



Neutral Citation Number: [2026] CIGC (Civ) 30

Cause No: G2025-0254

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

THE KING

(On the application of

(1) THE PROPRIETORS OF STRATA PLAN 148; and

(2) THE PROPRIETORS OF STRATA PLAN 3)

Applicants

-and-

CHAIRMAN OF THE PLANNING APPEALS TRIBUNAL

Respondent

(1) BUTLER GROUP LIMITED

(2) CENTRAL PLANNING AUTHORITY

Interested Parties

AND IN

Cause No: G2025-0193

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

THE PROPRIETORS, STRATA PLAN 148 (THE PALMS)

AND 37 OTHERS

Appellants

-and-

(1) PETER BROADHURST

(As Chairman of the PLANNING APPEALS TRIBUNAL)

(2) CENTRAL PLANNING AUTHORITY

(3) BUTLER GROUP LIMITED

Respondents

Appearances: Mr Chris Buttler KC instructed by Ms Kate McClymont of Nelsons Legal for the Applicants / Appellants

Senior Crown Counsel Mr Nigel Gayle and Crown Counsel Ms Felicia Connor of the Attorney General's Chambers for the Respondent / First Respondent

Mr Samuel Jackson and Ms Selina Tibbetts of Jackson Law for the First Interested Party / Third Respondent

Crown Counsel Ms Anna Russell-Knee of the Attorney General's Chambers for the Second Interested Party / Second Respondent

Before: The Honourable Justice Jalil Asif

Heard: On the papers

Judgment: 25 September 2026

Civil procedure—costs—judicial review—whether to make issues based or percentage costs order where applicant succeeded on one complaint and failed on the other

Civil procedure—costs—judicial review—whether to order costs against interested party or to require interested party to contribute to applicant's costs

JUDGMENT

1. I heard the application for judicial review in Cause No: G2025-0254 on 19 and 20 March 2026 and delivered my reserved judgment on 3 June 2026: see *The King (Proprietors of Strata Plan 148 and Another) v Chairman of the Planning Appeals Tribunal (No. 2)* [2026] CIGC (Civ) 21. This is my determination of the costs orders that should be made in those proceedings consequential on that judgment and in the linked proceedings, Cause No: G2025-0193, which I will address in the third part of this judgment. Finally, because it has been raised by one of the parties, I will also deal in the fourth section of this judgment with the costs of the hearing below.
2. For the purposes of this determination, I have been provided with the following materials:
 - 2.1 combined written submissions dated 23 July 2026 and a combined bundle of authorities filed on behalf of the Applicants / Appellants in both G2025-0254 and G2025-0193;
 - 2.2 written submissions dated 21 July 2026 and a bundle of authorities filed on behalf of the Chairman of the Planning Appeals Tribunal in G2025-0254;
 - 2.3 written submissions dated 21 July 2026, a bundle of authorities and a copy of the affidavit of Felicia Connor sworn on 10 October 2025 exhibiting various documents in support of an application to strike out the proceedings made in 2025, filed on behalf of the Chairman in G2025-0193;
 - 2.4 written submissions dated 17 June 2026 and an affidavit of Selina Tibbetts sworn on 17 June 2026 exhibiting *inter partes* correspondence filed on behalf of Butler Group Ltd in G2025-0254 in relation to the costs of certain interlocutory matters; and
 - 2.5 written submissions dated 23 July 2026 and a bundle of authorities filed on behalf of Butler Group Ltd in G2025-0254 in relation to the costs of the substantive judicial review.

Butler Group Ltd did not file any additional submissions on costs in G2025-0193 but indicated that it takes broadly the same position in those proceedings as it does in G2025-0254.

3. The Central Planning Authority indicated that it does not seek its costs from any other party and does not expect to be the subject of any adverse costs order given its limited role and the effectively neutral position that it adopted in the proceedings. It has therefore not prepared any submissions on costs. I agree with that stance and make no orders for costs in favour of or against the Central Planning Authority.

A. The relevant Rules

4. The applicable Rules relevant to the costs issues in these two matters are O.62, rr.4, 5 and 8, which provide as follows:

“4.(1) [...]

- (2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by successful party in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.*

[...]

- (5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.*

[...]

- (7) The orders which the Court may make under this rule include an order that a party must pay —*

- (a) a proportion of another party's costs;*
(b) a stated amount in respect of another party's costs;

[...]

- (f) costs relating only to a distinct part of the proceedings;*

[...]

- 5.(1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described in the following paragraphs of this rule.*

- (2) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by the party as against any other party (except for the purpose of obtaining a default judgment), that other party shall be entitled to the other party's costs of the action or counterclaim or the other party's costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.*

8.(1) [...]

- (2) Except in a case to which paragraph (1) applies, whenever the Court makes an order for costs, the party entitled to the benefit of the order shall be entitled, at the party's option —*
(a) to an order that such costs shall be taxed if not agreed; or

(b) to have the amount of such costs assessed by the Judge.”

B. G2025-0254 – the judicial review proceedings

5. The Applicants argue for an order that the Chairman of the Planning Appeals Tribunal pay their costs, to be taxed on the standard basis if not agreed. They submit that they were the successful parties overall, and the fact that they lost on one of the two primary arguments that they advanced should not detract from that.
6. The Chairman contends for no order as to costs. It is submitted on his behalf that such an order would properly reflect the overall justice of the case having regard to the following factors:
 - 6.1 the Applicants’ judicial review challenged two distinct decisions of the Chairman and only succeeded on one – the Chairman’s case wholly succeeded on the other;
 - 6.2 the issues before the court were narrowed from their wider ambit at earlier stages, including by the Applicants’ abandonment before or during the substantive hearing of certain grounds of challenge and forms of relief sought;
 - 6.3 the judicial review proceedings were generated by the Applicants’ admitted failure to comply with the rules as to service in the Development and Planning (Appeals) Rules (1999 Revision);
 - 6.4 the public law nature of the proceedings and the Chairman’s position as a statutory, quasi-judicial, tribunal;
 - 6.5 the participation of Butler Group Ltd to protect its separate interests; and
 - 6.6 the conduct of the parties before and during the proceedings.
7. Alternatively, if the court were to make a costs order against the Chairman, then he argues that the Applicants should only recover their costs of the issue on which they won and any costs order should be apportioned between the Chairman and Butler Group Ltd to reflect their respective participation in the judicial review.

8. Like the Central Planning Authority, Butler Group Ltd does not seek its costs of the substantive judicial review proceedings from any other party and submits that it should not be liable for any costs having regard to what it describes as its limited role in the determination of the judicial review. However, Butler Group Ltd does argue that the Applicants should pay Butler Group Ltd's costs of three interlocutory summonses that it says it was obliged to file and pursue and in respect of which, it says, it obtained the relief it sought by consent.
9. My decision on costs is that the Chairman shall pay the Applicants' costs of the action to be taxed on the standard basis, if not agreed. I do not make any order in respect of the costs of the Interested Parties. This does not affect the previous interlocutory costs orders that have been made, save that the undetermined costs of the three interlocutory summonses should be costs in the cause. My reasons for those rulings and for concluding that an issues-based costs order or a percentage costs order are not appropriate, are as follows.
10. I accept the Applicants' submission that useful guidance is to be drawn from the approach to costs issues in England, where the following has been stated:

- 10.1 HLB Kidsons v Lloyds Underwriters [2007] EWHC 2699 (Comm); [2008] 3 Costs LR 427, per Gloster J (as she then was):

"11. There is no automatic rule requiring reduction of a successful party's costs if he loses on one or more issues. In any litigation, especially complex litigation such as the present case, any winning party is likely to fail on one or more issues in the case. As Simon Brown LJ said in Budgen v Andrew Gardner Partnership [2002] EWCA Civ 1125 at para 35: 'the court can properly have regard to the fact that in almost every case even the winner is likely to fail on some issues'. Likewise in Travellers' Casualty (supra), Clarke J said at para 12:

'If the successful claimant has lost out on a number of issues it may be inappropriate to make separate orders for costs in respect of issues upon which he has failed, unless the points were unreasonably taken. It is a fortunate litigant who wins on every point.'

The reference to Travellers' Casualty is to Travelers' Casualty and Surety Company of Canada v Sun Life Assurance Company of Canada (UK) Ltd [2006] EWHC 2716 (Comm).

- 10.2 Fox v Foundation Piling Ltd [2011] EWCA Civ 790; [2011] CP Rep 41, per Jackson LJ:

"62. There has been a growing and unwelcome tendency by first instance courts and, dare I say it, this court as well to depart from the starting point set out in CPR r.44.3(2)(a) too far and too often. Such an approach may strive for perfect justice in the individual case, but at huge additional cost to the parties and at huge costs to other litigants because of the uncertainty which

such an approach generates. This unwelcome trend now manifests itself in (a) numerous first instance hearings in which the only issue is costs and (b) a swarm of appeals to the Court of Appeal about costs, of which this case is an example.”

10.3 *R (Sino) v Secretary of State for the Home Department* [2016] 4 WLR 80 per Hayden J:

“24 There is of course no rule requiring deduction of a successful party’s cost if he loses on one or more issue. Indeed, there are very few cases where one party succeeds on every point. The dangers inherent in trying to construct awards in costs which reflect this often complex litigation matrix are obvious and encapsulated by Jackson LJ in Fox v Foundation Piling Ltd [2011] CP Rep 41, at para 62.”

10.4 *R (Johnson) v Secretary of State for Work and Pensions* [2019] EWHC 3631, where Singh LJ and

Lewis J confirmed the application of the principles applicable to private law civil cases to judicial review proceedings in paragraph 26, expressly approving Clarke J’s observation in *Travelers’ Casualty*, as quoted by Gloster J in *HLB Kidsons*, and continued:

“27 Against that background of undisputed principle, it seems to us that there are two features of the present case which lead us ultimately to the conclusion that there should be no reduction in the claimants’ costs in principle because Ms Johnson failed on the PSED ground. The first is that this was not unreasonably pursued. Permission to advance this ground was granted, as it was for other grounds. The second point is that much if not all of the evidence relating to this ground would, it seems to us, have had to be placed before the court in any event. [...]”

I have applied the guidance from these cases in reaching my conclusion on the appropriate costs order in respect of the judicial review proceedings.

11. The Chairman is right that the Applicants lost on one of the two core arguments that they advanced, namely the argument based upon *R v Soneji* [2006] AC 340 that the Development and Planning (Appeals) Rules do not specify a consequence for a failure to serve a Notice of Appeal upon another party and so there is no consequence for a failure to do so. However, in my judgment, the Applicants were the successful parties overall: they obtained the quashing of the Chairman’s decision, which was the substantive relief that they sought, with the result that the matter has been remitted to the Chairman to make his decision afresh. The fact that the Applicants lost on the *Soneji* argument does not, of itself, require the court to make some other order as to costs. As indicated in the English authorities I have set out above, it is very rare that a litigant will win on every point. The court’s focus should be on the commonsense answer to the question who is the overall winner, rather than allowing itself to be distracted by arguments over who won or lost on particular issues within the overall scope of the arguments.

12. In this case, the Applicants did not act unreasonably in raising and running the Soneji argument. Moreover, given the Chairman's failure to address it in his decision under challenge, it was a point that needed to be determined because, if the Applicants were right, then that would have been an end of the matter and of the need for any further decision by the Chairman or the Planning Appeals Tribunal on whether to grant the Applicants an extension of time for service of their Notice of Appeal on Butler Group Ltd.
13. I do not consider that the fact that the Applicants trimmed their case in the lead-up to the hearing of the judicial review and did not advance every point that they had intended to argue should result in some different outcome as to costs. Parties should be encouraged to withdraw or not to pursue arguments that do not make a difference to the outcome or are likely to fail, in order to make the litigation process more efficient, rather than being discouraged from doing so by the risk of facing adverse costs orders – unless the arguments are obviously bad and should not have been advanced or should have been abandoned at a far earlier stage. I do not consider that the Applicants' conduct came anywhere close to crossing that line. Indeed, it seems to me that the Applicants acted responsibly and with an eye on the overriding objective in focussing on the issues that were likely to be dispositive and jettisoning those which might not be.
14. I reject the Chairman's submission that the fact that the judicial review arose out of a failure by the Applicants to comply with the service requirements of the Development and Planning (Appeals) Rules should affect the court's approach to the allocation of costs. In my view, what caused the need for the judicial review proceedings and their associated costs was the Chairman's failure to deal with the Applicants' application for an extension of time in a legally correct way, and his failure to concede that he had not done so, requiring the judicial review to run its full course.
15. I also reject the suggestion on behalf of the Chairman that the allocation of costs should be affected by the fact that these are public law proceedings and that the Chairman is performing a statutory and quasi-judicial function. First, it is clear from the English authorities relied on by the Applicants and which I have identified earlier in this judgment that the same general approach to costs should apply to judicial review proceedings as to private law civil claims. Secondly, there is no suggestion

that the Chairman will have to pay the costs ordered personally. I fully expect that he will be indemnified against such liability by the Planning Appeals Tribunal or by Government. The fact that the Chairman is performing a statutory and quasi-judicial function is therefore irrelevant.

16. Contrary to the Chairman's submission, I do not consider that there was any relevant conduct by the Applicants that should affect the terms of the costs orders that I make. For the avoidance of doubt, I consider that the issues concerning finalisation of my previous judgment in this matter are wholly irrelevant to the question of the costs of the proceedings, and I have put those issues out of my mind in determining the costs issues.
17. The Chairman seeks to lay off some of his costs liability to Butler Group Ltd. Butler Group Ltd has not directly addressed this in its skeleton argument, presumably because it did not have advance notice of the Chairman's intention to raise this issue: their respective submissions were filed on the same day. However, in the Applicants' response to Butler Group Ltd's submissions, the Applicants note that the general position in relation to planning appeals is that the developer should not recover costs unless they have a separate issue to raise from those advanced by the planning authority: see Bolton MBC v Secretary of State for the Environment [1995] 1 WLR 1176 at 1178G to 1179B. The Applicants suggest that the corollary should also apply by analogy, namely that the developer should not be exposed to a costs liability unless it has raised a separate issue from those advanced by the planning authority. In my view, this makes good, logical sense and should apply. Butler Group Ltd makes a similar point in support of its general argument that it should not bear any liability for costs in the proceedings. It draws my attention to the judgment of Smellie CJ (as he then was) in Axis International Ltd v Civil Aviation Authority of the Cayman Islands (unreported 06/11/14), where the learned Chief Justice referred to Bolton MBC and then said:

"12. First, I should note my acceptance that that dicta is suitable for adoption as guidance for the approach to the award of costs in Judicial Review proceedings which review the decisions and decision-making processes of a regulatory authority like the CAACI.

13. Accordingly, the regulated party will not normally be entitled to his costs unless he can show that there was likely to be a separate issue on which he was entitled to be heard; that is to say an issue not to be covered by counsel for the regulator (here the CAACI); or unless he has an interest which requires separate representation. The mere fact that he is the regulated party will not of itself justify a second set of costs in every case."

18. As far as the substantive judicial review is concerned, Butler Group Ltd did not advance any different arguments from those put forward by the Chairman. It is right to record that, despite having indicated before the hearing that Butler Group Ltd did not anticipate making any oral submissions, in fact the attorney for Butler Group Ltd spoke for nearly an hour in support of the Chairman's position. However, this was a modest fraction of the two days of the overall hearing and in my view should not expose Butler Group Ltd to a costs liability.
19. In the circumstances, I do not accede to the Chairman's argument that I should order Butler Group Ltd to contribute to the Chairman's costs liability, whether by making an order that Butler Group Ltd is jointly or severally liable to the Applicants for the costs of the judicial review or by making an order that Butler Group Ltd should contribute to or partially indemnify the Chairman against his costs liability to the Applicants.
20. Finally in relation to the judicial review, I will address Butler Group Ltd's argument that it should recover its costs relating to three interlocutory summonses that it pursued. The summonses concerned: (a) an application to set aside the grant of leave to pursue the judicial review and to set aside the stay of the planning permission that I granted to the Applicants *ex parte*; (b) a separate application to vary the stay of the planning permission; and (c) an application for leave to adduce further evidence out of time.
21. Butler Group Ltd concedes that I dismissed its application to set aside the grant of leave to pursue judicial review and that I ordered Butler Group Ltd, the Planning Appeals Tribunal and the Central Planning Authority to pay the costs of that application. It does not seek to set aside or vary that order. However, Butler Group Ltd argues that the other aspects of the first summons concerning the stay of the planning permission and the relief it sought by its second summons regarding the stay of the planning permission were both ultimately agreed by the Applicants on 18 March 2026, the day before the judicial review hearing. No order was made regarding the summons for leave to adduce further evidence, which was withdrawn along with the other summonses. The consent order agreed by the parties on 18 March 2026 provides that the outstanding costs of the interlocutory summonses will be determined by the court at a later date, following judgment on the judicial review.

22. Butler Group Ltd argues that, until the consent order was agreed, it had its own separate interest to protect, namely the grant of the planning permission in its favour, so that its active participation in the proceedings was justified. Butler Group Ltd submits that, in substance, it obtained the relief it sought, and it should therefore be entitled to its costs of those interlocutory summonses, insofar as they have not already been determined.
23. The Applicants respond that the outstanding relief sought by Butler Group Ltd regarding the stay of the planning permission was never determined by the court and the Applicants agreed to discharge the stay of the planning permission for pragmatic reasons because they no longer needed the stay to be in place by the time of the substantive hearing. This was because, by that time, Butler Group Ltd could not practicably have commenced development before the conclusion of the proceedings.
24. In my view the proper analysis is that the relief sought by Butler Group Ltd had become redundant by 18 March 2026 due to the passage of time and the progress of the judicial review proceedings. I do not consider that the Applicants' concession that the stay of the planning permission could be discharged at that time was any indication that Butler Group Ltd's position on that point at earlier stages of the proceedings was necessarily correct. In my view, given that the balance of Butler Group Ltd's first summons and its second summons were never argued before and determined by the court, the appropriate costs order should be costs in the cause.
25. As regards Butler Group Ltd's third summons, this was filed on 4 March 2026 and sought leave to rely on an affidavit sworn on 3 March 2026 by Ms Edelgard Beister. Until 25 November 2025, Ms Beister was the owner of a unit within one of the two strata that were the Applicants. Ms Beister exhibited an email thread including copies of emails from Mr Richard Reupke, the chairman of the executive committee of the strata, which she said she had received on or about 30 September 2025. This was at a time when she was still a strata proprietor and one of the named appellants in G2025-0193. The emails provided an update on the progress of the dispute regarding the planning permission and discussed strategy and costs issues. One of the earlier emails in the thread attached a copy of an opinion from a King's Counsel regarding the merits and Mr Reupke quoted in the email counsel's assessment of the prospects of success.

26. The Applicants opposed Butler Group Ltd's summons on the ground that the emails were privileged and that privilege could not be waived by Ms Beister unilaterally and had not been waived, with the result that Ms Beister's affidavit was inadmissible. The Applicants' submission at the time was that the privilege issue was obvious, should have been identified by Butler Group Ltd's attorneys and that Butler Group Ltd should never have made the application to rely on Ms Beister's affidavit.
27. Having re-read Ms Beister's affidavit and the parties' submissions in relation to the summons, and conscious that the issues on the summons have not been argued, I consider that it is unlikely that Butler Group Ltd's application would have succeeded. I think it is significantly more likely that I would have dismissed the summons and ordered Butler Group Ltd to pay the costs. Given the arguments on privilege, it is quite feasible that I would have ordered those costs to be paid on the indemnity basis. I therefore conclude that it is not appropriate to accede to Butler Group Ltd's argument now that it should recover its costs of the unargued summons. Instead, I consider that the most appropriate order to make is also costs in the cause.

C. G2025-0193 – the appeal proceedings

28. I must also determine the outstanding costs issues in this case, which arise in the following circumstances. Before commencing their judicial review claim, on 21 July 2025 the Appellants commenced a statutory appeal against the refusal by the Chairman of their application for an extension of time, as provided for by GCR O.55, which they served on 22 July 2025.
29. On 29 July 2025, the Chairman objected that a statutory appeal was only available where the decision was made by the Planning Appeals Tribunal and was not available for a decision by the Chairman alone, including a decision as to an extension of time. It was said on the Chairman's behalf that the appeal was therefore abusive. On 8 August 2025, the Appellants said that their position was that the Chairman had made his decision on behalf of the Planning Appeals Tribunal, so that there was a right of appeal. However, they said that they acknowledged the Chairman's argument and would therefore file an application for judicial review. They proposed that the appeal should be stayed pending the determination of the judicial review. The Appellants explained that they wished

to guard against the possibility that the court would determine that judicial review was not available and that they should have proceeded by way of appeal after all. On 14 August 2025, the Chairman circulated a draft consent order providing for a stay of the appeal. However, the parties were not able to agree the terms of the consent order and, in particular, the Appellants' suggestion that the appeal proceedings should be treated as being an application for judicial review and the incidence of costs. On 28 August 2025, the Appellants wrote stating:

"Please let me know within 7 days whether, in light of the authorities supporting our proposed approach, you are now willing to agree to our proposed consent order. If not, we will proceed with the JR from scratch (as you suggest) and treat the appeal as stayed with any costs arising from it dealt with under the JR. If despite this, you apply to strike out the appeal, we will defend on the basis that the JR is going to determine whether there is a right of appeal and so it would be duplicitous [to] have the matter determined in that proceeding and produce this correspondence in support of a costs order in favour of our clients."

The Chairman responded the same day, saying:

"We believe our draft Consent Order protects you[r] clients' interest and properly treats with the matter of the stay.

We wish to advise that, unless a stay is agreed, with costs as conditionally proposed, we will not hold our hands in taking the necessary actions, not excluding a strike-out application with costs."

The Chairman's position was supported by Butler Group Ltd.

30. In late September or early October 2025, the Applicants sent their draft application for leave to pursue judicial review to the Chairman. On 6 October 2025, the Applicants informed the Chairman that they had obtained leave to pursue the judicial review proceedings. The Chairman invited the Appellants to discontinue their appeal and threatened to apply to strike it out and seek indemnity costs if they did not. The Appellants responded, referring to the earlier correspondence, and asserted that because the court would have to consider within the judicial review proceedings whether or not there was a right of appeal, it would be a waste of court time and of the parties' resources to pursue an application to strike out the appeal. They suggested that if the Chairman did pursue such a course rather than agreeing a stay of the appeal, then the Appellants would seek payment of their own costs by the Chairman. The Chairman replied that the Appellants' position was unreasonable and said that he would apply to strike out the appeal and seek indemnity costs.
31. On 10 October 2025, the Chairman issued a summons seeking to strike out the appeal. This came on for hearing before Walters J (Ag) on 27 November 2025. Walters J (Ag) felt constrained to recuse

himself from hearing the matter but did allow the Appellants to withdraw their appeal and he adjourned the question of costs.

32. Before me, the Appellants concede that they should pay the costs of the appeal proceedings on the standard basis. The Chairman seeks his costs on the indemnity basis, arguing that the Appellants' pursuit of an appeal was misconceived and relying on the correspondence that I have summarised.
33. I have carefully read through the correspondence with which I have been provided. I am not persuaded that the Appellants' conduct in initially proceeding by way of a statutory appeal under GCR O.55 or in the way in which they responded to the objection raised on behalf of the Chairman was improper, unreasonable or negligent. I therefore conclude that the appropriate order as between the Appellants and the Chairman is that the Appellants should pay the Chairman's costs on the standard basis.
34. The Appellants ask me summarily to assess the Chairman's costs and suggest that those costs should not be allowed at more than about US \$500. I cannot do so. GCR O.62, r.8 clearly provides that direct assessment of costs by the court is only available at the option of the receiving party, not the paying party. The Chairman has not asked me to assess his costs. Accordingly, the Chairman's claim for costs will have to proceed to a taxation in the normal way.
35. As regards the costs of Butler Group Ltd, the Chairman's submissions include an argument that the effect of the Appellants' withdrawal of their appeal on 27 November 2025 is that the other parties are automatically entitled to their costs. This is based on GCR O.62, r.5(2), which I have set out earlier in this judgment. However, the opening words of GCR O.62, r.5(2) expressly state that it applies where a party discontinues or withdraws their claim "*by notice in writing and without leave*". That is not my understanding of what has happened in this case. There is no suggestion that the Appellants served a notice of discontinuance or withdrawal in writing. Instead, it is said for the Chairman that the Appellants only indicated their intention to withdraw the appeal during the course of the hearing before Walters J (Ag) on 27 November 2025, after the attorney for the Chairman had made his submissions on the application. This is not disputed by the Appellants. It

appears that Walters J (Ag) then gave the Appellants leave to withdraw the appeal – hence the Order dated 27 November 2025 recording that the appeal was withdrawn by the Appellants. If the appeal had been withdrawn without leave, there would have been no need to record the withdrawal in the Order. The suggestion that costs automatically follow the withdrawal of the appeal is also contradicted by the terms of Walters J (Ag)’s order, which expressly provided that the question of the costs of the appeal was adjourned to be dealt with me on 12 December 2025, which hearing was then further adjourned by the parties by consent.

36. It follows that GCR O.62, r.5(2) is inapplicable and there is no automatic entitlement to costs that might apply in favour of Butler Group Ltd as a party to the appeal proceedings. I must therefore exercise my discretion as to the costs of Butler Group Ltd within the appeal proceedings. Having regard to Butler Group Ltd’s stated position that it takes the same stance as regards the costs of the appeal as it does with respect to the costs of the judicial review, that Butler Group Ltd’s position in the substantive judicial review is that it should not receive or pay costs, and that Butler Group Ltd appears to have taken very limited steps in relation to the appeal, I consider that the just outcome is that I should make no order in respect of Butler Group Ltd’s costs of the appeal proceedings.

D. The costs of the application to the Chairman of the Planning Appeals Tribunal

37. Butler Group Ltd asks me to reserve the costs of the application to the Chairman so that they can be determined when the matter is re-heard. I do not consider this is necessary. I accept the Applicants’ argument that the effect of quashing the Chairman’s decision is that there is no subsisting costs order from the hearing below before the Chairman. The Chairman will have to exercise his powers regarding costs afresh when he re-makes his decision.

Dated 25 September 2026



**THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT**