
Costs Decision

Hearing held on 23 October 2025 and 13 January 2026

Site visit made on 23 October 2025 and 12 January 2026

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2026

Costs application in relation to Appeal Ref: APP/M1595/Q/25/3368235

Lawns Court, Thomas Bata Avenue, East Tilbury, Essex, RM18 8FQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Thurrock Council for a partial award of costs against Ingleton Luxury Homes Lawns Court Ltd.
 - The appeal was against the refusal to modify a planning obligation dated 3 July 2018.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Council's application was made under several themes which I address below.

The first adjournment of the hearing

3. The main reason for the adjournment, as recorded in my adjournment note, was that the appellant wished to seek legal advice on whether 'equally well' meant equivalent benefit. However, this was a core element of the Council's submissions made four weeks before the hearing opened, recognised in the Statement of Common Ground and responded to in writing twice. On face value, the Council's application for costs on this point is understandable because the appellant could have sought legal advice before the hearing opened. If they had done so, then it's unlikely an adjournment would have been necessary as all legal submissions could have been made and addressed on the 23 October 2025. The key question, therefore, is whether it was reasonable to seek an adjournment at the hearing to pursue legal advice that could have been sought earlier. The context identifies some mitigating circumstances.
4. Firstly, the Council's legal submissions made entirely new arguments and would have therefore come as a complete surprise to the appellant. The appellant could be forgiven for thinking the main issue in dispute between the parties was still viability. Moreover, the submissions were not attributed to a legal expert and there was no confirmation from the Council that it would be legally represented at the hearing. This did not become apparent until the hearing opened. This is an

important point, as disclosing the presence of Counsel in advance can assist the other party in deciding whether to seek their own legal representation.

5. In the absence of this confirmation, the appellant sought to address the Council's legal submissions themselves in writing. Mr Bray was also instructed to provide the appellant's main response the week before the hearing opened. These responses would have seemed proportionate in the prevailing circumstances, especially as they were able to point to other appeal decisions that support the approach they were advocating. A not unreasonable expectation would have been that the legal matters would not take up much time at the hearing and could have been left primarily to the written submissions – the viability matters being the main reason a hearing was chosen as the appeal format. This is not what initially transpired.
6. During the hearing the Council raised a new point relating to the weight that should be afforded to Mr Bray's expert evidence on viability, which is central to the appellant's case. Indeed, it was suggested that I should afford his evidence significantly reduced weight because he was also advocating for the appellant on legal matters. This understandably led to some hesitation as to his role in the hearing. Seeking an adjournment to reflect on this point was not unreasonable given the importance the Council seemed to be placing on it.
7. Furthermore, the Council's legal submissions were forcefully made on the 23 October 2025. There is no fault in this, but the suggestion there would be a legal challenge if the Council's submissions were not accepted understandably unsettled the appellant's team, who are not legal experts. Legal authorities, including *Mansfield*¹, were then addressed in forensic detail and the Council's legal arguments were developed. It was becoming increasingly apparent to me that there was a clear inequality of arms that could possibly result in unfairness. I therefore briefly adjourned the hearing to allow the appellant time to reflect on matters. On return, the appellant requested a longer adjournment to seek legal advice. In the circumstances, the request was not unreasonable behaviour.

Whether the appellant acted in bad faith

8. The Council submits that the appellant responded to its legal submissions twice in writing before the hearing, but it was only at the hearing, when matters seemed to be going against them, that the appellant sought an advantage from requesting an adjournment to seek legal advice. This is true to an extent. Indeed, the hearing on the 23 October 2025 was not going well for the appellant. But this was due to the inequality in arms from them not being legally represented. In the circumstances, this decision was understandable for the reasons given above. As such, they did not act in bad faith, and thus unreasonably, in seeking the adjournment.

Whether the appellant changed their case several times

9. The Council alleges that the appellant changed its case several times, but I do not consider this a fair characterisation. The appellant's first submission was responding to the reason for refusal, which solely related to viability. Indeed, the Council's delegated report does not refer to the relevant tests in connection with an application made under s106A of the Town and Country Planning Act and quotes a conflict with the development plan in the reason for refusal.

¹ *Regina (Mansfield District Council) v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 1794 Admin

10. The Council then correctly, and apparently belatedly, pointed out the relevant tests in a note provided at the outset of the appeal and invited further submissions. As invited to by the Council (and agreed by me), the appellant framed their case more clearly around the relevant tests. The Council responded to this with a Statement of Case. This was then responded to by what the Council refers to as the appellant's third case. That response supplemented the earlier points made rather than amend them.
11. Mr Bray's submissions (the alleged 'fourth' case) deposited a week before the hearing raised a nuanced point rather than a new case. My reading of what he is saying is that the obligations in question would no longer serve a useful purpose if left unmodified, but the proposed modification would serve their current purpose equally well. In any event, the appellant unambiguously confirmed at the hearing that the obligations do serve a useful purpose and that their application is framed around the test in s106A(6)(c). This clarification was not a fifth case.
12. The Council suggest that the first adjournment allowed the appellant to make a sixth case, but in truth the appellant's legal submissions simply framed the case the appellant had already attempted to make in writing. The appellant has not crossed the threshold of unreasonable behaviour in this regard.

Whether the appellant submitted contradictory submissions out of time before the hearing opened

13. As outlined above, the Council submitted a note at the outset of the appeal asking the appellant to clarify their case, which they then did. In response, the Council provided a statement of case, which included legal submissions. The appellant responded to these twice. Those responses were not invited but were reasonable in the circumstances given the Council were running an entirely new case that diverted significantly from the reason for refusal. The responses were not contradictory. As explained above, Mr Bray's submissions were nuanced. Indeed, he was suggesting the current obligations are preventing the deliverability of the scheme and would not serve a useful purpose unless modified along the lines proposed. In any event, the appellant confirmed their position at the hearing, which was only a week later, that their application is framed around s106A(6)(c). There was no unreasonable behaviour.

Whether the appellant pursued an unarguable case at the first hearing

14. This part of the Council's application for costs was made before the appellant deposited their barrister's legal submissions. Those legal submissions make out an arguable case that viability is a relevant consideration in a s106A appeal. Much time was spent at the second event discussing the legal points. They also built upon the two written submissions made before the hearing opened by the appellant and Mr Bray. The appellant did not abandon his case at the first hearing or after. There was no unreasonable behaviour.

Whether the appellant should have concede the appeal

15. The Council submitted the Chilmington Green appeal decision in the second adjournment. The Inspector in that case seemed to share many of the views the Council had advanced in its legal submissions. However, that decision is not binding on me as each application falls to be considered on its own merits, albeit with thought given to consistency. Therefore, the appellant was not required to

concede the appeal. Instead, they provided a rebuttal which sought to point out material differences and points of interpretation. The appellant has also provided other appeal decisions that support their position. There was no unreasonable behaviour here.

Did the appellant fail to provide relevant documents

16. In the second adjournment the Council indicated that it did not have all the documents Mr Bray has referred to in his statement. It is unclear what has happened here as the documents were sent to the Planning Inspectorate and should have been cross copied. They are also referred to in Mr Bray's statement, so the Council should have been aware of them and could have requested copies earlier. There is no substantive evidence of deliberate concealment. No unreasonable behaviour occurred.

Whether misleading statements were made

17. A misleading statement was made by the appellant by suggesting that registered providers had shown no interest at all in purchasing the affordable homes. That is not correct. However, I am satisfied this was an inadvertent mistake rather than a deliberate attempt to conceal a point or mislead the hearing. The statement was a reference to no interest being shown following Mr Bray's recent enquiries, rather than no interest having ever been shown. The Council had to adduce evidence to address the point, but it was correctly promptly at the hearing.
18. The appellant's legal submissions omitting reference to Paragraph 17.4 of the relevant RICS guidance on surveyors acting as expert witness. This paragraph clearly makes the point the Council were relying on - that the weight to be given to Mr Bray's evidence may carry less weight if he also acts as an advocate. It was a mistake not to quote this paragraph in the appellant's legal submissions. However, this became a moot point because Mr Bray did not act as an advocate on the 13 January 2026 and gave no substantive viability evidence on the 23 October 2026. Therefore, his role as a viability expert was not compromised. His written evidence was made as a surveyor, and any points of law were proportionately made to aid his client. Doing so did not affect the weight I gave his submissions. Accordingly, there was no unreasonable behaviour here.

Whether the appellant should have pursued the education modification

19. I share the view of the Council the 'Interest Gap' means the proposed education modification could not serve the current purpose of the obligation equally well. However, the appellant's proposition is that the education contribution index linked would serve the purpose equally well without the 'Interest Gap'. This was a matter of judgment. On balance, I do not consider unreasonable behaviour occurred in the appellant pursuing this argument.

Conclusion

20. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not arisen and consequently an award of costs is not warranted.

Graham Chamberlain
INSPECTOR