



Costs Decisions

Site visit made on 8 April 2025

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th May 2025

Costs application in relation to Appeal A Ref: APP/G1630/W/25/3359791 Cider Barn (Cyder Barn), Cold Pool Lane, Badgeworth, Gloucestershire GL51 4UP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr C Mellor for a full award of costs against Tewkesbury Borough Council.
- The appeal was against the refusal to grant planning permission for the change of use of barn to include alterations and extension to create a new residential unit.

Costs application in relation to Appeal B Ref: APP/G1630/Y/25/3359793 Cider Barn (Cyder Barn), Cold Pool Lane, Badgeworth, Gloucestershire GL51 4UP

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, section 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by Mr C Mellor for a full award of costs against Tewkesbury Borough Council.
- The appeal was against the refusal to grant listed building consent for the change of use of barn to include alterations and extension to create a new residential unit.

Decision

1. Appeal A: the application for a full award of costs is refused.
2. Appeal B: the application for a full award of costs is refused.

Procedural Matters

3. The barn that is the subject of these applications is referred to by different names. Within the original application it is known as the barn at Cold Pool Lane, whilst the Council refer to it as the barn behind Cyder Mill Cottage. It is also described as Cider or Cyder barn, and the listing for the building refers to it as being a barn southwest of Full of Elms. From the evidence provided, including what was apparent at the site inspection, it is the same building, and has been referred to as Cyder Barn for the applications.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. The Guidance advises that awards may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The Guidance makes it clear that costs cannot be claimed for the period during the determination of the original application, although behaviour of the parties at this time can be taken into account.
6. The applications for an award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The appellant considers the Council failed to determine the applications in their statutory time frames, with extensions of time sought without justification nor any substantive progress having been made. There was a lack of constructive negotiation and consistency, no site visit was undertaken, and four case officers dealt with the applications, each with varying views, and providing no clear guidance or response. The officer reports made no balanced arguments or justification, with limited reasoning and interpretation of planning policies, and little consideration of the benefits of the scheme. It was unreasonable that additional information was not requested to avoid four reasons for refusal, and the Council's provision of conditions shows these matters could have been addressed as conditional requirements.
7. The appeals have been dismissed for substantive reasons. Procedurally the Council has complied with the appeal requirements, including providing a statement and suggested conditions. The applications appear to have been live for a long time, in part due to several changes of case officer, and because the applications were regarded as complex, with an extensive planning history, with the most recent applications having been withdrawn rather than determined. For whatever reason the delays occurred, this would amount to poor service from the Council, albeit the appellant could have exercised their right to appeal against non-determination.
8. Changing officers and the consequential change in views would have been frustrating for the appellant, as would the change in stance with regard to listed building matters from approval to refusal. Whether or not any of the case officers visited the site would have been a choice for those individuals concerned, albeit not undertaking a visit would fail to provide an officer with an up-to-date assessment of the listed building and an appreciation of its setting. The Council has explained that officers did seek to explore opportunities for an acceptable scheme, with additional information being sought via telephone conversations and meetings, and an email was sent to the appellant explaining that the applications could not be supported.
9. The appellant chose not to provide the additional information that would have been required for four of the reasons for refusal, with reliance at the appeals stage being placed upon resolving these matters with conditions. The Council are obliged to suggest conditions without prejudice for the appeals, but this process does not imply that outstanding matters could be resolved through conditions. Given the circumstances of these cases, the fundamental ambiguities and unresolved issues that remained were such that there could be no certainty that conditions could satisfactorily address the outstanding issues, and consequently development that should have been allowed has not been prevented.
10. The officer reports for the original applications and the appeals statement provides explanation as to the matters of concern, including the conflict with policy. However, the harmful impact of the scheme upon the listed building was not

decided until the decision-making stage, with a subsequent explanation of the harm provided for the appeals. Whilst the Council's Conservation Officer did not object to the proposal, what has not been undertaken at any stage is an assessment of whether the harm to the listed building would be outweighed by public benefits, albeit the benefits of the works are lightly touched upon by the Council in consideration of whether there would have been any very special circumstances. This was remiss of the Council, as was neglecting to comment upon the historic map evidence provided by the appellant. It was also remiss of both the main parties not to consider the impact of the car port upon the green belt.

11. The consideration of applications involves matters of judgement that are at times finely balanced based on complex evidence, and for these appeals multiple and complex considerations are raised with the Council giving a different weight to the issues than the appellant. There have been several delays in dealing with the original application stemming from a variety of matters, and these would have been frustrating for the appellant, particularly so with regard to conflicting officer views. However, it was the appellant's choice not to appeal against non-determination and also not to provide the additional information required by the Council. Given the particular circumstances of these appeals, including the number of unresolved issues, the refusal of the applications was justified, and it is not the case that development that should have been permitted and consented has been prevented and delayed. The decision to appeal, and when, would have been one for the appellant to make.
12. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Accordingly, the applications for an award of costs are refused.

J J Evans

INSPECTOR