Planning Inspectorate

Costs Decision

Hearing held on 25 & 26 August 2026
Site visits held on 25 August & 8 October 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2026

Costs application in relation to Appeal Ref: APP/D0121/W/26/3378598
Land off High Street, Portbury BS20 7TR

- The application is made under the Town and Country Planning Act 1990, section 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Patrick Mullane.
- The appeal was against the Council's decision to refuse planning permission for the material change of use of land from equestrian to a mixed use of equestrian and a residential caravan site to provide 2 pitches for human habitation, to be occupied by Gypsy and Traveller, each pitch comprising of 1 Static caravan, 1 touring caravan, 1 day room, hard standing, cycle store, bin store, landscaping and erection of sound barrier acoustic fencing, associated infrastructure (retrospective).

Decision: the application is refused.

The case for Mr Patrick Mullane

1. The essence of the applicant's case is that endeavours were made to narrow the issues with the Council in an attempt to save all parties time and money. In the subsequent discussions that followed the withdrawal the Enforcement Notice, the applicant sought to narrow three of the remaining main issues, namely (a) Noise (b) Highway Visibility and (c) Junction19 future safeguarding.

2. In relation to noise, the applicant holds an email from the Council in which they agreed to withdraw the objection pertaining to noise based upon a planning condition they put forward. On receipt of that suggested condition, the applicant consulted a specialist to ensure that compliance could be achieved, for which the applicant paid fees. The applicant subsequently received an email from the Council indicating that noise remains a contested matter. This necessitated the applicant to instruct the specialist to attend the Hearing in order to defend his position. This incurred the associated costs.

3. The applicant maintains that it has been clearly demonstrated through technical specialist evidence that the required visibility splays are available at the site within land owned by the appellant or on land under the ownership of Highways Authority. The applicant has attempted on numerous occasions to get the Council and Highway Authority to examine the technical data and to agree a standard visibility. The applicant considers the approach adopted by the Council is unreasonable behaviour and necessitated the attendance of a highway specialist at the Hearing, with the associated costs.

4. It is the Council's position that they could remove their objection relating to Junction 19 safeguarding of the land but would require the applicant to enter into a Section

106 Agreement. The need for such an agreement in and of itself is not denied by the applicant but the version received goes beyond which is reasonable in so far as the Council require a section 106 agreement for in perpetuity and further to secure a nil use of the land. This despite the Council's case officer informing the applicant that it is now very likely that Junction 19 improvements will not be proceeding. In dealing with the Council's unreasonable behaviour to acknowledge that the works are unlikely to proceed, and by not accepting a reasonable section 106 agreement limited by time, the Hearing will now spend time that could have been saved.

The case for North Somerset District Council

5. The Council's response is detailed and, whilst I have taken that response fully into account, I do not attempt to rehearse it all here. However, the key points are as follows.

6. On and after 12 May 2026, the parties cooperated to try and narrow the issues in this appeal and potentially avoid it altogether. On 2 July 2026, the applicant peremptorily terminated that cooperation and opted to pursue the appeal. As of that date, the Council's position in respect of noise was that the objection would be withdrawn if the applicant agreed to comply with a condition specified by its Environmental Health Officer[1], as set out in an email dated 1 July 2026. In summary, that email focused on the relationship between internal noise levels and overheating.

7. The applicant has persistently failed to give clear and unequivocal agreement to implement works to achieve a satisfactory noise environment and secure the same by the imposition of a condition. In the circumstances, the Council's adherence to the position adopted on 1 July 2026 was reasonable and has not caused the applicant to incur or waste any costs on the resolution of the noise issue.

8. The Council has undertaken a road safety review and does not agree that the applicant has demonstrated that a safe level visibility can be achieved and maintained. The applicant has not incurred any wasted costs. It was necessary for the applicant to take competent advice on the issue of road safety. In the circumstances, even if the highway issue is decided in favour of the applicant, the Inspector is invited to conclude that the outcome was the result of adjudication of a reasonable disagreement between experts.

9. The land at Junction 19 is safeguarded in the current development plan and in the submission draft version of the North Somerset Local Plan. There is no need to formulate a scheme to justify a decision to safeguard land. By its very nature, safeguarding will often be adopted when it is unclear precisely when and how land which is safeguarded is to be used.

10. The Council did contemplate the possibility that this objection might be overcome by the applicant agreeing to enter into a section 106 Agreement not to enter onto or develop any part of the safeguarded land. However, the applicant rejected that potential solution.

Reasons

11. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved

[1] A copy of that condition was provided as part of the Council's response but is not repeated here.

unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice.

12. It is important to firstly commend the endeavours made by both parties in seeking to narrow the issues between them before the Hearing. That is good practice. It is unfortunate that those endeavours did not secure more agreement and narrow the issues further[2].

13. The applicant's position in relation to noise appears to me to be somewhat contradictory. The applicant rejected the condition proposed by the Council's Environmental Health Officer but at the Hearing advocated that the matter could resolved by the imposition of a different condition, as imposed by an Inspector in an appeal decision (APP/C3105/W/18/3210199). I acknowledge that the conditions were differently worded, but the outcome would not have been materially different whichever condition was imposed.

14. I do not consider that the Council acted unreasonably in this respect. If anything, the applicant acted unreasonably by breaking off discussions peremptorily and not progressing discussions to arrive at a mutually acceptable condition. It is possible, and perhaps even likely, that this matter could have been resolved had the applicant continued with discussions.

15. The issue of highway safety was keenly debated by two qualified experts in that field. Both were expressing their experience and professional judgement in support of their respective views. There is no imperative for the Council to agree a standard visibility where it takes contrary view and supports that with evidence. In the event, my conclusions were an adjudication of a disagreement between experts. I find nothing unreasonable in that.

16. There is nothing unreasonable in the Council requiring the applicant to enter into a section 106 agreement for in perpetuity, even if that did result in a nil use of the land. By its very nature, safeguarding is intended to ensure that the land is available for a specific purpose as and when required. It would be counter-productive to time limit a section 106 Agreement when the timescale for the improvements to Junction 19 are not known. In that context, there is no evidence before me that the works to Junction 19 of the M5 are unlikely to proceed: indeed, it is intended that the land will continue to be safeguarded in the emerging North Somerset Local Plan. It is therefore reasonable to conclude that improvements to Junction 19 could come forward at any point during that plan period.

17. Moreover, the need to enter into a section 106 agreement for in perpetuity should not have come as a surprise to the applicant. The safeguarding of the land for possible improvements to Junction 19 of the M5 was part of the North Somerset Council Development Management Policies: Sites and Policies Plan Part 1 (as articulated in Policy DM21 of that plan) at the time the applicant purchased the appeal site. Nevertheless, part of Plot 1 and a good part of Plot 2 (as shown on the layout plan submitted with the planning application) are within the land to be safeguarded. That sets up an immediate conflict with Policy DM21 that needed to be addressed.

[2] This is no criticism of those concerned.

18. In this context, the need for a Section 106 Agreement in and of itself is not denied by the applicant. From the applicant's perspective, the issue is that the requirements set out by the Council go beyond what is reasonable. However, having acknowledged the need for an agreement, no such agreement was put before me. For example, it was open to the applicant to submit a Unilateral Undertaking in the terms deemed to be acceptable for my consideration. But this was not done. It is difficult to argue that the Council acted unreasonably when the applicant did not pursue all measures open to him to cover the point.

19. It is reasonable to conclude that the applicant was aware of the extent of the safeguarded land when submitting the planning application. There must have been, and certainly should have been, an expectation on the part of the applicant that some mechanism would be required if the development was to accord with Policy DM21 and for as long as that policy (or a similar policy in a replacement plan) was in place. It is difficult to envisage how the applicant considered the proposed development to be in accordance with Policy DM21 without entering into a section 106 Agreement of some description to preclude development in the safeguarded land in perpetuity.

Conclusion

20. The PPG is very clear: costs may only 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. I find that the Council has not acted unreasonably in relation to any of three issues cited by the applicant. Consequently, and award of costs is not justified.

Paul Freer
INSPECTOR