

APPELLANT'S RESPONSE TO THE LOCAL PLANNING AUTHORITY'S COSTS COMMENTS

Appeal reference: 6015757

Planning application: 4/26/2115/0F1

Site: 20 Lingmell Crescent, Seascale, Cumbria, CA20 1JZ

Appellant: Mr Martin Rigg

Local Planning Authority: Cumberland Council

Agent: David Wright MRTPI, Fellpath Planning

Date: 23 September 2026

1.0 Purpose and scope

- 1.1 This response is submitted following the Planning Inspectorate's invitation to comment on Cumberland Council's response to the appellant's application for an award of costs. It is submitted separately from the substantive appeal representations.
- 1.2 This response does not raise a new costs case and does not repeat the original application. It addresses only the points advanced by the Council in resisting the costs claim. The appellant maintains the request for a full award or, alternatively, a partial award limited to unnecessary appeal expense attributable to any unreasonable behaviour found by the Inspector.

2.0 The applicable test

- 2.1 There is no dispute about the basic test. An award requires unreasonable behaviour which has directly caused another party to incur unnecessary or wasted expense in the appeal process. The appellant has never suggested that a difference of planning judgement, by itself, is sufficient.
- 2.2 The relevant Planning Practice Guidance also identifies, among the examples of substantive unreasonable behaviour by a local planning authority: failure to substantiate a reason for refusal; vague or generalised assertions unsupported by objective analysis; refusal on a matter capable of being addressed by conditions; and failure to provide reasonably requested information where a more helpful approach would probably have avoided the appeal or narrowed the issues and reduced appeal expense.
- 2.3 The costs application therefore turns on the Council's handling and substantiation of the particular concerns in this case, rather than on the mere fact that the appellant disagrees with the refusal.

3.0 The Council's description of the proposal as "fundamentally unacceptable"

- 3.1 The Council now says that minor amendments and/or planning conditions could not have overcome its concerns and that the proposal was fundamentally unacceptable. That is the Council's present position, but it does not answer the specific conduct identified in the costs application.
- 3.2 The contemporaneous correspondence records that, on 27 May 2026, the appellant's agent expressly invited the Council to identify anything that could make the scheme acceptable so that

it could be discussed with the applicant. On 2 June 2026 the officer responded that she did not consider a design revision could achieve an acceptable scheme. The application was then refused that same day.

- 3.3 The costs complaint is not that the Council was obliged to redesign the proposal for the applicant, or to negotiate indefinitely. It is that, having identified open frontages and boundary treatment as central concerns and having received a direct invitation to explore a solution, the Council rejected the possibility of any design revision without explaining why obvious proportionate options such as repositioning or reducing boundary treatments or retaining part of the land open or using conditions to control future structures and boundary treatments could not address or narrow the concern.
- 3.4 Offering the appellant the choice of withdrawal or refusal was a procedural option. It did not, in itself, answer the appellant's request for information about whether the identified harm could be overcome. The Inspector is respectfully asked to consider that distinction against the Planning Practice Guidance on constructive engagement and reasonably requested information.

4.0 Professional judgement and substantiation of harm

- 4.1 The appellant accepts the Council's point that character, appearance and visual impact involve professional planning judgement. The original costs application expressly accepted that a reasoned officer assessment can amount to evidence and that a separate technical landscape report was not a prerequisite to a lawful refusal.
- 4.2 The issue raised was narrower. The refusal described the site as an "important area of open space", alleged "significant" erosion of estate character and identified harm to both the immediate locality and the wider residential area. The costs application questioned the evidential basis for that degree of harm and the absence of a clear explanation as to why mitigation or conditions could not address it.
- 4.3 The Council's response states that these matters are professional judgement, but it does not identify any additional site-specific evidence or objective analysis which was relied upon to establish the asserted importance of this particular parcel, the extent of community value attributed to it, or why the identified harm was incapable of mitigation. The appellant therefore maintains the point already made in the original costs application: the Inspector should consider whether the refusal reason was sufficiently substantiated, rather than treating the existence of a planning judgement as conclusive of reasonableness.

5.0 Previous applications and absence of formal pre-application advice

- 5.1 The previous applications and withdrawals are not disputed. They were not concealed from the Council and the planning history was expressly acknowledged in the material submitted with the March 2026 application. The appellant was aware that the Council had concerns about the use and enclosure of the land.
- 5.2 That history does not dispose of the costs application. The present claim has never been based on surprise at the existence of a Council objection. The March 2026 application was accompanied by a planning case addressing the status and function of the land and offered controls on outbuildings, hardstanding and further boundary treatments. Furthermore, unlike previous applications it addressed head on the application of the Council's Local Plan policy on open space.

When the Council maintained its concern, the agent then expressly invited a discussion about changes capable of making the proposal acceptable.

- 5.3 The fact that the appellant did not purchase or request separate formal pre-application advice does not answer the reasonableness of the Council's handling of the live application. The relevant issue is the Council's response to the information and invitation actually before it during determination.

6.0 Revised appeal material and the causal connection

- 6.1 The Council submits that revised plans, landscaping measures and post-refusal evidence cannot retrospectively demonstrate that its June decision was unreasonable. The appellant agrees with that principle. The original costs application expressly stated that later landscape evidence does not retrospectively establish unreasonableness and that the revised appeal arrangement was not before the Council when it refused permission.
- 6.2 The revised material is relied upon only in the limited manner already explained in the costs application: as a practical illustration of the type of boundary and landscape options which the appellant had invited the Council to discuss before refusal. It is not advanced as proof that the Council was bound to approve the original 1.8 metre perimeter fence, nor as a new ground of unreasonable behaviour.
- 6.3 For the same reason, the appellant has never contended that the whole cost of the post-refusal landscape report automatically falls to the Council merely because it was commissioned after refusal. The application expressly recognised the need to distinguish ordinary appeal/redesign work from expenditure causally attributable to any unreasonable conduct.
- 6.4 If the Inspector concludes that the original scheme was reasonably refused and that permission only becomes possible because of new mitigation, the appellant accepts that this would weigh strongly against a full award on that basis. The alternative claim for a partial award was included precisely so that any award can be confined to identifiable additional work caused by the conduct the Inspector finds unreasonable.

7.0 Causation and relief sought

- 7.1 The causal case remains the one set out in the original application: the appellant expressly offered to discuss changes; the prospect of an acceptable revision was rejected without sufficient explanation; the application was refused on the same open-space/design issue; and appeal work was then required to investigate, evidence and respond to that issue.
- 7.2 The appellant does not seek recovery of the original planning application fee, work on earlier applications, compensation for delay or unrelated expenditure. The costs sought remain limited to appeal expense, with the precise amount and any necessary apportionment to be substantiated if an award is made.
- 7.3 The appellant therefore respectfully maintains the application for a full award if the Inspector concludes that unreasonable refusal or failure to pursue a reasonably available solution caused the appeal as a whole. In the alternative, a partial award is requested for the identifiable unnecessary expense caused by any failure to substantiate the refusal reason adequately or to engage proportionately with the requested design/condition options.

8.0 Conclusion

- 8.1 The Council's response confirms that it regarded the proposal as fundamentally unacceptable, but it does not materially alter the two issues placed before the Inspector in the original costs application: whether the degree of open-space and landscape harm alleged was sufficiently substantiated, and whether a more helpful response to the appellant's express invitation to explore proportionate changes or conditions would probably have avoided the appeal or narrowed the issues and reduced expense.
- 8.2 Those matters fall squarely within the considerations identified in the Planning Practice Guidance. The appellant respectfully asks the Inspector to determine the costs application on the original evidence, the Council's response and these limited comments, and to make a full or partial award as appropriate.

Authority relied upon

Planning Practice Guidance - Appeals, particularly paragraphs 029-030, 033, 040-044 and 046-050 (including paragraph 049, Reference ID 16-049-20140306).

Planning Inspectorate Procedural Guide: Planning appeals - England, for appeals relating to applications dated on or before 31 March 2026, section 3.2 (Costs).

AI-use disclosure

Generative artificial intelligence was used to cross check planning practice guidance and review grammar for this response. The final factual content, planning analysis, professional judgement and conclusions are those of David Wright MRTPI, who accepts full professional responsibility for the submission.

David Wright MRTPI

Fellpath Planning

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