



Neutral Citation Number: [2026] CIGC (Civ) 11

Cause No: G 2025-0254

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

THE KING

(On the application of

(1) THE PROPRIETORS OF STRATA PLAN 148

(2) THE PROPRIETORS OF STRATA PLAN 3)

Applicants

-and-

PLANNING APPEALS TRIBUNAL

Respondent

(1) BUTLER GROUP LIMITED

(2) CENTRAL PLANNING AUTHORITY

Interested Parties

Appearances:

Mr Chris Buttler KC of counsel instructed by Ms Kate McClymont and Ms Sarah Brady of Nelsons Legal for the Applicants

The Respondent was not represented

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

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

Mr Nigel Gayle and Ms Felicia Connor of the Attorney General's Chambers for the Chairman of the Respondent (seeking to appear in that capacity without leave)

Before:

The Honourable Justice Jalil Asif KC

Heard:

11 and 12 December 2025

Ex tempore judgment delivered:

12 December 2025

**Finalised judgment
approved: 5 March 2026**

Judicial review—application by interested party to set aside grant of leave—test to be applied—whether to set aside grant of leave

JUDGMENT

1. There is an application before me today, by way of a summons dated 4 November 2025 to set aside the grant of leave to the Applicants to pursue a claim for judicial review. The summons was filed on behalf of the First Interested Party, Butler Group Limited, and is supported by the Respondent, the Planning Appeals Tribunal, and the Second Interested Party, the Central Planning Authority.
2. The Applicants are represented by Mr Chris Buttler KC of counsel instructed by Ms Kate McClymont and Ms Sarah Brady of Nelsons Legal. Mr Samuel Jackson and Ms Selina Tibbetts of Jackson Law appear for the Butler Group Ltd, which I will refer to as the Developer, and Ms Anna Russell-Knee of the Attorney General's Chambers appears for the Central Planning Authority.
3. Without seeking leave to do so, Mr Nigel Gayle of the Attorney General's Chambers has addressed me at length on behalf of the Chairman of the Planning Appeals Tribunal, who is not currently a party to the proceedings. Notwithstanding that he was at pains to point out that the Planning Appeals Tribunal is distinct from its Chairman and that the Planning Appeals Tribunal is not present nor represented at the hearing, Mr Gayle made submissions in support of the Developer's summons for nearly 40 minutes. In addition, disclaiming any instructions on its behalf to do so, Mr Gayle has sought to advance certain arguments on costs on behalf of the Planning Appeals Tribunal. I find Mr Gayle's approach to his role in this hearing to be very unsatisfactory.
4. For the purpose of this judgment, the relevant relief sought by the Developer by its summons is that the Order dated 3 October 2025 granting the Applicants leave to pursue an application for judicial review should be set aside on five grounds:
 - 4.1 the application is irregular in that the claim has been brought against the Planning Appeals Tribunal, which is the wrong person because the decision in question was made by the Chairman of the Planning Appeals Tribunal;

- 4.2 the Applicants did not make their application for leave promptly, although they did make it within the 90-day time limit provided in GCR O.53;
 - 4.3 the Applicants are in breach of and blatantly failed to comply with the Judicial Review Pre-Action Protocol, Practice Direction Number 4 of 2013;
 - 4.4 the Applicants are guilty of material non-disclosure and failure to adhere to the duty of full candour on an *ex parte* application in that they failed to provide the Court with a full copy of the text of the Chairman's decision; and
 - 4.5 the grounds for seeking judicial review are hopeless on the substantive merits.
5. I can describe the underlying nature of the decision-making giving rise to the application for judicial review very briefly as follows:
- 5.1 The Developer sought and obtained planning permission from the Central Planning Authority for a new development on the site of the existing Aqua Bay Club property on Seven Mile Beach.
 - 5.2 Certain neighbouring residents were unhappy with that decision and the Central Planning Authority's rejection of their opposition to the proposed development, in particular their complaint that the Developer's plan to build changing rooms on the roof in connection with a swimming pool involved a breach of the Development and Planning Regulations (2024 Revision). The Applicants sought to pursue an appeal against the Central Planning Authority's decision. For reasons that are not clear to me, whilst the Applicants filed a Notice of Appeal with the Planning Appeals Tribunal's executive office, they omitted to serve a copy of that Notice of Appeal upon the Developer at the same time. However, the evidence is that the Planning Appeals Tribunal's executive office sent a copy of the Notice of Appeal to the Developer contemporaneously.
 - 5.3 The Applicants complied in time with all other required steps in order to pursue their appeal, preparing and serving their Grounds of Appeal and other relevant documents.

- 5.4 The Developer raised an objection to the prosecution of the appeal on the ground that the Developer had not been served with the original Notice of Appeal that the Applicants had filed.
- 5.5 In those circumstances, the Applicants contended that the requirement to serve a copy of the Notice of Appeal on the Developer was not a condition precedent to the validity of the appeal but, if it was, then they sought an extension of time in order to comply with that requirement.
6. There is an interesting jurisdictional question, which is that Rule 17 of the Development and Planning Appeals Rules indicates that a decision as to an extension of time should be considered and granted by the Chairman of the Planning Appeals Tribunal, whereas Mr Buttler contends that the question whether or not the Notice of Appeal needed to be served upon the Developer was something to be considered and determined by the Planning Appeals Tribunal. So, there is a question mark over which body was appropriate to determine the issues raised by the Applicants, whether it was the Planning Appeals Tribunal or the Chairman of the Tribunal sitting alone.
7. In any event, the Applicants' application was argued before the Chairman of the Planning Appeals Tribunal sitting alone. He decided: (a) it was an explicit requirement of the Planning Appeals Rules that the Notice of Appeal should have been served upon the Developer; and (b) he would refuse to grant any extension of time for the Applicants to pursue their appeal, with the result that the intended appeal could not proceed any further.
8. The Applicants initially brought proceedings to challenge this decision in July 2025 by way of an appeal under GCR O.55, the precise date is not significant for the purpose of the matters before me today. However, the Attorney General's Chambers objected to that procedural route stating that, because the decision was one made by the Chairman of the Planning Appeals Tribunal and not by the Tribunal, there was no route of appeal under GCR O.55 and any challenge to the decision-making needed to proceed by way of judicial review instead. The Applicants agreed to proceed in that way.
9. I have seen the correspondence between the parties over the summer period, and it appears from this that there was some toing and froing between each side as to what should happen in relation

to the O.55 appeal proceedings. The Applicants initially proposed that those proceedings should be stayed pending the outcome of the judicial review, as a fallback position in case the judge hearing the judicial review considered that the correct statutory route was an appeal under O.55. However, at a later stage, the Applicants conceded that judicial review was the route that should proceed and, in the face of applications by the Developer and the Attorney General's Chambers to strike out the appeal, withdrew the O.55 proceedings.

10. The application for judicial review was made in the normal way, by way of a paper application on 3 October 2025, and came before me on that date. Having read the written application and the materials in support, I gave the Applicants leave to pursue their judicial review application.
11. The Developer's summons, which is supported by the Attorney General's Chambers on behalf of the Planning Appeals Tribunal and the Central Planning Authority, raises a number of discrete issues. Due to the inadequacy of counsel's time estimate, it has only been possible to hear the first of those, which is the question whether the grant of leave should be set aside.
12. Mr Jackson argues that the judicial review is procedurally defective. He says that the Chairman of the Planning Appeals Tribunal, who made the decision, and the Planning Appeals Tribunal, which is joined as respondent, are different entities performing different functions. Mr Jackson says that it is important that an applicant joins the right respondent. He submits that the Applicants have not done so and the judicial review is therefore bound to fail. He complains that the Applicants have not sought to substitute the Chairman as respondent and says that it is now too late for the Applicants to do so. He argues that the 3-month period to seek leave for judicial review has now expired and that the Court should not entertain any application for substitution at this stage.
13. On the question of delay, Mr Jackson submits that an applicant for judicial review needs to apply promptly, as required by GCR O.53, and that the 90 days specified in the Rules is a long-stop date. He says that the need to apply promptly is particularly important where the judicial review causes prejudice to third parties, as in this case due to the impact on the Developer's ability to start work on site. Mr Jackson says that the Applicants did not apply promptly, and complains that there is no

explanation from the Applicants for the time taken to make their application for leave. He argues that the Court should not forgive the time taken up by the Applicants with the O.55 appeal proceedings, which he says were obviously the wrong course.

14. As regards the Practice Direction and pre-action protocol process, Mr Jackson says that the Applicants' failure to comply was deliberate, and that the result was that the Applicants were able to apply for leave on the basis of a weak case, without the court seeing any response to a pre-action protocol letter from the Developer, which the Applicants would have had to disclose to the Court as part of their duty of candour.
15. Mr Jackson criticises the Applicants for failing to put the full decision of the Chairman of the Planning Appeals Tribunal before the Court on their *ex parte* application. He points out that there is a high duty of disclosure on an *ex parte* application. Mr Jackson complains that the Court was only shown snippets from the decision and argues that important aspects of the decision were not disclosed. He relies on the BVI case of Cable & Wireless BVI Ltd v Telecoms Regulatory Commission (Justice Vicki Ann Ellis, High Court of the Virgin Islands, unreported 09/08/13) as authority that the Court can discharge the grant of leave as a punitive measure. I note that, in that case, whilst the initial grant of leave was set aside, Justice Ellis immediately made a new grant of leave.
16. Finally, Mr Jackson submits that the Applicants' claim has no merit. By reference to the English case of Avon Freeholds Ltd v Cresta Court E RTM Co Ltd [2025] EWCA Civ 1016, Mr Jackson says that the Soneji principle, from R v Soneji [2005] UKHL 49, on which the Applicants rely, has no application in this case. In addition, he argues that the Applicants failed to provide the Chairman with any reasons for their delay in applying for an extension of time, so that there was no material on which the Chairman could properly exercise any discretion that he had in the Applicants' favour. Mr Jackson says that that, in combination with the length of the delay, which the Chairman found to be 42 days, meant that the Applicants' case for an extension of time was hopeless.
17. Mr Buttler responded that the Applicants' Notice of Appeal was filed in time, and they filed their Grounds of Appeal in time. The Developer was notified that the appeal had been filed on the same

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day that it was filed. The Applicants argued that their admitted failure to serve the Developer with the Notice of Appeal did not invalidate the appeal proceedings. Mr Buttler complains that the *Soneji* principle applied, namely where a procedural requirement is expressed in imperative form but does not specify the consequence for breach then the tribunal has to consider whether non-compliance should result in the total invalidity of the proceedings, but the Chairman made no effort to apply that principle.

18. Secondly, Mr Buttler complains that the Chairman failed to give any adequate reasons for concluding that the Applicants' appeal had no prospect of success and, in particular, for rejecting their contention as to the proper interpretation of Regulation 8 of the Development and Planning Regulations. Mr Buttler says that, not only were the Applicants' grounds of appeal arguable, they were unanswerable.
19. Mr Buttler reminds me that these are public law proceedings, which are about public law issues concerning development and planning, and not about private law interests. He says that the Applicants are trying to stop the Central Planning Authority from granting planning permission for a building that is too high and from overriding Parliament's intention, as expressed in the Development and Planning Regulations.
20. As to the correct respondent, Mr Buttler argues that the Chairman exercises power on behalf of the Planning Appeals Tribunal; there is nothing in Rule 17 of the Development and Planning (Appeals) Rules that indicates that the Chairman and the Tribunal are to be treated as distinct entities. He says that there is an analogy to be drawn with the powers of the Court of Appeal being exercised by a single judge of the Court of Appeal where the decision is nonetheless that of the Court of Appeal. In any event, if substitution is required then both the Chairman and the Planning Appeal Tribunal have known at all times what is being challenged by the Applicants, and not to allow the Applicants to substitute the Chairman for the Planning Appeals Tribunal would be a triumph of form over substance.

21. Mr Buttler directs me to the decision in R v Environment Agency, ex parte Leam, a decision of Laws J (as he then was) on 18 March 1977, sitting in the Queen's Bench Division (Crown Office List). The copy of the judgment with which I have been provided is the Lexus transcript. I am not aware that the judgment has been formally reported anywhere. Mr Buttler relies on the following passages in the judgment (paragraph numbering added for convenience):

“[3.] The application to set aside is made on three grounds: (i) delay, (ii) non-disclosure, and (iii) the assertion that the case for judicial review is unarguable and bound to fail.”

I interpose here that those are essentially the same three grounds that the Developer raises in relation to the grant of leave to pursue judicial review in this case. Under the heading “Delay”, Laws J said this:

“[4.] The application was brought within three months, but only just. The duty is, of course, to apply promptly and in any event, within three months: see, Ord.53, r.4. Questions of delay are in most cases apt for resolution at the inter partes hearing. Where an application is made within the three-month period it would be wholly exceptional to set aside leave on the ground of delay. I would not do so here.”

22. I have already indicated the slightly chequered procedural history leading up to the application in this case for leave to pursue judicial review. That application for leave to pursue judicial review was made, I think it is common ground, on day 85 of the 90-day period that is permitted by GCR O.53. Accordingly, the underlying factual matrix is very similar to that facing Laws J in the ex parte Leam case.

23. Whilst ex parte Leam is an English judgment, it seems to me that the principles to be applied in the Cayman Islands are not significantly different from those that apply in England and Wales in relation to questions of procedural delay and their impact on judicial review proceedings, and I consider what Laws J said about it being “highly exceptional” to set aside a grant of leave on the ground of delay where the proceedings have been commenced within the relevant 90-day period to be useful guidance.

24. Secondly, under the heading “non-disclosure”, Laws J said this:

“[5.] It is said that the Applicant failed to make plain to the court that the Agency and/or Redland [which was the developer in this case] desired or might desire to be heard on the leave application, and certain correspondence has been referred to me. I do not think it necessary to set it out. It is quite plain that there was no deliberate concealment on the part of the Applicant’s

solicitor [...]. Indeed, he appears to have done what he was asked to do in correspondence, so far as the Respondents are concerned. It is certainly not shown that anyone was guilty of non-disclosure of a magnitude such as would justify the setting aside of leave.”

25. Again, this is a complaint that is made by the Developer in this case, namely that because of the way in which the Applicants progressed the application for leave to pursue judicial review, the Court was not provided with the Developer’s objections or submissions that they would wish to make on why leave to pursue judicial review should be refused.
26. Mr Buttler has sensibly accepted that it would have been better if steps had been taken to inform the Developer that an application for leave to pursue judicial review was being submitted, with a copy of the draft application. It seems to me it would probably have been better also to give the Developer the opportunity to put forward any objection in writing that it wished to do, although I am conscious that the vast majority of applications for leave to pursue judicial review, because they are made *ex parte*, often do not have any representations put before the Court on behalf of the respondent or intended respondent.
27. In any event, if there was any significant prejudice to the Developer as a result of it not having the opportunity to put its case forward on the papers, that has been addressed by the Developer now pursuing the current summons to set aside the grant of leave. And so, whilst there may be some costs consequences, it does not seem to me that any failure to give the Developer the opportunity to make representations on the application for leave has materially affected the ability of the Court to consider, to the extent that it is appropriate to do so, whether or not leave should have been granted and should now be continued or re-granted.
28. Picking up later in Laws J’s judgment in the *ex parte Leam* case, having summarised the substance of the intended judicial review in that case, Laws J continued:

“[10.] Certainly, to put the matter bluntly, I do not think that there is much in this part of [the Applicant’s] case. However, whether I would have given leave in relation to it is not the test. The Respondents have not established that there is simply and flatly nothing to argue about.”

Mr Buttler prays that phrase in aid and says that, at this stage, I should be satisfied that there is no reasonable argument that I should set aside the grant of leave to pursue judicial review.

29. Finally, of relevance in ex parte Leam, in the last two paragraphs of the judgment, Laws J said:

“[21.] This application has been mounted with copious documentation and full affidavits on both sides. The argument took the best part of the day.”

and I note that the argument in this case has taken three-quarters of a day already, and there is still, as I have indicated, large parts of the Developer’s summons which have not even started to be argued or addressed

“For all the world, it was a preliminary canter through the inter partes hearing. It may very well be that [the Applicant] will face great, perhaps insuperable, difficulties when the case is finally heard, but in my judgment this was never a case for an application to set aside leave. It cannot be emphasised too strongly that such an application is not to be brought merely on the footing that a Respondent has a very powerful, even an overwhelming, case. If that approach were adopted we should at once face all the undesirable consequences described by Bingham LJ (as he then was) in ex-parte Chinoy, page 462D-E, with which, with respect, I will repeat, for it deserves every emphasis.”

Mr Justice Laws then sets out a quotation from Bingham LJ as follows:

“I would, however, wish to emphasize that the procedure to set aside is one that should be invoked very sparingly. It would be an entirely unfortunate development if the grant of leave ex parte were to be followed by applications to set aside inter partes which would then be followed, if the leave were not set aside, by a full hearing. The only purpose of such a procedure would be to increase costs and lengthen delays, both of which would be regrettable results. I stress, therefore, that the procedure is one to be invoked very sparingly and it is an order which the court will only grant in a very plain case.”

Mr Justice Laws therefore dismissed the application in that case.

30. Before I move on, I will bring Bingham LJ's comments up to date by indicating that both in England and Wales and in the Cayman Islands, courts are now subject to the overriding objective. Amongst other things, the court is strongly encouraged to avoid waste of time and costs, and also to be careful about allocating its resources between all of the different litigants who wish to make use of the court’s services, the court, obviously, having limited capacity to be able to deal with the matters that require its attention.
31. Against ex parte Leam, Mr Jackson has particularly drawn my attention to the decision of Smellie CJ in Cable and Wireless (Cayman Islands) Ltd v Information and Communications Technology Authority [2007] CILR 273, where the former Chief Justice addressed questions of setting aside for material non-disclosure in the course of making an application for judicial review. Mr Jackson drew to my

attention, in particular, that the learned Chief Justice indicated that an order may be discharged entirely as a punitive measure for failing fully to satisfy the duty of disclosure.

32. Mr Jackson also referred me to the statement of Smellie CJ at paragraph 64 in *Cable & Wireless* that if Smellie CJ would not have granted leave “*had I had the full understanding of the factual and legal issues which I now have.*” Mr Jackson says that I should ask myself the same question, when considering the totality of the information now available to the court, and I take that statement to heart when I consider the various complaints that have been made by the Developer regarding the extent of the disclosure made by the Applicants on the paper application for leave to pursue judicial review.
33. Turning then to the particular complaints that have been made. The first to consider, logically, it seems to me, is the complaint that the wrong respondent has been joined to these proceedings. The judicial review application names the Planning Appeals Tribunal as the respondent rather than the Chairman of the Planning Appeals Tribunal who, it is said by the Developer, supported by the Central Planning Authority and the Planning Appeals Tribunal, is the person who made the relevant decision under challenge.
34. It is said, on behalf of the Developer, and adopted by the Attorney General's Chambers, that it is not permissible at this stage, after the 90-day period for judicial review proceedings to be initiated, to substitute the Chairman of the Planning Appeals Tribunal for the Tribunal. This is an interesting point and I do not, and cannot, at this stage, on the material that is before me, form a conclusion whether, as Mr Buttler contends, it is permissible to treat the Chairman, exercising a power of the Planning Appeals Tribunal, as being equivalent with the Tribunal; or whether, as Mr Jackson contends, they are to be treated as separate entities and therefore the wrong entity has been joined. It seems to me this is something that I would need to, or the judge hearing the judicial review in due course will need to, hear much fuller argument on the legal analysis and reach a conclusion on a full consideration of all the relevant evidence. So, it does not seem to me that it would be right for me to try to make a summary decision at this stage whether or not the claim has been made against the

wrong respondent and, if so, that substitution of the Chairman of the Planning Appeals Tribunal for the Tribunal should not be ordered.

35. Secondly, as regards the question of delay, I am on record as having previously said that judicial review proceedings should be conducted in order to achieve speedy certainty. That indication was picked up and endorsed recently by the Court of Appeal of the Cayman Islands. I do, therefore, have some concerns about the period of time that the Applicants allowed to elapse before they made their application for leave to pursue judicial review.
36. However, it seems to me that Mr Buttler is right that this is something that is better determined and considered at the hearing of the full judicial review application, where its impact can properly be considered in terms of any prejudice to the Respondents and the Interested Parties. The judge hearing the judicial review application can consider whether any culpable delay that is established should prevent the claim from proceeding or merely impact the relief which is granted. Part of the reason that I take that approach is that the legal questions which the Applicants wish to raise on the substantive appeal against the grant of planning permission do seem to me to raise important questions as to the construction of the Development and Planning Regulations. It may be the case that the outcome of the judicial review could give useful guidance as to the proper interpretation of the Regulations for the future even though the Developer might nonetheless be permitted to move ahead with its intended development and construction of changing rooms on the roof of the property because of the Applicants' delay in pursuing the judicial review application. In other words, Mr Buttler is right that any culpable delay may impact the relief that is granted without necessarily impacting the necessity for the Planning Appeals Tribunal or the court to give guidance for the future on the proper interpretation of the Development and Planning Regulations.
37. The third point raised by the Developer is the Applicants' non-compliance with the pre-action protocol for judicial review applications. It does not seem to me that there is any real substance in this complaint, which appears to be a makeweight. I do not intend to address it in any more detail than to indicate that there are reasonably arguable reasons why it was not necessary for the Applicants to proceed with the pre-action protocol process at all. But in any event, at the same time

as making their application for leave to pursue judicial review, the Applicants invited the Planning Appeals Tribunal, the Developer and the Central Planning Authority to go through a process which would have provided the equivalent of full compliance with the pre-action protocol, which does not appear to have taken up or, to the extent that it was taken up, did not achieve any resolution of the dispute.

38. The primary purpose of a pre-action protocol process is to seek to resolve disputes without recourse to the court. Given that the parties seem intent on pursuing the application and the opposition to it tooth and nail, it does not seem to me that there is any consequence that has flowed from the Applicants' failure to go through a full pre-action protocol process.
39. The fourth point that I will address is the Developer's complaint that leave to pursue the judicial review was obtained on a misleading basis. The primary complaint here is that the Applicants failed to put before the Court on the written application a full copy of the Tribunal Chairman's determination running to some 56 pages, and instead, while stating that the decision ran to 56 pages, asserted that the reasons for the decision of the Chairman occupied only two pages within the record of the decision.
40. First of all, let me record that those statements are factually correct in that the decision is some 56 pages long, 58 pages including the signature and the determination on costs, and that the reasons for the decision do occupy two pages within the overall decision document.
41. Mr Buttler, again, frankly acknowledges that it would have been better if the entirety of the decision had been put before Court, and I agree with him that a full copy of the decision should have been put before the Court. He has indicated he intends to give advice to his instructing attorneys that they should do so in the future, and I endorse that.
42. Having said that, it seems to me that having read through the entire 58 pages of the decision document, the question that I ask myself is, as Mr Jackson indicated, had I known everything that was in the full text of the Chairman's decision, would I have granted leave? My immediate reaction is that I do not know. However, I certainly cannot reach the conclusion that I would not have granted

leave to pursue the judicial review. On further reflection, for the reasons that Mr Buttler has argued, it seems to me that there are a number of criticisms that can properly be levelled at the quality of the decision-making that is recorded in the Chairman's decision. I appreciate, as Mr Jackson submits, that essentially the Chairman had one decision to make, which was, in all the circumstances was there good reason for granting an extension of time. But nonetheless, it does seem to me that it is more than reasonably arguable that in reaching a conclusion on that core question the Chairman needed to make sure that he had properly identified what were the material factors that were relevant to that decision and to make sure that he excluded any matters that were raised by the parties that were not relevant to that decision. In addition, he needed properly to express his reasoning, however briefly expressed, on each of those topics.

43. I have some concerns about whether the Chairman actually did so and it seems to me that Mr Buttler's intended criticisms of the Chairman's decision-making may succeed. I do not put it any higher than that but, for the purpose of concluding whether I should set aside the grant of leave to pursue judicial review, that is all that I need to be satisfied of.
44. Finally, in terms of the matters put before me, Mr Jackson urges me to conclude that there really is absolutely no merit in the intended judicial review that is to be pursued. Amongst other things, he complains that there is no error of law that has been pleaded, and there is no irrationality in decision-making that has been identified. He says the Soneji principle, on which the Applicants rely, is not applicable in the circumstances of this case.
45. I have carefully considered all of those arguments. It may be that there is considerable strength in the Developer's objections but, again, I am not satisfied at this stage that I can properly conclude that this is a case where there is really nothing to argue about, as Laws J indicated in the ex parte Leam case. It seems to me that there certainly are things to argue about. As I have indicated, it may be that the Applicants will lose on those arguments, but it would be wrong, bearing in mind the test that I should apply based on ex parte Leam, to conclude that this is an application for judicial review where leave should not have been given.

46. I am well aware that the bar for granting leave is always said to be a relatively low bar. It is essentially an arguability test. The purpose of obtaining leave on paper, or on a renewed oral application, is simply to act as a filtering process to make sure that unmeritorious claims do not proceed and take up both the time and costs of the respondent but also court time and prejudice other litigants as a result of occupying that court time.
47. Standing back and looking at this case, this is not one where, as I have indicated a moment ago, there is nothing to argue about. It seems to me there clearly are things to argue about and it would be wrong for me to reach any or to try to reach any conclusion on the merits of the various matters raised by Mr Jackson over the course of yesterday afternoon and this morning on a summary basis.
48. For those reasons I will refuse the application to set aside the grant of leave.
49. Having heard oral submissions from Mr Buttler, Mr Jackson and Ms Russell-Knee and considering the terms of GCR O.62, r.4, I accept Mr Buttler's submission that this is a summons where the usual rule should apply that costs should follow the event, and that whatever happens in relation to the substantive judicial review is something that is separate from this application to set aside the grant of leave. Accordingly, there is no proper reason to order the costs to be reserved, as Mr Jackson argues; they should be determined today. The other aspects of the Developer's summons which are outstanding are discrete issues which are separate from the overall question whether leave should be set aside. The Developer, who has led the charge on that question, has not been successful and, in the normal way, the Developer, and the Planning Appeals Tribunal and the Central Planning Authority, which explicitly supported the Developer's summons, should jointly and severally pay the Applicants' costs of this aspect of the summons, to be taxed on the standard basis, if not agreed.
50. Having announced that conclusion in court, Mr Gayle, sought, on behalf of the Planning Appeals Tribunal, which he did not represent, to argue that I should not make any costs order against the Planning Appeals Tribunal because it was not present at the hearing. I rejected that submission because the Planning Appeals Tribunal was expressly said in the Developer's summons to support the summons. The fact that the Planning Appeals Tribunal did not attend the hearing of the

summons was not, in my judgment, relevant to that conclusion. Further, given Mr Gayle's attendance on behalf of the Chairman of the Planning Appeals Tribunal, who is not even a party, the non-attendance of the Planning Appeals Tribunal appeared to me to be purely tactical. That is not behaviour in which either the Attorney General's Chambers or the Planning Appeal Tribunal should engage.

Dated 5 March 2026



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