



APPLICATION FOR AN AWARD OF COSTS

20 Lingmell Crescent, Seascale
Planning application 4/26/2115/0F1

Applicant for costs: Mr Martin Rigg
Party against whom costs are sought: Cumberland Council
Agent: David Wright MRTPI, Fellpath Planning
Date: 5 September 2026

1.0 Application and award sought

1.1 This application accompanies the appeal under section 78 of the Town and Country Planning Act 1990 against the refusal dated 2 June 2026 of the change of use of land to residential garden and relocation of the existing pedestrian route at 20 Lingmell Crescent, Seascale. It is a separate application for an award of appeal costs against Cumberland Council.

1.2 The appellant seeks a full award. Alternatively, he seeks a partial award confined to expense attributable to any unreasonable conduct identified by the Inspector. The present schedule records £1,425 excluding VAT (£1,710 including VAT), subject to VAT recoverability and substantiation. The Inspector is asked to determine entitlement and scope; the amount would be settled subsequently.

1.3 The central complaint is the Council's rejection of a specific invitation to explore an acceptable amendment, coupled with insufficient explanation of why boundary controls and conditions could not address its concerns. The appellant also challenges the evidential basis for the degree of open-space and landscape harm alleged. This is not a claim that every refusal, or every unsuccessful planning judgement, warrants costs.

2.0 Applicable costs principles

2.1 Planning Practice Guidance (PPG), Appeals, paragraphs 030–033, requires unreasonable conduct causing unnecessary appeal expense. Application-stage conduct may be relevant, but application-stage fees and indirect losses are excluded. Paragraph 049 identifies unsupported refusal grounds, inadequate impact analysis and refusal where conditions could suffice as potential grounds. Paragraph 050 protects reasonable decision-making. Paragraphs 040–044 explain full and partial awards and subsequent settlement of the amount. [1]

2.2 The claim concerns the information and options available when the Council acted. Later landscape evidence does not retrospectively establish unreasonableness, and later changes in national policy are not relied upon to criticise the June decision.

3.0 Evidence of engagement before refusal

3.1 The principal contemporaneous evidence is the complete eight-page email chain supplied as “email chain dated 2nd june.pdf” (Evidence C1). Page references below refer to the PDF pages, rather than the order in which emails were sent.

3.2 On 16 April the officer requested a biodiversity net gain exemption statement. The agent supplied it on 19 April and offered further assistance (C1, pages 7–8). On 3 May the agent sought an update and offered to discuss matters. On 5 May the officer explained the consultation period and said she would identify comments requiring action; on 6 May the agent remained available (C1, pages 5–7). This shows that communication occurred and that the appellant responded to requests.

3.3 On 27 May at 16:37 the officer explained that scattered green areas and open frontages characterised the estate. She considered the proposal inconsistent with DS4 and national design policy, referred to an undesirable precedent, and offered withdrawal or a subsequent appeal (C1, page 4). The appellant acknowledges that this was a stated planning rationale; it was not an entirely unexplained refusal.

3.4 On 27 May at 17:34 the agent disputed the assessment but expressly offered cooperation: “We want to work with the Council and not against it and if there is anything that you would propose that would make this an acceptable scheme let me know and I can discuss with the applicant.” (C1, page 3.) This was an invitation to identify changes, rather than simply a demand for approval.

3.5 On 2 June at 08:55 the officer replied: “I do not feel that a design revision would achieve a scheme that is acceptable, so will be determining the application based on the information you have already submitted.” She acknowledged that the land was not protected, referred to N12’s application to other spaces with evidence of community value, and requested withdrawal by 3pm if desired (C1, pages 1–2).

3.6 At 14:22 the agent again questioned the evidence of community value and the conclusion that amendments could not help. He confirmed the application would not be withdrawn and requested committee determination (C1, page 1). The Council’s refusal is dated that day (Evidence C2). No separate allegation of a breach of delegation rules is made: the email request alone does not establish an entitlement to committee determination.

4.0 Grounds of unreasonable behaviour

Ground 1: failure to explore a proportionate solution

4.1 The criticism is not a complete failure to communicate. It is the categorical rejection of the invitation of 27 May without explaining why a lower or repositioned fence, a reduced area of enclosure, retention of grass and trees, or controls on future structures could not address the concerns. These were directly relevant possibilities where the officer's objection centred on open frontages and boundary treatment.

4.2 The original Planning Statement offered conditions restricting outbuildings, hardstanding and further boundary treatments (Evidence C3, section 3). The Council was therefore aware that the appellant was willing to accept controls. Although it was not obliged to redesign the proposal or prolong determination indefinitely, the appellant submits that reasonable consideration of these options could probably have avoided the appeal or narrowed the dispute and associated professional work.

4.3 C1 records no invitation to discuss a particular boundary solution, no request for proportionate landscape evidence, and no explanation of why conditions would be insufficient. The Council is invited to identify any contemporaneous consideration outside that chain. The short withdrawal deadline is part of the chronology, not an independent allegation of unreasonable behaviour.

Ground 2: insufficient substantiation of the alleged harm

4.4 The refusal alleges loss of an important open space, significant erosion of estate character and harm to the immediate locality and wider residential area. C1 explains the general character of the estate, but does not identify a site-specific assessment supporting the importance attributed to this parcel or distinguish harm caused by the proposed fence from harm inherent in the garden use.

4.5 The appellant accepts that undesignated grassland may have visual and community value, that N12 is not confined to mapped sites, and that a reasoned officer assessment can be sufficient evidence without a commissioned technical report. Private ownership, absence of play equipment and lack of objections do not establish absence of value. The complaint is that the severity of harm alleged and rejection of mitigation were not adequately explained in the correspondence and decision notice available to the appellant.

4.6 The officer's reference to precedent also lacks an explanation in C1 of materially comparable sites or the mechanism by which this permission would cause further harm. It is a supporting point, not a separate refusal reason. The Council's complete assessment should be considered before concluding that the evidential deficiency is established.

5.0 Amendment and causal connection

5.1 The appellant recognises the distinction between the original application and the appeal amendment. The original scheme included a 1.8-metre outer fence. Following refusal, Westwood Landscape Design prepared specialist evidence and a revised arrangement concentrating the high fence at the rear and leaving the outer garden open, with retained and additional trees (Evidence C4). The revised plan was not before the Council when it refused permission.

5.2 The amendment is relevant as a practical example of the boundary options the appellant had invited the Council to discuss. It does not prove that the Council was bound to approve the original fence, nor that the Inspector must accept the amendment. The costs claim asks whether the original concerns could reasonably have been addressed through conditions or constructive engagement before an appeal became necessary.

5.3 The claimed causal sequence is: an express offer to discuss changes; rejection of the prospect of an acceptable revision without sufficient explanation; refusal on the same open-space/design issue; and the resulting need to commission landscape advice and prepare the appeal. Had the Council explained a workable boundary approach, the appellant submits that there was a realistic prospect of resolving or materially narrowing that issue during determination.

5.4 A full award is sought if the Inspector finds that unreasonable refusal or failure to pursue an available solution caused the appeal as a whole. If refusal of the original scheme was reasonable and permission becomes possible only because of new mitigation, the later improvement alone does not justify a full award.

5.5 Alternatively, a partial award is sought only for identifiable additional work caused by the conduct found unreasonable. This may include avoidable work establishing and answering an inadequately substantiated open-space objection. The appellant recognises that ordinary redesign or evidence costs which would have been necessary in any event must be excluded. Any apportionment between appeal assessment and design work will be supported by the consultant's fee breakdown; the whole £800 is not automatically attributable to unreasonable conduct merely because it followed refusal.

6.0 Expense incurred to date

6.1 The following figures are supplied by the appellant's agent for this application. They record the landscape report and five hours of appeal work; no additional hours for preparing this costs application have been assumed or added.

Work	Net	VAT (20%)	Total
Westwood landscape report	£800.00	£160.00	£960.00
Fellpath: 5 hours × £125	£625.00	£125.00	£750.00
Total to date	£1,425.00	£285.00	£1,710.00

7.0 Scope, evidence and relief requested

7.1 VAT is included only to the extent that it is an actual irrecoverable expense of the appellant. If all VAT is recoverable, the present net total is £1,425. If none is recoverable, the gross total is £1,710. The VAT position will be confirmed when quantifying any award.

7.2 No invoices or detailed time entries are appended to this draft. Those records should support settlement of the amount and, where required, allocation of work to the conduct found unreasonable. No original application fees, earlier application work, compensation for delay or unrelated expenses are included. There will be no double recovery of professional time.

7.3 The appellant respectfully requests a full award of reasonable appeal costs against Cumberland Council or, alternatively, a partial award limited to the unnecessary expense established. The Council is asked to address the invitation of 27 May, its response of 2 June, the consideration given to conditions and design alternatives, and the evidence supporting the degree of harm alleged.

7.4 The appellant asks that this application be considered alongside the planning appeal and that he have an opportunity to reply to the Council's costs response in accordance with the applicable procedure. The substantive planning merits remain addressed in the separate Statement of Case.

8.0 Supporting documents and authority

C1 "email chain dated 2nd june.pdf", eight pages, correspondence from 16 April to 2 June 2026. Submit the complete PDF with this application. Key passages: pages 2–4; corrections addressed at paragraph 3.7 above.

C2 Cumberland Council refusal notice, 4/26/2115/0F1, dated 2 June 2026 (appeal core document).

C3 Fellpath Planning, Planning and Design & Access Statement, 20 March 2026, particularly section 3 (appeal core document).

C4 Westwood Landscape Design, Landscape Supporting Statement Revision A, 27 July 2026, and Landscape Plan WW/L01 Revision A (appeal documents, subject to acceptance).

C5 Appellant's Statement of Case, Procedural Note and Suggested Planning Conditions (separate appeal documents).

[1] Planning Practice Guidance, Appeals: reference IDs 16-030-20140306 to 16-033-20140306; 16-040-20140306, 16-041-20140306, 16-044-20140306, 16-049-20140306 and 16-050-20140306. Available at <https://www.gov.uk/guidance/appeals> (accessed 5 September 2026).