



Appeal Decision

Site visit: Not applicable¹

by David M H Rose BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

Appeal Reference: APP/P4605/Q/25/3372809

Land at former Comet PH, Collingbourne Avenue, Hodge Hill, Birmingham, B36 8PE

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.
 - The appeal is made by John Howard (Collingbourne) Limited against the decision of Birmingham City Council.
 - The development to which the planning obligation relates is Revision to section 106 Agreement to application reference 2018/03568/PA.
 - The original planning obligation was dated 11th January 2019 and varied by a deed of variation dated 20 December 2023.
 - The planning obligation, dated 11 January 2019, was made between Birmingham City Council, AJS Properties 2018 Limited and Fundingsecure Ltd and the (first) deed of variation was made between Birmingham City Council and John Howard (Collingbourne) Limited.
 - The application Reference, 2025/01886/PA dated 20 February 2025 was refused by notice dated 26 June 2025.
 - The application sought to have the planning obligation modified as follows: reduced contribution of £90,000 comprising £70,000 towards off site affordable housing and £20,000 to compensate for the loss of public open space.
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Decision

1. The appeal is allowed.
2. The Planning Obligation, dated 11 January 2019, made between Birmingham City Council, AJS Properties 2018 Limited and Fundingsecure Ltd shall have effect subject to the Schedule of Variation in the Deed made on 18 December 2025 between Birmingham City Council and John Howard (Collingbourne) Limited.

Applications for costs

3. An application for costs was made by John Howard (Collingbourne) Limited against Birmingham City Council. This is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Obligation continues to serve a useful purpose.

Reasons

5. The original Obligation relates to a conditional planning permission for the erection of 20 dwellings with associated landscaping and external works on land at the former Comet Public House.

¹ The parties agreed that a site visit was not necessary and the appeal could be decided on the basis of the written submissions

6. The section 106 agreement, in short, provided for:
 - 10% affordable housing as a commuted sum (£70,000);
 - A payment of £14,025 to compensate for the loss of the bowling green towards the provision and improvement of sports facilities within Hodge Hill Ward;
 - Payment of £155,975 to compensate for the loss of public open space and to address the public open space needs of the new development; and
 - Payment of a monitoring and administration fee in the sum of £8,400.
 - All of the above were subject to indexation.
7. The above sums by the terms of the original Obligation were due to be paid prior to the occupation of the ninth residential unit. By the (first) Deed of Variation, the due date was extended to *'not to allow occupation of more than 15 residential units in the Development prior to the service of the Occupation Notice'*.
8. The original Obligation, and the terms of the variation, served a useful purpose in ensuring a proportionate contribution to much needed affordable housing and to compensate for the loss of a recreational facility and provide for the open space needs of householders on the development.
9. It is acknowledged that the Council, in agreeing to the Deed of Variation, were acting in the best interests of facilitating the development, in light of changed circumstances. It is evident that it was balancing the immediate needs of the developer whilst maintaining the public purpose of the Obligation.
10. It is said that the original developer, who had commenced work on plots 1-8 (phase1), went into receivership in 2020. The current owner of the land has completed Phases 1 and 2. The 8 plots remaining in Phase 3, and the related infrastructure and landscaping, is stalled and the financial contributions required by the Obligation have not been triggered.
11. The Appellant's current application to vary the Obligation, and the subsequent appeal, is supported by a Financial Viability Assessment.
12. The Council's independent advisors reported that having regard to the output of their appraisal, ignoring any section 106 contributions, they were content that a section 106 contribution of £90,000 plus indexation was fair and reasonable, and the most that the development could viably sustain. The subsequent report to Planning Committee supported the proposed variation, retaining the £70,000 for affordable housing and a reduced contribution of £20,000 for open space provision.
13. However, the application was refused on the grounds that the reduced contribution for open space would leave the Council and the local community without the necessary compensatory contributions for the loss of facilities. As such it would not satisfy Policies TP9 and TP11 of the Birmingham Development Plan and the National Planning Policy Framework.
14. The Council's supporting statement explains that whilst Policy TP31 (Affordable Housing) makes provision for a reduction in the percentage of affordable housing provided from a development, based on independently assessed viability, there is

no automatic presumption. In this case it is said that Councillors did not consider it to be in the City's interests to reduce the amount of affordable housing delivered by the site.

15. That is understandable based on the City's acute need for affordable housing provision. However, the sum sought in the original Obligation, and that the subject of this appeal, would remain intact. The issue in play is the reduced contribution for open space which formed the basis of the Council's refusal which is not addressed in its subsequent appeal statement.
16. The reality is that the Planning Committee does not appear to have grappled with the issue, in that the delivery of the site was delayed by receivership at a time of the Covid-19 pandemic and, following subsequent acquisition, increasing build costs. The evidence, corroborated independently on behalf of the Council, is that the completion of the development based on the terms of the original Obligation is not viable. There is nothing advanced to undermine this clear position.
17. Failure to construct and deliver the remaining phase would likely leave the land standing idle and the small, but important, contribution towards the stock of market housing would be denied. In addition, the sums required by the Obligation would not be realised and the public benefits accruing would not materialise.
18. I recognise the importance of appropriate provision for sport and recreation, including compensatory loss arising from the development, consistent with local policy and the objectives of the Framework in promoting healthy communities.
19. I also acknowledge the very substantial demise of the open space contribution now presented. It goes without saying that Planning Obligations once entered into should not be modified without good cause based on robust assessment.
20. Here, the change in circumstances, with clear justification and viability corroborated independently, in tandem with the benefits of delivering the remainder of the development are, in my view, very strong material considerations. These outweigh the harm arising from the loss of the sports facilities sum and the diminution of the open space contribution and related policy conflict.
21. In this regard, the original Obligation, as first varied, is now frustrating the completion of the development and the fulfilment of the related benefits. As such it does not continue to serve a useful purpose in its current form.
22. Nonetheless, financial contributions for the provision of affordable housing and improved open space/recreation provision remain at the heart of the proposed variation. Given that these are the most that the development could realistically contribute, the Obligation as proposed to be varied would serve both a useful and important planning and public purpose.
23. I have before me a Deed of Variation dated 18 December 2025 made between Birmingham City Council and John Howard (Collingbourne) Limited. The Schedule of Variation includes several new definitions to Clause 2.1 of the Principal Deed (as amended) to include:
 - A new definition of 'Appeal';
 - A new definition of 'Application' with reference to the 2018 and/or 2025 planning application as the context may require;

- A new definition of 'Development' to reflect the reduced financial contributions;
- A new definition of the 'POS Sum' (Public Open Space Sum);
- A new definition of the 'S106A Application' to include the 2025 planning application;
- A new definition of 'Secretary of State' to reflect the change in nomenclature since 2019;
- The deletion of the 'Sports Facilities Sum'; and
- Various consequential amendments to reflect the terms of the Obligation as varied.

24. Having reviewed the Deed, I am satisfied that the Obligation as varied is fully justified and in accordance with relevant guidance. On this basis I shall allow the appeal.

Conclusion

25. The appeal is allowed and the Planning Obligation, dated 11 January 2019, made between Birmingham City Council, AJS Properties 2018 Limited and Fundingsecure Ltd shall have effect subject to the Schedule of Variation in the Deed made on 18 December 2025 between Birmingham City Council and John Howard (Collingbourne) Limited

David MH Rose

Inspector