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## Costs Decisions

Site visit made on 20 April 2022

**by Michael Boniface MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13/05/2022**

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### **APPLICATION A**

**Costs application in relation to Appeal Ref: APP/A5840/Y/21/3279037**  
**13 Colnbrook Street, London, SE1 6EZ**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
  - The application is made by Joel Resare for a full award of costs against the Council of the London Borough of Southwark.
  - The appeal was against the refusal of listed building consent for alterations to the ground floor to add a spiral wine store under the existing floor level with an access hatch.
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### **APPLICATION B**

**Costs application in relation to Appeal Ref: APP/A5840/Y/21/3282025**  
**13 Colnbrook Street, London, SE1 6EZ**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
  - The application is made by Joel Resare for a full award of costs against the Council of the London Borough of Southwark.
  - The appeal was against the refusal of listed building consent for alterations to the ground floor to add a spiral wine store under the existing floor level with an access hatch.
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### **APPLICATION C**

**Costs application in relation to Appeal Ref: APP/A5840/Y/21/3286314**  
**13 Colnbrook Street, London, SE1 6EZ**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
  - The application is made by Joel Resare for a full award of costs against the Council of the London Borough of Southwark.
  - The appeal was against the refusal of listed building consent for alterations to the ground floor to add a spiral wine store under the existing floor level with an access hatch.
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### **Decision**

1. Application A is refused.
  2. Application B is refused.
  3. Application C is refused.
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## Reasons

4. Planning Practice 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. In this case, three similar appeals were submitted and considered by the Council. Much of the dispute between the parties relates to a difference of opinion on matters of legitimate professional judgement. Such differences of opinion are not in themselves unreasonable provided they are substantiated.
6. The purpose of a costs application is not to re-argue the merits of the case or restate arguments that were properly matters for the appeals and I do not intend to cover such matters in these decisions.
7. The reasons for refusal given in each case were clear and precise and the Council has fully substantiated its reasons, explaining the harm that was anticipated or identifying a perceived lack of information or justification. It is entirely understandable that the reasons for refusal in each case were similar given the similarity in the appeal proposals and the short time span in which they were submitted.
8. Whilst my judgement in considering the appeals does not fully align with the Council's in all cases, I have found sufficient merit in the arguments advanced to dismiss two of the appeals and a cogent case was presented for all of them. These are not cases where consent clearly should have been granted without delay, but finely balanced matters of judgement.
9. Consistency in decision making is important but different decision makers must exercise their own professional judgement in the circumstances of the case and two proposals will rarely be identical. The Council sufficiently explained this concept and had full regard to the wine store approved by the Council in 2012 in another listed building. It is not however, sufficiently comparable to draw direct parallels, involving entirely different heritage assets and a different arrangement for the proposed ventilation pipes, out of public view. It was not unreasonable for the Council to consider the current appeals on their own merits. The Council's, apparently erroneous, record of the alternative site being in use for flats does not alter this conclusion.
10. I note the applicant's suggestion that the Council was less than helpful and cooperative during the application process but also that the Council's established route for pre-application advice was not followed. There is an onus on both parties to work constructively and cooperatively with one another during the application and appeals process. In this case, the Council has fully complied with expectations during the appeals process and I have no reason to conclude that it has acted unreasonably in exercising its statutory functions.
11. Overall, I do not consider that these appeals could have been avoided. In order to resolve the issues in dispute, which went to the entire principle of the proposals, the appeals were clearly necessary. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Michael Boniface*

INSPECTOR