

Appendix M14-DCP2

Summaries of High Court Cases Supporting the Police Service

Jelson Limited vs Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2016] EWHC 2979 (Admin)

Jelson Limited (JL) were appealing to the High Court against the decision of a Planning Inspector to refuse planning permission for 73 homes. The case revolved around a dispute between the parties over the calculation of 'Full Objectively Assessed Need' for housing.

However, JL also objected in the case to making a Section 106 contribution to Leicestershire Police (LP), on grounds that such contributions did not comply with Community Infrastructure Levy (CIL) Regulation 122.

For the avoidance of doubt, LP were not represented at the High Court. Therefore, the High Court assessed the written evidence presented by them at the earlier planning appeal and application stages.

In this respect LP had submitted detailed representations to both the original planning application (14/00475/OUT) and to the subsequent appeal requesting the following Section 106 contributions:

- £3,527 – Start-up equipment for a police officer
- £1,697 – Vehicle costs
- £153 – Additional radio capacity
- £80 – Police National Database
- £176 – Call handling
- £2,055 – ANPR
- £375 – Mobile CCTV
- £19,278 – Premises
- £146 – Hub equipment for police officers
- £27,487 - Total

Hinckley and Bosworth Borough Council considered the above contributions CIL Regulations compliant, as did the Planning Inspector following a public inquiry.

JL's arguments against the LP contribution are contained in paragraphs 73 – 76 of the enclosed High Court Judgement. In essence, they argued that the Planning Inspector had not properly assessed the evidence submitted by LP. Had the Inspector done so, she would have rejected LP's Section 106 contribution request on grounds that it was not directly related to the scheme.

The High Court rejected all of JL's arguments, as detailed in paragraphs 77 – 81 of the enclosed Judgement (see attachment). In summary, the reasons for this were as follows:

1. It was unreasonable to have expected the Inspector to undertake a more detailed analysis of the submissions and data from LP than she had done.
2. The request made by LP was clear, with the contributions requested properly allocated to specific projects.

3. The LP evidence comprehensively demonstrated and evidenced the impact caused by the development and why the infrastructure types (and contributions) identified would mitigate this.
4. In view of the above, the Inspector could have made no other reasonable choice but to award the requested Section 106 contribution to LP.

The judgement provides case law support for all police Section 106 requests nationally, because the methodology used by all Forces in England to request developer contributions follows LP's. It is now cited in all Police Section 106 requests nationally as a result.

JL did subsequently challenge the High Court's decision at the Court of Appeal, but this was dismissed as well on 19 January 2018. As the Appeal Court's decision made no reference at all to LP's Section 106 request, it is not detailed here (*Jelson Ltd vs Secretary of State for Communities and Local Government & Anor [2018] EWCA Civ 24 (case number: C1/2016/4558)*).

**R (Police and Crime Commissioner for Leicestershire) vs Blaby District Council [2014]
EWHC 1719 (Admin)**

This case concerned an outline planning consent (11/0100/1/OX) for a proposed new settlement known as 'New Lubbesthorpe' in Blaby District (Leicestershire) granted on 14 January 2014. The scheme itself comprised 4,250 dwelling with associated development and infrastructure.

During the planning application process LP submitted a Section 106 request and following negotiations, the Section 106 agreement contained the following;

- £536,834 for police equipment
- £1,089,660 for the provision of police premises.
- £1,626,494 - Total

Payment of the police equipment contribution was scheduled by the agreement to be made no later than the occupation of 2,600 dwellings.

The premises contribution was scheduled by the agreement to be no later than the occupation of 3,750 dwellings.

The Judicial Review was though subsequently brought by LP, in summary, on the grounds that the Council acted irrationally and unfairly by the Section 106 contributions for the police only being triggered after the occupation of 2,600 and 3,750 dwellings. It was also on grounds these contributions were to be reviewed for their CIL Regulations compatibility at the time they became due.

While Mr Justice Foskett dismissed the Force's claims, he did make the following *obiter* comments in his judgement that are considered to be supportive of the principle of developer contributions for police infrastructure and the methodology used to calculate them:

It is obvious that a development of the nature described (4,200 dwellings) would place additional and increased burdens on local health, education and other services including the police force. The

focus of this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without the necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages “sustainable development”: see, for example, paragraphs 17 and 79 of the National Planning Policy Framework (‘NPPF’). It is that that leads to the Claimant’s interest in these matters. [11]

I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble about a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would plainly be the “consumer view” of the issue... [61]

Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police. [61]

I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide the police with a sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area... [62]

I repeat that, looked at objectively, there are features of the way the police contribution in this case was dealt with in the Section 106 agreement that are not very satisfactory and, as I have said, some legitimate criticisms seem to me to be open to the formulation of the trigger mechanism. I rather suspect that, irrespective of the outcome of this case, the issue of the timing of the police contributions will have to be re-visited before the development proceeds too far to ensure that those who are considering purchasing properties on the development will have the reassurance that it will be properly and efficiently policed...[84]

The above comments have since been included into Section 106 requests made by Forces across England, as they are considered to be very helpful guidance to local authorities and Planning Inspectors on this subject.