Planning Inspectorate

Appeal 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

Appeal Ref: APP/M1595/Q/25/3368235
Lawns Court, Thomas Bata Avenue, East Tilbury, Essex, RM18 8FQ

- 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 Ingleton Luxury Homes Lawns Court Ltd against the decision of Thurrock Council.
- The development to which the planning obligation relates is construction of 18 dwellings, including a new vehicular and pedestrian access off Thomas Beta Avenue, provision of public space and landscaping.
- The planning obligation is dated 3 July 2018.
- The application Ref 24/00823 was refused by notice dated 30 January 2025.
- The application sought to have the planning obligation modified as follows: revisions to Schedule 2 Education Contribution and Schedule 4 Affordable Housing.

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for an award of costs was made by Ingleton Luxury Homes Lawns Court Ltd against Thurrock Borough Council and by Thurrock Borough Council against Ingleton Luxury Homes Lawns Court Ltd. These applications are the subject of separate Decisions.

Preliminary Matters

3. The Council advised that the delegated report prepared by Officers should be taken as its decision notice, with the reason for refusal set out in Section 8 of that document. The appellant has not objected to this and therefore I have approached my assessment on that basis. The hearing was adjourned twice. The first was to allow the appellant to seek legal advice and advocacy and the second to allow time to respond to a series of questions I posed. I have had regard to the submissions made in response to my questions as well as the other documents listed at the end of this decision letter.

Background and Main Issues

4. During the hearing I sought clarification as to the modifications being proposed. After some initial uncertainty, I was finally referred (at the reconvened event) to a document titled *Heads of Terms for Proposed Changes to the Planning Obligation*, which specifies the proposed affordable housing contribution as £141,678. This is what was considered in the Officer's delegated report.

5. Accordingly, I have based my decision on the modifications originally proposed in the 'heads of terms document' referred to in the preceding paragraph rather than the draft deed of variation (DDOV) submitted with the appeal. Indeed, a determination under s106A(c) of the Town and Country Planning Act 1990 (the Act), and by extension s106B, is to be made subject to the *modifications specified in the application*. In any event, the DDOV proposes something substantially different to what was originally applied for, with changes including around a 20% alteration to the affordable housing figure and entirely different trigger points. It would also be procedurally unfair to consider significant modifications, such as these, without them being put to wider consultation first. It is also worth noting up front that it is not open to me to impose modifications different to those applied for.

6. Section 106A of the Act provides for the modification of planning obligations in certain circumstances. When an application is made to modify a planning obligation the decision maker may determine:

   a) That the planning obligation shall continue to have effect without modification;

   b) If the obligation no longer serves a useful purpose, that it shall be discharged; or

   c) If the obligation continues to serve a useful purpose, but would serve that purpose equally if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

7. The appellant is proposing modifications to Schedule 2 'Education Contribution' and Schedule 4 'Affordable Housing', being of the view that these obligations continue to serve a useful purpose and would do so equally well subject to the modifications being applied for. It is important to emphasise that the appellant's case does not relate to (b) above.

8. As such, the main issues in this appeal are:

   - Whether the proposed modifications would serve the purpose of the original obligation relating to the education contrbution equally well; and

   - Whether the proposed modifications would serve the purpose of the original obligation relating to affordable housing equally well.

Reasons

Education Obligation

9. Schedule 2 of the planning obligation makes provision for the payment of an education contribution defined as £70,154. It does this by preventing the occupation of 50% of the market homes until the funds are paid in full. The figure is to be index linked from the date of the planning permission to the date of payment. In addition, a late payment clause adds annual interest at 4% above the Bank of England base rate from the date the sum fell due until the date of actual payment.

10. The purpose of the obligation at the time it was entered into was to allow the developer to mitigate the scheme's impact on local education infrastructure. This was necessary to allow the scheme to adhere to the development plan. The funds are to be spent on increasing the capacity at either Gable Hall School, Hassenbrook Academy and/or St Clere's Secondary School. Indeed, there is an obligation on the Council to spend the financial contribution in this way.

11. The trigger point also serves a very important purpose as it allows for the timely provision of the funds in a way that balances the developers access to cash flow, with the risk of the impact going unmitigated for a lengthy period. Alternatively, it derisks matters for the Council if it finances the works in the short term, because it could do so in the knowledge the developer would have a strong incentive to make the payment given the value left in the balance of the homes yet to be constructed.

12. The late repayment clause builds on this because it incentivises payment of the funds in a timely way at the trigger point. It also provides the Council with compensation for late payment. This would be particularly welcome in the event it has used its own funds in the interim because in such circumstances there would be an opportunity cost to the Council as the funds used could have been spent on something else. Indexation serves the purpose of ensuring the value of the financial contribution does not decrease over time on account of inflation.

13. The appellant has constructed all twelve of the market homes but has not paid the education contribution in part or in full despite this being due. In the interim, the Council has undertaken works to increase the capacity at the relevant schools using its own funds. Although the works to increase capacity have already occurred, there is nothing before me to suggest further works to increase capacity at the schools would not serve a useful purpose. In any event, the obligation allows the Council to immediately enforce the payment and thus recoup the public funds spent on mitigating the scheme's impact on education infrastructure. The indexation clause continues to serve the purpose of ensuring the value of the sum does not decrease over time. The late payment clause still serves the useful purpose of providing an incentive to pay in a timely manner, and provide compensation if the payment is missed. As such, the education obligation continues to serve a useful purpose.

14. The appellant is of the view the education obligation can serve the current useful purpose equally well if modified as follows - 1) Update the education contribution as £97,100 to allow for indexation; 2) Include three payments of £32,366 to be made on or before the occupation of the 13th, 15th and 17th residential units; 3) include indexation from the date the modification is approved to the date of payment; and 4) provide for late payment interest if the new trigger points are missed. This to be calculated from the point the sums fall due until payment.

15. The appellant argues that with the modifications outlined above, the Council would receive the same financial contribution towards education, albeit a bit later. They submit that this would not be problematic in this instance because the proposal is not currently having an adverse impact on education capacity as the works to increase capacity identified in 2020 have been completed by the Council. As such, the appellant submits the modified obligation would serve the purpose equally well.

16. However, at present, the Council can enforce the obligation and secure all the funds it is due. The modifications proposed by the appellant would effectively see the Council forego its ability to do this. Instead, the payment triggers would be pushed back. The implication being that the Council, and by extension the public purse, are being asked to take a risk, as there is no guarantee the developer would construct the 13th, 15th and 17th homes. Indeed, they may run into difficulties such as raising finance or there could be sudden shocks to the economy.

17. Given the appellant's failure to make *any* payment to date[1], and because the proposed modifications would push the first payment to some unspecified time in the future, I can understand the Council's reluctance to agree to the modification. Indeed, the Council has referred to the maxim of a 'bird in the hand is worth two in the bush' as a means of explaining their position. In effect, it would be unclear when the Council would receive the funds it is currently due and is presently able to enforce payment of. Accordingly, pushing the trigger points back in the way proposed would not serve the current purpose of the obligation equally well.

18. Furthermore, the Council are also being asked to forego the sum required by the late payment clause. I understand that the education contribution fell due in 2020. On this basis, the late payment penalty has added an annual rate of 4% above the Bank of England basic rate since then (in addition to indexation). This is not factored into the education contribution now being proposed. It means the Council would not be compensated for the opportunity cost of having diverted public funds some years ago to mitigate the impacts of the development on education capacity. Furthermore, the funds generated by the late payment penalty could be used by the Council for useful purposes.

19. In addition, there is also an indexation gap. Rather than leave the original sum with the indexation clause, the appellant is seeking to include the sum of £97,100, being of the view that it has the same value as the original figure of £70,154 indexed linked. The £97,100 figure appears in the Avebury Financial Appraisal of the 14 October 2024. If I were to allow the appeal, then indexation would begin at the date of my decision in 2026. Accordingly, there would be an 'indexation gap'. I accept that indexation gaps can occur in such circumstances but the time lag in this instance is especially long. Thus, the value of the education contribution would fall if the modification were to be accepted. The figure used also needs to be accurate as it would be the baseline for future calculations.

20. Thus, the proposed modifications would result in additional risk to the Council, loss of funds due under the late payment penalty and a smaller education contribution in real terms. Consequently, it follows that the proposed modifications would not serve the current useful purpose of the obligation equally well.

Affordable Housing Obligation

21. Schedule 4 of the planning obligation seeks to secure affordable housing by not allowing more than 33% (4) of the market dwellings to be occupied until all the affordable dwellings[2] have been constructed, completed and transferred to a registered provider. In this respect, the planning obligation does not require the provision of affordable housing. Instead, it provides a strong incentive for the developer to deliver them early in the scheme before going on to realise the value in the remaining market homes. However, the appellant did not pause the development after constructing four homes. Instead, he built the 12 market homes and then stopped, in breach of the planning obligation.

22. The purpose of the obligation at the time it was entered into was to secure the delivery of a minimum amount of affordable housing. This was necessary to allow the scheme to adhere to the development plan. There is nothing of substance

[1] Even though the monitoring surveyor indicated such fund had been put aside in 2020
[2] 4 rental units and 2 shared ownership units - 6 AH overall

before me to suggest there is no longer a pressing need for affordable housing. Accordingly, the obligation continues to serve a useful purpose.

23. The appellant is of the view that the obligation would continue to serve the current useful purpose if modified to reduce the amount of affordable housing secured. This is on the proviso that the maximum reasonable amount of affordable housing is still provided when considering viability. The Council has provided detailed legal submissions challenging the basis of this approach. However, for the purposes of this decision I have considered the appellant's case on its own terms first, as the Council apparently did in its delegated report.

24. The appellant alleges that registered providers (RPs) are uninterested in taking on the homes and therefore a financial contribution in-lieu of on-site provision is the maximum reasonable amount of affordable housing that can be delivered. There is force to this argument because Mr Bray has contacted several RPs to no avail. The Council has referred to one RP showing interest, but there is a lack of clarity from both the Council and appellant as to why this deal did not materialise.

25. The in-lieu financial contribution towards affordable housing was initially calculated by Mr Bray as £141,648 but was revised to £169,109 following comments from the Council. However, the proposed modification in the application defines the affordable housing contribution as £141,648. The latter sum was calculated after the Council's decision. I understand that no negotiation took place during the Council's assessment, but it was under no obligation to do so. Consequently, the affordable housing contribution applied for is less than what the appellant suggests is the maximum reasonable amount. Thus, even on the appellant's best case the modification applied for would not serve the useful purpose equally well.

26. Notwithstanding this finding, and without prejudice to their legal submissions, the Council are also of the view that £169,109 would not be the maximum reasonable amount of affordable housing the scheme could viably provide. This is because the Council considers the residential values used in Mr Bray's assessment are too low and the build costs too high.

27. RICS guidance *Assessing Viability in Planning* states that the date upon which an application is resolved is the date when all relevant information should be considered. This would seem to imply that viability reviews should be based on contemporary inputs relating to costs and values. Although the same guidance also states that reviews should be based on the most robust data available, which could include known build costs and values. It seems to me that the relevant guidance quoted by the parties is not pulling in different directions. It requires me to consider matters now but the assessment should not disregard robust data, which can include known costs and sales.

28. In this respect, the twelve homes already constructed in Phase 1 were transferred in late 2020 and early 2021 from a company the appellant owned to another legal entity he is a director of for £345,000 each as part of re-financing. The properties are now occupied as rental units. The appellant has therefore used the figure of £345,000 and multiplied it by twelve to establish a value for Phase 1. The sale of the twelve homes was not an arm's length transaction and therefore cannot reliably establish market value. Nevertheless, the value they were transferred at coincides with an independent 'red book valuation' undertaken in autumn 2020.

29. The appellant confirmed that the investment company he is a director of has become an 'accidental landlord' due to the development stalling. The intension is still to sell all the properties at current market values once the development is complete. This would seem to suggest that I should use current sales figures to establish the value of Phase 1 because the realisation of the gross development value will occur in the future when the homes are sold on the open market and finance paid off. Accordingly, I favour the professional opinion of Mr Leahy - of valuing all the homes in both Phase 1 and 2 at contemporary values and then updating the corresponding build costs to ensure a balanced approach.

30. In seeking to establish the value of the homes at today's prices, it is reasonable to start with the red book valuation of £345,000 from September 2020. Evidence from both sides suggest house prices have grown significantly between 2020 and 2025, with most of the price growth occurring between 2020 and 2023. Evidence provided by the Council suggests that, in general, prices have risen in Thurrock by around 19% since 2020. Therefore, the homes could be valued at around £410,000 on this measure. However, they are no longer new builds so such a valuation could be ambitious. In any event, this is a general trend that needs to be 'sense checked' against comparable evidence.

31. Mr Bray has provided an extensive sample of comparable sales data, which includes 'second hand' properties, and plotted this on a graph to establish a trend line. This suggests that a 100sqm semi-detached home in the area, which includes many flat roofed properties and houses from the mid-20th Century, is likely to sell for around £375,000. The analysis by Bespoke Property Consultants (BPC) seems to support this, identifying average sold prices for 3 bed-semi-detached houses between January 2025 and August 2025 being £3,788/m2. BPC has argued for an increased value of £4,000/m2 but have used 'on market' evidence to support this. Such evidence is inferior to actual sales data though. It is also important to factor in the non-standard construction of the flat roofs and the off-plot parking.

32. Accordingly, a contemporary value of £375,000 seems reasonable in the circumstances for the Phase 1 units given the trends and comparables outlined above. A new build premium could be added to the Phase 2 units, but I have not done so on a precautionary basis in case the Phase 1 units are slightly over valued. Thus, the Phase 2 units can also be conservatively valued at £375,000 as well. It follows that the gross development value (GDV) for the purpose of my assessment is less than BPC's figure but more than Mr Bray's.

33. Turning to build costs. Arebury have calculated the build cost for Phase 1 based on the actual costs incurred. BPC are content to adopt the same build costs but have index linked them to the present day to reflect the use of current sales values. This is a reasonable and balanced approach. For Phase 2, the parties agreed a figure of £1,452/m2 (the BCIS medium rate). Therefore, in broad terms the main dispute is over the cost of externals and abnormal works.

34. Arebury suggest the total figure for external works and abnormal costs is £902,014 plus a further £64,284 (equalling £966,928) to account for indexation as well as site clearance and remobilisation to build Phase 2. It is suggested that the figure of £902,014 was agreed by BPC in 2020. Indeed, reference is made to such provisional agreement in BPC's report dated 16 October 2020. However, Mr Sullivan (BPC's cost consultant) instead relies on an external works cost calculated

in 2019 (by consultants called s106) of £402,640. The provenance of the £902,014 figure, and the calculations that informed it, are unclear.

35. Based on the above, Arebury have calculated the appellant's external costs for Phase 1 as £532,111. However, this would be a sizeable portion of the known build costs for Phase 1 (£1,604.347), as recorded by the monitoring surveyor. This would mean that the appellant constructed the homes in Phase 1 at a 'highly unlikely' cost (as described by Mr Sullivan) of around £893/m2 as opposed to the BCIS median rate at the time (£1,221/m2). If the appellant can build at that rate, then it calls into question whether the current medium build cost of £1,452/m2 mentioned above should be used for calculating the build costs for Phase 2, as such an approach would not reflect robust data of known costs.

36. There are also other contradictions. In a letter dated 10 December 2024, Mr Bray put the external costs incurred in Phase 1 at £113,013 out of a total construction cost of £1,604,347. This is someway under the £532,111 for external and abnormal costs attributed to Phase 1 in his report. He also suggests that the majority of external costs would need to be undertaken in Phase 2. But the figures given in his report for plot specific external works are lower in Phase 2 than Phase 1.

37. If the external and abnormal costs for Phase 2 would be £434,187 as specified in Mr Bray's report, then this would only be £97,924 less than the costs in Phase 1 despite it involving fewer homes. Furthermore, the monitoring surveyor recorded that substantial SUDS works, parking bays, water and gas connections and services have been completed or paid for in Phase 1. It is therefore unclear what works in Phase 2 remain. There is suggestion that they would include the *entrance / bellmouth works, completion of the sewer diversion route, adoptable road construction and final surfacing* (see email from Monitoring Surveyor dated 22 January 2026). However, a detailed cost plan for these works has not been provided. The figures that have been supplied are reasonably described by Mr Sullivan as a 'random set of lump sum figures' under imprecise headings such as 'plot specific external works'. Some further detail is provided in Mr Bray's letter of the 10 December 2024, but there is no independent assessment or detailed itemisation of the predicted expenditure for Phase 2.

38. The projected external costs for Phase 2 include £134,000 for 'site preparation, demolition and site clearance'. This makes little sense as it was only £15,000 in Phase 1 and Mr Bray has already allowed for site clearance in his figure of £64,284 mentioned above. In any event, the Phase 2 area is already cleared save for some historic building materials and demolition is not required.

39. Arebury's report includes a £150,000 sewer diversion cost in Phase 1. The monitoring surveyor's report from October 2020 confirms that the diversion of the sewer pipe has been completed. However, the appellant argues that further sewer works need to be undertaken in Phase 2. Indeed, it has subsequently been clarified by the monitoring surveyor that their reference to the sewer works being complete is in respect of Phase 1. An email from Anglian Water dated 28 January 2026 indicates that works to divert the public sewer have been undertaken but are not yet complete. Indeed, a certificate of completion has not been issued. Mr Bray suggests he has seen correspondence from Anglian Water giving permission for Plot 10 to be built over the sewer pending its diversion. If most of the sewer diversion works need to take place in Phase 2, then it's unclear why they are listed

in Phase 1 and no clear costing provided for Phase 2. Accordingly, the costs of the sewer diversion appear to have been double counted.

40. Ultimately, in the absence of detailed costings, I favour the suggestion of BPC that the Phase 2 external works are likely to cost in the region of £189,902[3], which includes an allowance for restarting the development, rather than the £434,187 proposed by the appellant. Thus, the externals and abnormal costs for Phase 2 have not been satisfactorily demonstrated and seem overstated.

41. In conclusion, increasing the GDV and decreasing the build costs means more than £169,109 would be available to fund the affordable housing contribution. Thus, when considering the appellant's case on its own terms, the proposed modification would not secure the maximum reasonable amount of affordable housing and therefore the proposed modifications would not serve the current useful purpose of the obligation equally well.

Other Matters

42. The Council has provided extensive legal submissions relating to the scope of an application made under s106A as well as the Subsidy Control Act. As the appellant's case fails on its own terms, I have not gone into these points. There is evidence to suggest the Council previously agreed an affordable housing sum of £105,140 albeit with a viability review mechanism. However, I have come to the views I have for the reasons given and with reference to the evidence presented.

43. The appellant has suggested that frustrating the development would result in 'blight', as the site would remain unfinished and attract antisocial behaviour. They also submit that delivering the remaining houses would assist the Council's housing land supply. However, these points do not mean the obligations serve no useful purposes *at all*. I have explained what the current useful purposes are and why the proposed modifications would not serve those purposes equally well.

Conclusion

44. In conclusion, the planning obligations in question continue to serve useful purposes. The proposed modifications would not serve those purposes equally well. As such, the planning obligation shall continue to have effect without the proposed modifications. The appeal is therefore dismissed.

Graham Chamberlain
INSPECTOR

[3] Which is roughly a third of the total cost identified by s106 of £402,640 index linked

APPEARANCES

FOR THE APPELLANT

Richard Turney KC	Barrister, Landmark Chambers
Tom Ingleton	Managing Director of Ingleton Luxury Homes The Lawns Limited and the appellant
Mr Richard Bray BSc Hons MRICS MCIOB	Director of Arebray Ltd
Mr Matthew Wood BSc (Hons) MScTP MRTPI	Director of Phase 2 Planning (Planning Consultant)

FOR THE LOCAL PLANNING AUTHORITY

Dr Sam Fowles	Barrister, 39 Essex Chambers
Nadia Houghton BA Hons PgDTP MRTPI	Team Leader, Thurrock Council
Andy Leahy BSc MIoD FRICS	Managing Director, Bespoke Property Consultants
Terry Sullivan	Associate, Bespoke Property Consultants
Caroline Robins	Principal Planning & Highway Solicitor, Thurrock Council

DOCUMENTS SUBMITTED DURING THE HEARING

1. Regina (Mansfield District Council) v Secretary of State for Housing, Communities and Local Government [2018] EWHC 1794 Admin
2. Heads of Terms for Proposed Changes to the Planning Obligation – this was an incorrect version submitted by the Council which included a affordable housing contribution of £105,140 and a viability review mechanism, neither of which were proposed as part of the application.
3. Council's initial response dated 20 October 2025 to the first adjournment note
4. Council's first cost application dated 31 October 2025
5. Email dated 5 November 2025 including the appellant's initial response to the first adjournment note and an application for costs
6. Email dated 13 November 2025 with the Council initial response to the appellant's application for an award of cost

7. Appellant's legal submissions and response to the Council's first application for an award of costs dated 21 November 2025
8. Council's final comments on their first application for an award of costs dated 28 November 2025
9. Council's response (dated 4 December 2025) to the appellant's legal submissions of the 21 November 2025 (missing appendices)
10. Email of the 9 January 2025 with missing appendices – these being evidence from s106 of offers being made from RPs for Affordable Housing
11. Appellants legal submissions dated 13 January 2026 relating to the Subsidy Control Act 2022
12. Letter dated 16 December 2025 from the Rt Hon Steve Reed OBE MP, which includes a section on Modifying Planning Obligations
13. Sewer diversion plan – Drawing No 3000
14. Email dated 19 January from the Council indicating it does not have all of the information appended to Mr Bray's statement
15. Email of the 21 January confirm the Council has received the above information
16. Appeal decisions 3333923 and 3334094 – accepted as late evidence because the decisions appeared relevant and were issued after the hearing adjourned on the 13 January 2026
17. Council's second application for an award of costs dated 20 February 2026
18. Council's final submissions (dated 20 February 2026) relating to the residual matters partially occasioning the adjournment on the 13 January 2026 and setting out the relevant points in relation to document 16 above
19. Council's Appeal Statement Addendum prepared by BPC dated 19 February 2026 answering the questions I posed during the second adjournment
20. Appellant's response prepared by Arebury to the adjournment questions dated 18 February 2026
21. Appellant's submissions regarding appeal decisions 3333923 and 3334094
22. Appellant's final comments dated 6 March 2026 by Arebury in response to the Council's Appeal Statement Addendum
23. Appellant's final comments dated 6 March 2026 responding to the Council's second application for an award of costs