinet please consider replacing recommendations 2 and 3 with a single recommendation that says: "Cabinet recommends appointing a Professional Administrator, or Firm of Administrators, who will be charged with managing the closure of 3 Rivers Developments Ltd so as to obtain the maximum possible benefit for the sole shareholder - Mid Devon District Council"?

The Cabinet Member for Finance responded by explaining that this question is really one for Cabinet to consider during its deliberations. However, the appointment of administrators is one of the options being considered, but is not recommended for the reasons given in the answer to an earlier question, namely, this could be considered a "hard closure" and the Council would appoint administrators to liquidate the Company and its assets, this would hand over complete control from elected representatives to administrators. The negativity associated with administration



would also likely affect the value of the Company's assets and likely affect the reputation of MDDC. This option offers around a 37% less than expected financial return than a "soft closure". The appointment of external advisors from both the legal and accountancy professions is a key part of the recommendation for a soft closure.

## **Barry Warren**

### **Question 1.**

Can it please be confirmed that the Deputy Chief Executive was the Director of Finance (S151) when 3 Rivers Development Limited was formed and that he was one of the founding Directors of the Company?

The Cabinet Member for Finance responded by explaining that three directors were appointed by Councillors on the formation of 3 Rivers Developments Limited, the Council's Deputy Chief Executive and Section 151 Officer was one of those appointed by the Council; this action was not unusual.

### **Question 2.**

In 2019 did the then Cabinet, which consisted of Liberal Democrat and Independent Councillors, raise concerns as to the running of the Company and commissioned two independent reports resulting in some 33 recommendations for change - one of which was that the Deputy Chief Executive (S151) Officer should not be a Director of the Company?

The Cabinet Member for Finance responded by explaining that a report from an external advisor was received during 2020 which included 33 Recommendations, one was that the Deputy Chief Executive should not be a Director of the Company to avoid a perceived conflict of interest, and a further recommendation that a new shareholder agreement be put in place. The recommendations were approved by Councillors between June 2020 and July 2021 and the resulting Shareholders Agreement remains in force. I would point out, that as I stated in my response to question 1, it is not unusual to appoint officers to local authority owned companies and there is certainly no legislation prohibiting or, indeed, no best practice advice to avoid such an appointment.

### **Question 3.**

When did the Deputy Chief Executive cease to be a Director of 3 Rivers and when did he take over from the Chief Executive as the 'Council representative' as referred to in the Shareholder Agreement?

The Cabinet Member for Finance responded by explaining that Companies House record the date of director resignation as 25th January 2021 and the current shareholder agreement was approved by Cabinet on 8th June 2021.

### **Question 4.**

Since that time has the Deputy Chief Executive been the Officer who has prepared reports for Council, Cabinet and Committees involving most if not all issues in relation to 3 Rivers, including making them loans or impairing such loans or debts?

The Cabinet Member for Finance responded by explaining that the Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council's financial

affairs. As an ex-Leader of the Council and ex-Chairman of the Scrutiny Committee, I am sure Councillor Warren knows this, and can appreciate it would be a little odd, if not unlawful if the Council's Chief Financial Officer did not have oversight of all financial reports, including those relating to 3 Rivers.

**Question 5.**

Has the Deputy Chief Executive been the Officer who has prepared 'Terms of Reference' for investigations to be carried out by the Devon Audit Partnership and the external auditors where allegations of 'irregularities' have been made by third parties?

The Cabinet Member for Finance responded by explaining that As stated in the answer to the previous question, the Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Councils financial affairs, and along with our Chief Executive and other members of the Corporate Management Team has overall responsibility for Mid Devon District Council's Counter Fraud Policy and procedures.

The Council forwarded all allegations received to DAP and External auditors to investigate, without terms of reference due to the nature of the allegations. I view this fully in accordance with section 7 of our Anti-Fraud, Bribery and Corruption Policy presented to the Audit Committee in January 2023. It is also worthy to note that DAP and EA completed full due diligence, and reported back to the Audit Committee that the allegations were unfounded.

**Question 6.**

When the Terms of Reference were agreed by the previous Cabinet in accord with the wishes of Council - who finalised them, circulated them to potential candidates to carry out the independent review and appointed Francis Clark?

The Cabinet Member for Finance responded by explaining that The Terms of Reference were agreed by the Leader of the Council at the time, Councillor Warren. These were circulated to 7 potential candidates and 3 bids received; Francis Clark was the most competitive bid and the appointment was approved by the Senior Leadership Team including CEO, DCEO/ S151, Monitoring Officer and Director of Place.

**Question 7.**

Did anyone other than the Deputy Chief Executive have any contact with Francis Clark as a representative of Mid Devon District Council and if so who?

The Cabinet Member for Finance responded by explaining that Yes, the Deputy Section 151 Officer was also involved as a representative of the Council.

**Question 8.**

Bearing in mind the involvement of the Deputy Chief Executive from the outset of 3 Rivers is it now reasonable to approve Recommendations 2 and 3 in the interests of his wellbeing and/or openness and transparency of the actions proposed?

The Cabinet Member for Finance responded by explaining that this really is a question for Cabinet to consider during its deliberations. It would be highly unusual if the Council's Chief Financial Officer was not involved in such an important and

serious matter, indeed it would likely be a dereliction of their statutory duty as explained in my answer to question 4.

**29. DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00:25:13)**

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

**30. 3 RIVERS OPTIONS APPRAISAL REPORT (00:25:27)**

The Cabinet were presented a report\* which considered the current trading position of the Council's wholly owned property development company – 3 Rivers Development Ltd - and its potential for medium to longer term financial viability based on its own analysis and supported by external opinion from Francis Clark.

The Cabinet Member for Finance highlighted the options available to the Council along with a guideline on the potential losses for each option. And suggested that a soft closure was the most appropriate option out of the four.

The Deputy Chief Executive (S151) explained that the recommended soft closure considered and estimated a 6 to 12 month rundown for a soft closure.

The following was considered:

- Asked if there were more positive options available to the Council, the Deputy Chief Executive (S151) explained that a soft closure was the least worst option which also minimised risk.
- It was noted that the pandemic was a challenging moment for all business and that it was contemplated that 3 Rivers Development Ltd needed a second chance. However, it was suggested that a private company may not have been appropriate for a Local Authority to create. It was felt that this had put a strain on the openness and transparency of the Council. It was asked if actions of other Local Authorities had been considered.

The Deputy Chief Executive (S151) confirmed that the pandemic hindered all business nationally and in particular development companies, which was further compounded by the cost of living crisis that followed. Furthermore, it was agreed that the balance between confidential information of a company in a competitive market and the need for openness and transparency had been a challenge. It was noted that other Authorities operated trading companies all with mixed results and that failures tended to be what the media focussed on.

- Asked whether the confidential reports might be published publicly in the future, the Deputy Chief Executive (S151) explained that currently reports were live commercial reports that needed to be kept confidential but some financial information might be placed on Companies House in the future.
- The expected completion time of outstanding projects was sought along with reassurance in the losses calculated in the report, given the current housing market. The Deputy Chief Executive (S151) explained that the Bampton site was due to complete in 6 months and the St George's site completion date was imminent. In addition, the Deputy Chief Executive (S151) officer along with Francis Clark were experts and estimated that there could be a 10% tolerance of

the calculations presented. This was also supported by additional external advice and that the housing market was not something that could be easily predicted.

- It was established that all work requested by Full Council had been completed.
- That there was a need for the Council to move forwards on this matter.
- External reports were welcomed but encouraged that an independent survey took place at the Bampton site.
- It was felt that there was a need to maximise income from the remaining projects.

### **ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC**

The Leader indicated that discussion with regard to the following items may require the Cabinet to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet would need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

**RESOLVED:** That, in accordance with Part I of Schedule 12A to the Local Government Act 1972, the press and public be excluded from the meeting for item 4 of business, for the reason set out below:

- Information under paragraph 3 (contains information relating to the financial or business affairs of any particular person including the authority holding that information).

(Proposed by the Leader, Cllr L Taylor)

The meeting then returned to an open session.

**RESOLVED:** That

1. Cabinet recommend to Full Council a “soft closure” of 3 Rivers Development Ltd. over a sensible short term period in order to minimise any potential financial exposure and maximise returns from company assets.
2. Delegated authority is given to the Deputy Chief Executive in conjunction with the Cabinet Member for Finance to deliver/instruct all necessary activities in order to deliver a “soft closure” and maintain timely decision making in order to protect the Council’s position during this process.
3. The Deputy Chief Executive, in discussion with the Cabinet Member for Finance, procure any additional professional advice required to protect the Council’s position and maximise the return to the Shareholder and minimise any potential further losses.

(Proposed by the Leader, Cllr L Taylor)

Reason for the decision:

The Company, at its inception, was set up to help partially fund and link to a number of key strategic objectives in the Corporate Plan. However, 6 years later the Council now needs to make a fundamental decision which will enable it to concentrate on the delivery of a new Corporate Plan.

Note: \* Report previously circulated.

(The meeting ended at 19:07)

**CHAIRMAN**

**Appendix 3**  
**MDDC Press Release 17/08/23**



# Council Statement on 3Rivers

Posted On: 17-08-2023

Posted In: Business and economy

**Back in 2017 the Council set up 3Rivers, a commercial business owned by the Council, which aimed to deliver high quality homes in Mid Devon, while providing a financial return to the Council. However, after six years it is clear these long term aims have not materialised and set against a back-drop of high interest rates, high building costs and a changing housing market the future of the firm has been uncertain for some time.**

While 3Rivers has delivered successful housing projects in Mid Devon since it began, notably the Orchard, Halberton, Threwstones, Tiverton and a development of social housing in Burlescombe, the Council decided in March 2023 that 3Rivers would not embark on any new projects. Following this decision the Council's Cabinet met on 16 Aug 2023 and has recommended 3Rivers undertake a "soft closure", which in effect means the business would be wound down and ultimately cease trading.

This recommendation from the Cabinet will now be put forward to Full Council on **6 September** for a final decision.

**Cllr Luke Taylor, Leader of Mid Devon District Council, said:**



“We know there have been concerns raised about the viability of 3Rivers, and the council funding of it, for some time and as a newly appointed Leader I committed to addressing this concern swiftly. Building more homes in Mid Devon, which are high quality and in the right location, is something most of us agree needs to happen, but we must make sure the process to build these homes is the right one and that our limited council resources are used in the most efficient way. We are committed to investing in Mid Devon and will now work with our officers to plan future housing delivery across the district in an open and transparent way.”

The Council will now look to seek independent advice to ensure that, should the Full Council agree to the closure, it is undertaken correctly in order to reduce any further financial exposure.

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