

Minutes of a meeting of the Leicester, Leicestershire and Rutland Police and Crime Panel held at County Hall, Glenfield on Monday, 9 June 2014.

PRESENT

Cllr. R. B. Begy	Mr. J. T. Orson JP CC
Cllr. David Bill MBE	Cllr. Trevor Pendleton
Cllr. J. Boyce	Cllr. Byron Rhodes
Cllr. A. V. Greenwood MBE	Cllr. Sarah Russell
Mr. S. J. Hampson CC	Cllr. Lynn Senior
Miss. H. Kynaston	Cllr. Manjula Sood, MBE
Cllr. William Liquorish	

Apologies

Col. R. Martin OBE, DL, Cllr. D. Slater and Cllr. Paul Westley

In attendance

Sir Clive Loader, Police and Crime Commissioner, Simon Cole, Chief Constable, Paul Stock, Chief Executive and Helen King, Chief Finance Officer

62. Election of Chairman.

It was proposed by Mr. Pendleton and seconded by Cllr. Russell that Mr. J. T. Orson JP CC be elected Chairman of the Panel for the period up to June 2015.

Mr. J. T. Orson JP CC - in the Chair

63. Election of Vice-Chairman.

It was proposed by Mr. Orson and seconded by Mr. Rhodes that Mr. T. J. Pendleton CC be elected Vice-Chairman of the Panel for the period up to June 2015.

64. Chairman's Announcement

The Chairman read out the following statement:

"We may well be in for a lengthy meeting this afternoon, but before we get started, I do wish to make a few further remarks.

The papers for this meeting were circulated on Monday 2 June. To meet the legal requirements, papers should have been sent out on the previous Friday afternoon, 30 May. I know that the secretariat has already apologised for this to members of the panel and I repeat that apology from the chair. However, the secretariat does need papers provided to it in good time to meet these deadlines and on this occasion the papers arrived too late on Friday afternoon from the Office of the Police and Crime Commissioner for them to be copied and despatched. I must ask those who work in that office to ensure that papers are provided to Sam Weston and his colleagues in Democratic Services in good time and in accordance with the timetable which they set for the production of the paperwork in order to meet the legal requirements.

At the last meeting on 17 March, we debated at some length the development of a Question Procedure for the Panel. I had intended that a further paper would come today on that issue to the Panel for information, but in light of the length of the agenda I have agreed that the procedure will now simply be circulated to Panel members by the secretariat. Consultation has taken place with the Chief Executive of the Commissioner and steps will now be taken to publicise this procedure in an appropriate manner.

I have also asked that this Panel receive a report from the Police and Crime Commissioner about the proposals for the future of the Public Relations function at the police. I understand that discussions are ongoing and I therefore agreed not to take this item on today's agenda; I do expect the Panel to return to this matter at its next meeting.

I have asked that the Commissioner reconsider my request for there to be a briefing to members of the Panel by the Chief Constable to assist the Panel in undertaking its work. I am awaiting a response from the Commissioner and will advise Panel members of that as soon as I have received it.

Finally, if the meeting is as lengthy as I suspect, I plan to have a comfort break at around 4.00pm."

65. Minutes.

The minutes of the meeting held on 17 March were taken as read, confirmed and signed.

66. Urgent Items.

There were no urgent items for consideration.

67. Declarations of Interest.

The Chairman invited members who wished to do so to declare any interest in respect of items on the agenda for the meeting.

Cllr. M. Sood declared a personal interest in respect of all items on the agenda as a member of the Police's Independent Advisory Panel and as the Chairman of the Leicester Council of Faiths.

68. Section 106/Lubbesthorpe.

The Panel considered a report concerning a the PCC's decision to take Blaby District Council to a Judicial Review in respect of the phasing of Section 106 funding for the proposed development known as "New Lubbesthorpe" in the district of Blaby. A copy of the High Court's judgement of the matter, dated 27 May 2014, is field with these minutes.

The Chairman invited the PCC to deliver a statement setting out his views on the matter. Accordingly, the PCC delivered the following statement:

"I would like to make it clear before I start that I intend to focus on facts which can be evidenced. It is not my intention to incite media headlines or engage in petty political posturing. I have however observed several comments which appear to be little more than malicious in nature, factually incorrect and misleading to the public and I have no wish to add to this already unedifying spectacle. A vitriolic debate, conducted via the media, between different members of the public sector family is, I believe, wholly

unnecessary and highly inappropriate; I would expect that members of this panel would subscribe to a similar ethos.

Let me now talk about the actual events leading up to the decision to seek a Judicial Review regarding the Lubbesthorpe development – and, like I said, this sequence of events is fully evidenced. For the record, my only concern at all times, has been the preservation of community safety - an important quality of life – indeed, safety of life – issue that I personally do not believe should be diluted or compromised in any way to the benefit of those who stand to gain most from such developments.

I am sure that many of you, particularly those members of this panel who sat on the former Police Authority, will recall that the Lubbesthorpe proposals first came to light in late 2009, from which time until early 2011 there was regular Police involvement regarding the impact of the development and the necessary mitigations.

Then, on 28th April 2011, shortly after the submission of the Planning application, Leicestershire Police made a formal request for a financial contribution – a position fully supported by the Police Authority. Former members will no doubt recall that, at the Police Authority meeting held on 24 January 2012, they unanimously approved the following:

The realignment of the Architectural Liaison Officer to focus on secure by design and planning advice, managing demand against reducing resources. And that...

The ‘Policing Contributions from Development Schemes Policy’ [was to] remain in force to allow claims against major developments where a significant policing impact is foreseen.

At the subsequent meeting, held on 28 March 2012, Police Authority members considered a report from the Chief Constable covering Developer Contributions. The full report is available, but of particular pertinence at that meeting was that the Authority - unanimously once again - resolved to:

‘Confirm that developer contributions will continue to be actively pursued in accordance with the Police Authority Policy updated at the 24th January meeting’;

Quite clearly then, the Police Authority appreciated the risks ahead and was in favour of pursuing timely developer contributions. Indeed, these extracts are an important part of its legacy, a position with which I totally concur. Of note, this issue was included in the Police Authority Legacy Report, presented to me at the meeting of 20 November 2012, a mere 5 days after I was elected to Office.

However, on November 1st 2012, Blaby Planning Committee granted planning permission for the Lubbesthorpe development, subject to the execution of a legal agreement including (and I quote) "all CIL-compliant capital infrastructures for Policing necessitated by the development and including officer equipment, communications, CCTV, vehicles and premises – the precise terms of this contribution to be settled by further negotiation".

Over the next 12 months, a series of meetings and other communication between Blaby District Council representatives and the Police ensued, during which time it appeared that we were all ‘on the same page’, not least as evinced by the fact that, in September 2013,

the Force refreshed and reduced their request for funding contributions at the suggestion of the Council.

The Council confirmed that most Police items were acceptable in principle but asked for further clarification of the Force's financial position, which was subsequently provided. The Force clearly restated its position on premises and, in mid-November 2013, we received notification from the Council that the wording on premises would be provided to us. However, nothing materialised.

In December 2013, following a meeting to finalise the overall financial position and to deal with an outstanding item on vehicles, the Force confirmed the outline agreement reached at that meeting. Without itemising every detail here, it amounted to a stated need for equipment, premises and other facilities totalling £1.67m. Correspondence from the Force continued to highlight the need for appropriate phasing of the s106 payments, but no confirmation was received from the Council.

And so it was with no small degree of astonishment that we discovered, during January this year, that Outline Planning Permission had been granted, particularly as there had been no further communication from the Council.

This agreement contained no commitment to paying a large element of the contribution necessary to provide extra premises for the police officers and staff required to protect and ensure the security of the new Lubbethorpe community. This position was exacerbated by the inclusion of trigger points as to when the money would be paid – of note, the Force was not party to this agreement, which was drawn up between the Council and the Developer. As a result, nothing at all was to be paid until 2600 homes were built and occupied. Therefore essential police radio communications, CCTV and ANPR equipment will not be funded by developer contributions when needed in order effectively to police the new community. This equates to several thousands of residents and a number of years into the build, with no money coming forward whatsoever. Even then, the Force would have to wait until 3750 homes are built for any contribution towards premises – this, by the way, something that would only happen if the Council and Developers decided it was needed at that time; Police advice would not necessarily be sought...or heeded.

When complete, this development will be the size of Market Harborough which, in terms of policing and community safety, as the Chair of the CSP knows, requires a lot of hard work.

Amongst other items, we discovered that Blaby District Council and the developer did make provision for the improvement of Leicester City bus station, the first payment being made at 50 dwellings, and also a Health Centre, funded once 250 homes are occupied, but did not see fit to agree something similar for safe policing. The real danger remains that the developer will choose not to build all of the houses with the result that less, or even no, funds might be released for policing the development at all.

Blaby District Council states that it wrote to the Force on 18 November 2013 outlining its position.. However, Mr Justice Foskett noted that it was indeed common ground that this letter was never received. In fact this fundamental, critical piece of correspondence was not mentioned until some three months after it was purportedly sent. And when we asked the District Council to supply us with details of any letters sent to other infrastructure providers at the same time notifying them of the conclusion of the negotiation process,

Blaby stated that the only other correspondence was with Leicestershire County Council, by e-mail, over a week later.

Moving on, the Council was notified of our intention to commence legal proceedings on the 18th of February, from which point it became clear that they, and the other interested parties, had no intention of revisiting the funding schedule for policing.

Following legal advice (at the request of the Chief Constable and the Force), we formalised our intention to seek Judicial Review. Members of this Panel, this was not some personal, shallow whim as some here have implied, but was undertaken with great deliberation, calculation and more than a little reluctance. It was done entirely in the interests of community safety – as you should already know, it is my sworn duty to do all in my power to ensure that the police are able to cut crime and protect the public. Furthermore, I am here to represent the public voice, a public which repeatedly tells me that it wishes to see more visible policing – an aspiration entirely at odds with this outcome. Indeed Mr Justice Foskett stated in his judgement:

“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.”

As you would expect, being keen to settle the situation at the earliest opportunity and without further recourse to legal representation, the Force, the OPCC, and other interested parties made approaches to Blaby District Council between February and May 2014, with a view to achieving a resolution through means other than litigation. In these approaches we offered and encouraged mediation, facilitated meetings, and individual meetings, all of which were rebuffed by the Council and the developers.

I should emphasise, as I have done repeatedly in other places, that the Chief Constable and I are fully supportive of such developments. We both appreciate the benefits they can bring to the area. But we are both wholeheartedly opposed to anything that poses further risk to community safety – particularly at a time of acute austerity, with budgets stretched to the limit. I sought to secure a fair financial contribution, at realistic points in the development process, to enable the Force to continue to provide effective community safety services.

You will no doubt know that local authorities and Community Safety Partnerships are required to take into account community safety in their decision making to prevent crime and disorder in their areas. It is not, in my view, unreasonable to expect local authorities to consider the needs of policing when negotiating Section 106 agreements, this being for the mutual benefit of the new and existing communities we serve.

It is correct that, in February 2014, Blaby wrote to the Chief Constable offering to (and I quote) "cover the contribution towards the agreed police equipment" and although this has since been described as the offer of a loan, this is not a word used in that letter by the Blaby Chief Executive. Whilst it was accepted that this was a genuine offer from the Council, we were made aware of legal concerns that the offer made could potentially be challenged as "unlawful", and even as to whether Blaby had sufficient authority to make such a payment. Crucially, even if those concerns could have been addressed, the offer made no commitment to fund the police premises requirements and still involved using public funds to meet infrastructure costs – costs which are clearly intended, by s106

legislation to have been met by the developer, not by hard-pressed tax-payers.

I have to say, it does appear somewhat inconsistent for Blaby to be a party, on the one hand, to an agreement that virtually ignores the need for timely police funding whilst, on the other, it offers to put up the money for policing from their own taxpayers – money that they have decided not to exact from the Developers. The inference, nonetheless, is clearly that they concur our point of view.

For the reasons outlined above, disappointingly, we were forced to take our case to court. As the leader of Blaby District Council said on Radio Leicester, they had a very expensive barrister acting on their behalf. This very eloquent QC stated words to the effect that the Force did make representations, which the evidence suggests were considered and which were accepted – by all parties involved – as being CIL-compliant.

Naturally I was deeply disappointed to learn that we were unsuccessful in our claim; however, as Mr Justice Foskett explained, there is a very high legal threshold to overturn a decision such as this. I did take succour from several other areas in his Judgement in support of our case when he wrote:

'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. Miss Wigley (who was acting on our behalf), in my judgment, makes some entirely fair points about the actual terms of the Section 106 Agreement so far as they affect the Claimant.'

He went on to say:

'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.'

We have all heard a lot about who won, and who lost, legally. But morally and ethically, I remain firmly of the opinion that we were right to take a robust stance in an attempt to redress the situation created by the Lubbethorpe development.

I have been asked why we don't use our six million pound General Reserve, our only uncommitted reserve. If we were to deplete our prudent, but far from lavish, General Reserve to pay for the policing infrastructure of new developments, we would risk having no finance available for the very purpose for which we are legally required to hold them - unforeseen events and critical emergencies such as major public order incidents. In any case, it is not appropriate for taxpayers to pay, via the mechanism of Police funds, the price of policing new developments when that is clearly the onus to be laid upon those developers who stand to gain most. This is entirely consistent with the approach taken by other Local Authority partners.

Frankly, developers' cash-flow plans should not be my problem. Nor, indeed, should they adversely affect the safety of our existing communities. Either new funds are made

available for policing new developments, or policing in current communities must suffer; no ifs, no buts.

Meanwhile, as the Chair of this Panel highlighted in a previous meeting, the Force is facing the loss of a potential additional 250-300 officers and staff, on top of a similar reduction that has already taken place prior to my commencement in Office. Any further financial pressure will simply see a reducing blue line trying to spread itself ever more thinly over a greater area.

Let me re-state that I deeply regret that public money had to be spent in this way, but in the circumstances I am clear that it was necessary. As the Chief Constable has said: "together, we are charged with the safety of all of our communities; no one should be in any doubt that we will pursue every possible avenue – including legal recourse – as we strive to fulfil that public duty." Let no one be in any doubt that he and I stand firmly together on this.

Our legal costs were in the region of £25,000, but I understand that other costs for which we are liable are coming in much higher than that, some of which are still subject to negotiation. Of course, had we been allowed to adopt a less adversarial form of negotiation, such as formal mediation, or perhaps a meeting with the relevant parties, then the costs would have been far lower.

The Lubbethorpe case provides stark evidence regarding the effects on policing that can be wrought by large, new communities if appropriate funding is not secured. That is bad enough. But the greater threat to our safety is the potential further £13m the Police would need to find should this approach and outcome be repeated on the other planned developments in our Force area.

Those new communities must all be kept safe and secure – I repeat, it is my sworn duty to do all in my power to enable the Chief Constable to do that.

And as the elected Police and Crime Commissioner, it will be me who has to have difficult conversations with communities to explain why their expectations need to be lowered, and it will be the reputation of our police that will suffer when something doesn't happen as quickly as it might have, just because the requisite funding is not provided at a timely point in the development process.

We are all here to serve the interests of the public and I will have no need to remind you of your own role in ensuring safe communities. I do appreciate that, for some members, their Panel responsibilities may be difficult to reconcile with their roles elsewhere, but I would hope and expect that you are all able to put this issue to one side for the greater good.

We now need to work together and you might want to consider the words of the Policing Protocol which is unequivocal when it states (and I quote):

'While the Panel is there to challenge the PCC, it must also exercise its functions with a view to supporting the effective exercise of the PCC's functions.'

This action was taken entirely in the interests of community safety, to try to ensure the sustainability of policing, and ultimately the delivery of the Police and Crime Plan that you on this Panel approved. The public will not want to see a dilution of the policing in their neighbourhood, particularly as they will see no simultaneous reduction in their council

tax. It is also a matter of record that growth developments generate significant additional demands on the police service, this increased load beginning at the very commencement of the development and as the earliest homes are occupied – not when all are built and all are fully occupied.

As I have already alluded, and as you well know, Lubbesthorpe is not the only ball in play. Current proposals will see housing growth of around 70,000 homes and a resultant population increase in excess of 200,000 people in our area. Without appropriate funding this will inevitably impact significantly upon the Force's ability to sustain current service levels. What is going to give? And where?

Given the strength and content of Mr Justice Foskett's judgement, we chose not to appeal. However, while we have appreciated support for our action from the general public, I think it is now time to encourage Blaby District Council and the developers, having read the judgement, to reconsider their position.

I am certain that I am not alone in thinking that the taxpayers of Leicester, Leicestershire and Rutland should not be expected to suffer a reduced policing provision as a result of private sector developers failing to make adequate and timely provision for safe and secure communities.

So how do we work more effectively together in the future on planning issues that may impact upon community safety? Looking at the wider planning landscape it is clear that the situation could soon become untenable. It is absolutely critical for the safety of all our communities that this work starts now in addressing the risks posed by the new Lubbesthorpe development. It would be helpful to know if and how this Panel intends to support the Chief Constable and me in this regard. Meanwhile, my commitment to partnership working, on Lubbesthorpe and elsewhere, remains absolutely undiminished –

I am sure that you all feel the same.

Thank you."

The Chairman invited Mark Alflat, Director of Place at Blaby District Council to deliver a statement setting out the views of Blaby District Council on the matter. Accordingly, Mr. Alflat delivered the following statement:

"Good afternoon. I do not intend to give a comprehensive report to the panel on the whole process of the planning application and the judicial review. It will be useful for the panel however to have an overview of matters from Blaby District Council's point of view.

In February 2011 a planning application was received for "New Lubbesthorpe". This was for 4,250 dwellings, district centres, retail, commercial, employment, leisure, health, community and residential use, new schools, an employment site of 21 hectares with accompanying open space and woodlands. A huge infrastructure project was necessary to support the site including proposals for two new road bridges over the M1 motorway and M69 motorway and access points from various lanes. In March 2011 extensive consultation was carried out with various interested parties. Officers from the Council spent a large amount of time getting the Police requests into a form that could meet the statutory requirements. Indeed we assisted them more than any other Authority requesting funding. On 1st November 2012 the Planning Committee of Blaby District Council met to consider the application. On the day of the actual planning meeting at 4.30pm an objection was received from the Police to the planning application. The then

Deputy Chief Executive of Blaby District Council and the Police's Finance Director agreed a form of words that meant that the police did not object to the application. The planning application was then approved. Following consideration by the Secretary of State of the application, negotiations on the detail of the S106 agreement commenced again in March 2013. At that point the potential of £5m of pinch-point funding for the M1 bridge was on the cards which added urgency to the negotiations. All through the process the developers did not agree with the amounts that the police were claiming, particularly with regard to premises and felt the police accommodation needs could be met from a community building on the new development. One of the underlying themes throughout this process has been the police lack of understanding that they are part of a complex process where the role of the District planning authority is to create opportunities for development in according the national policy which requires the reconciliation of competing demands from the various bodies requesting funding and the need to bring viable development forward. There appears to be no recognition of the wider world beyond the provision of the police service or recognition of the role of the planning authority to mediate between all of these requests and the need to deliver development. The huge cost of the setting up of the initial infrastructure has meant that in order to be viable, trigger points have been set with interested parties as the development progresses. At the conclusion of extensive negotiations, planning consent was issued on 14th January 2014. On 29th January 2014 we sent a copy of the S106 to the Leicestershire police at the same time as it was sent to others. Three days before the expiry of the judicial review period, notice from Leicestershire Police of their intention to apply for judicial review was sent to the Council. There have been no previous discussion or intention notified to the District Council from the Police. It should be noted that throughout the negotiation process Leicestershire Police advised the District council they could borrow against the developer contribution to enable services to be provided in advance of the contribution. Given the scale of Leicestershire Police budget this appeared to be a reasonable assumption. The timing of the contribution payments were set in this context but through the legal process it became clear that the police no longer considered this to be a possibility. The District Council sought and obtained legal advice from Queens Counsel. The summary of which was that the police had an unwinnable case. Nevertheless in order to protect the overall public purse Blaby District Council's CE, Sandra Whiles and its Leader Ernie White agreed to put a proposal to the police where Blaby District Council would lend the money for the equipment element of the 106 agreement to the Leicestershire Police on a phased basis as suggested to the Police by the CE and GM at a meeting attended by Sir Clive, Simon Cole and Paul Dawkins. Given the relevant budgets of the two organisations this was a significant offer but it was declined by the Police despite the fact that it would on face value have solved the matter. Advice had been sought from the Council's financial manager that this was a perfectly valid and legal use of Council funding. As part of that response Leicestershire Police contended that it was unreasonable for them to have to justify the needs for new police premises later on in the course of the development. The Council's position has been that the position is entirely logical given the funding cuts and service delivery changes taking place across the public sector. No public sector body can be clear on the premises requirements 20 years from now. The original papers laid before the court had three claims:

- 1. Irrationality that the decision made by the council to issue the planning permission (and the associated agreement on payments and timing of payments) was irrational.*
- 2. The Council should have taken the agreement back to Committee as in the Police view it had not complied with the committee resolution.*

3. *Legitimate expectation that the Council had a duty to further involve and consult Leicestershire Police before issuing the planning permission.*

Following the service of the claim papers the police then sent in a solicitor to the Council Offices in an undercover operation designed to reveal alleged weaknesses in how it keeps its planning register. Following this visit a fourth ground was submitted to the courts that the Council are not maintaining an up to date register of planning applications on 106 agreements and therefore prevented and excluded the Leicestershire Police from the public process. I will note that following these actions by a supposed partner the position of the Blaby District Council hardened and we felt that the only way to resolve these matters was before the court. On 2nd May the Police wrote to Blaby District Council's legal representatives suggesting alterations to trigger points for the infrastructure requirements and tellingly despite public statements following the court case stated "the commissioner does however make clear that he is not proposing mediation. He merely seeks the party's assistance at a meeting in exploring the above question (or trigger points). The Council responded through its legal representatives pointing out that the District Council had already offered to lend money from its own finances to provide equipment and further to suggest reopening negotiations in coming to a conclusion before the court case of the 25th May and certainly without prejudicing the pinch-point bridge money with all the interested parties and the need for public bodies to go back to their members to agree any changes was not feasible. The District Council suggested that Leicestershire Police withdraw the claim and meet the district costs in defending the proceedings. We then stated we would be happy to continue discussions with the Police and developer's with a view to assisting Leicester Police in a way round their concerns. Again pointing out that all the interested parties would have to agree. Following this correspondence, proceedings took place on the 27th May, 2014 in the court. I understand that members have an overview of that judgement and I will not therefore go through that in any detail here. Suffice to say that the judge found that ground 2 reasonableness and ground 4 the planning register were refused permission to progress at all and were dismissed out of hand. The judge allowed grounds 1 and 3 to be considered and then dismissed them on their merits. The judgement endorsed the Council's decision and planning process and allowed us to return to focussing on delivering a new community. The PCC has decided not to appeal this judgement and we are currently seeking reimbursement of our direct costs which total an amount over £70,000. Regardless of what the total net cost to Blaby District Council residents is the public purse has suffered enormously from this action. In addition to this Council Officers have been taken off their normal duties to prepare statements which have impacted on the service available to the public. The police, despite losing the court case comprehensively appear to have taken some comfort from a small proportion of the judge's words. The judge had before him only the information that which was necessary to make a legal ruling. The Council's exercise of its planning judgement is based on much more information relevant to the 106 agreement. Neither the judge nor the police had been party to that full picture. The police have never had the full picture because they never asked. Instead they chose to challenge. Instead of challenging they could have trusted that the Council do its job properly and operate in the public interest just as the Council trust that our partners and the police will do their job without fear of challenge. Ironically, since before this arduous legal process began, Blaby District Council have been leading on behalf of Leicestershire planning authorities to establish a clear and appropriate process for calculating, delivering developer contribution. In other words BDC has been at the forefront in trying to support police funding.

Finally perhaps as a parallel, from day one of the first house being built the Council will need to service those householders with refuse collection and the other council services

it is responsible for. The Council has not asked for extra contributions out of the development as it will receive, as the police will, monies through the Council Tax and Central Government Funding.”

The Chairman then invited Cllr. Greenwood to deliver a statement setting out his views as a Blaby District Councillor on the matter. Cllr. Greenwood delivered the following statement:

“The Council has strong operational links with Leicestershire Police and considers community safety a fundamental aspect of delivering a sustainable community at Lubbethorpe. It is for this reason that Blaby District Council worked hard to ensure a significant development contribution of over £1.6m in favour of Leicestershire Police.

I was party with the Chief Executive at Blaby to the signing and sealing of these documents which amounted to in excess of £150 million – signed and agreed at that time with £1.6 million going to the Police for the infrastructure necessary to support a new town that was bigger than Market Harborough.

The Panel is now fully aware of how Blaby District Council sought to support Leicestershire Police and secured them the highest level of S106 contributions ever achieved in any development in the county. I ask members to remember the meeting on 24 January this year – agenda item number 5 – when I made a statement relating to Section 106 and the Community Infrastructure Levy. At that time, the prepared statement by the lead of all the district councils, appointed by members, to look at Section 106 indicated that Blaby District Council were the lead on Section 106 and Community Infrastructure Levy. At the time, I held out the olive branch after the meeting and indicated that we were still willing to come and agree with the Police. As the Chairman of the Lubbethorpe Strategic Consultative Board, there are representatives from all aspects of the public sector and developers, including the Police. I have had no approach at all as Chairman to be able to take this forward. That olive branch is still open to work with the Police.

I am obviously pleased that the High Court dismissed the PCC’s claim on all grounds and found the Council’s planning process and decision reasonable, rational and legally sound.

One of the most worrying and bitterly disappointing elements of the recent costly legal proceedings is the lack of trust and respect demonstrated by our Police partners. It is this adversarial approach taken by the Police and the continued threat of action against other local authorities that has so deeply damaged relations with all local authorities on planning matters. If public sector partners cannot trust each other to carry out our distinct roles in local governance then it is a very sad day for Leicestershire.

Since before this arduous, expensive legal process began, Blaby District Council has been leading on behalf of the Leicestershire planning authorities to establish a clear and appropriate process for calculating and delivering developer contributions. This work continues and I truly hope that Leicestershire Police and the Police and Crime Commissioner will engage positively in this work with us and use their energies constructively as opposed to using the courts to try to get their own way at the expense of others, especially the public that we serve.”

The Chairman invited members of the Panel to ask questions of the PCC. Arising from the questions asked, the following points of the PCC were noted:

- The PCC felt that it was his duty to do what he could to enable the Chief Constable to effectively police communities. He wanted to try and build a firm financial base for the Police against a backdrop of financial reductions. If he had agreed to the New Lubbesthorpe development, he would have had to agree to a number of other developments across the County and this would have diminished the service the Force was able to provide these new communities. With advice, he had sought to mitigate this by taking legal action. He felt that the public was very understanding of why he had taken this action;
- His legal advisers had felt that the PCC had a strong case with a good chance of success, though this was within the context of what he felt was a “high legal hurdle” in challenging a planning decision. He suggested that the Judge had confirmed in his judgement that the Police were justified in raising concerns about the extent to which they would be resourced to police this and other new developments in the Force area in the future. Though he regretted the outcome, he remained of the view that he was right to make the challenge and give support to his Chief Constable;
- Government policy was to build new homes and drive the economy forward and this was within the context of the significant financial challenges the public sector faced. Local planning authorities had a duty to enable development and there was the potential for Section 106 funds to be lost completely in instances where planning applications were refused and this was then overturned by developers at appeal;
- The PCC became aware that going to Judicial Review on this issue was a possibility in early 2013. He had then sought the advice of colleagues in the OPCC and the Force. He had reluctantly decided that this was his only option in order to have a chance to police the new developments effectively. He had also sought external legal advice;
- The population of the Force area had risen by 100,000 over the last 10 years with no increase in provision for policing though the increase in Council Tax revenues as a result of the population increase was acknowledged. He had felt that he had to make a stand against this continuing trend and ensure that the resources were in place to effectively police those communities. There had been a significant assessment carried out of the likely operational impact on policing of the new development being built. It was estimated that this would be equate to around 8,000 additional calls to the police. The Chief Constable felt that the most pressing concern of the development was inadequate radio coverage and significant investment would therefore be required in this regard;
- The PCC had decided not to appeal the High Court Judgement, despite being provided with legal advice to the contrary;
- The PCC felt that a number of members had made unnecessary public remarks in the press about the legal action, though members felt that they had only been responding to the situation at hand;
- Blaby District Council had been warned by the Police in November 2013 of the possibility of a Judicial Review. This had been authorised by the Chief Executive of the OPCC and the Finance Director of the Force;
- The PCC recognised that this was seen nationally to be a “landmark case” and was aware that other PCCs felt the same way about the lack of resources to effectively

police future developments. Though he had the support of some of his PCC colleagues across the country, it was noted that they would not be making a contribution towards the legal costs the Force would now incur as a result of losing the case;

- A risk assessment was not carried out by the PCC prior to going to a Judicial Review, though a number of meetings were held with senior officers and a number of options were looked at carefully;
- The PCC maintained that a dialogue between the Force and Blaby District Council was required by planning law to cease at the point when the planning permission was granted. It was subsequently stated by members of the Panel that planning permission could only be granted when the Section 106 agreement was signed off by all parties. The PCC acknowledged that communication was not as good as it could have been;
- The PCC had considered the impact this legal action could have on other developments and that his legal action could result in negotiations between developers and planning authorities being made more challenging in the future. The PCC chaired a Strategic Planning Board which had looked at the wider partnership aspects of the decision to take legal action and the possible knock-on effects this could have on relationships;
- The PCC acknowledged that there was a risk with the timing of the bridge associated with the development and the potential to lose £5 million of government infrastructure grant, though he was pleased that his actions turned out not to jeopardise this funding in the end;
- The PCC's Council Tax precept increase in January 2014 of 1.5% had received the support of the Panel, though the PCC now faced losing at least 50% of this additional revenue in legal fees. He did not regret taking legal action, though he did regret that the funds would now be lost to the legal system;
- The PCC was now willing to work with partners on moving Lubbesthorpe forward. He pointed out that, in his opinion, he did not always get the support he required from the Panel and he hoped that this case would provide a turning point to move this relationship forward into a more "harmonious partnership". The Chairman pointed out that the PCP had given support to the PCC on a number of occasions, namely in his setting of the precept and his appointment of a Chief Finance Officer;
- The PCC felt that he had learned a lot through this process and felt that there was a need to negotiate in good faith in order to achieve a good result for all partners as a result of future development.

The Chairman thanked the Panel, the Commissioner and Blaby District Council for taking part in the meeting. He indicated that the meeting would be adjourned to enable the Panel to consider what recommendations it would wish to make to the Commissioner.

The meeting was adjourned at 3.55pm and reconvened at 4.55pm to announce its decision to the Commissioner and his staff.

RESOLVED:

- (a) That the Panel expresses concern that, in his opening statement to the Panel, the Commissioner failed to demonstrate that he had considered the following key issues:
- The impact on all public bodies of the cost of judicial review;
 - The impact of his decision to issue judicial review proceedings on partnership working;
 - The context of planning decisions in terms of economic sustainability and viability of developments;
 - The reality of reaching agreements on planning issues and the need to compromise, set against the risk of losing developer contributions on appeal or in the event of piecemeal development;
 - The actions, which this Panel condemns, on the part of the Commissioner seeking information from Blaby District Council in a way which lacked any form of openness and transparency in order to bolster his case long after the event;
- (b) That the Panel:
- (i) notes that the Court's dismissal of all of the grounds put forward by the Commissioner confirms in the plainest terms its view and that of member authorities that permission for Review should never been sought, particularly in the light of the genuine attempts by Blaby District Council to find an agreed way forward, which were rejected by the Commissioner;
 - (ii) regrets that at least £125,000 of taxpayers' money has been wasted as a result of the Commissioner's action, money which could otherwise have been used on frontline policing and to improve community safety at a time when crime figures continue to display worrying trends;
 - (iii) further regrets that the Commissioner's application for Judicial Review has inflicted more damage to partnership working;
 - (iv) hopes that the Commissioner will learn lessons from this failure on his part and that of his advisers and now look to work with local authority partners in a much more constructive manner than hitherto by withdrawing the threat of judicial review made to other planning authorities and working to achieve appropriate and agreed outcomes in planning matters; and
 - (v) welcomes the statements made by the Commissioner that he will engage in discussions with partners, but expresses concern about the tone of the comments which demonstrated an apparent lack of willingness to compromise in discussions relating to planning permissions and agreements.

That, having regard to all of the above, the Panel requests the Commissioner to report back to this Panel at its next meeting on measures he proposes to take to repair damaged relationships with partners.

RESOLVED:

That the item be deferred for consideration at a meeting to be scheduled in July.

70. Commissioning.

RESOLVED:

That the item be deferred for consideration at a meeting to be scheduled in July.

71. Performance Reporting Framework 2014/15.

RESOLVED:

That the item be deferred for consideration at a meeting to be scheduled in July.

72. Date of next meeting.

It was NOTED that the next meeting of the Panel would be held on a date to be confirmed in July to enable the Commissioner to report back on the issues raised in the debate on Lubbesthorpe/S106 (Minute 67 refers).

2.00 - 5.00 pm
09 June 2014

CHAIRMAN