

---

## Costs Decision

Site visit made on 11 November 2015

**by Cullum J A Parker BA(Hons) MA MRTPI AIEMA**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 17 November 2015**

---

### **Costs application in relation to Appeal Ref: APP/B1550/W/15/3130774 Land east of former shellfish packing station, Fambridge Road, South Fambridge**

- 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 D Adams for a full award of costs against Rochford District Council.
  - The appeal was against the refusal of planning permission for 'reinstatement of ferry crossing, including ancillary car parking facilities.'
- 

### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The application for costs was made and responded to on the basis of the Planning Practice Guidance issued on 6 March 2014 (the Guidance). The Guidance, advises that costs may only be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council has acted unreasonably by a lack of co-operation, delay in providing information and failing to provide information within time limits. The Council considers that re-organisation and restructuring to meet the challenge of reduced resources, the fact that calls are ignored (which they consider an appropriate response to the challenges of the situation), that Natural England have been consulted (which should be helpful to the Inspector), and that circumstances conspired to prevent the Council from exercising their duty, which they nonetheless considered they did in a reasonable manner.
4. The facts are that the application was submitted to the Council in September 2014, with a target date of 19 November 2014. The applicant was advised it would go to committee in December 2014. It did not, owing to internal changes and demands at the Council. On 13 May 2015, well after either target date, the proposal was recommended for refusal, with a decision issued on 21 May 2015. Even though the appeal site is within or close to a European designated site (known as Natura 2000), the Crouch and Roach Estuaries Special Protection Area (SPA) which is also listed as a Ramsar site, the Crouch and Roach Estuaries Special Areas of Conservation, and the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI) Natural England were not consulted until 18 May 2015, and a response given after the

application was determined. All told, about five months separate the December 2014 committee date and the determination of the application, with little evidence that the Council sought to keep the applicant informed of its progress.

5. I acknowledge that it was open to the applicant to appeal against non-determination, but it appears clear that the applicant was not aware that there was a substantive grounds for refusal until May 2015. Whilst the Council point to the initial *Extended Phase 1 Habitat Survey (Preliminary Ecological Assessment)* undertaken by t4 ecology Ltd in September 2014, which recommended further surveys, and the Open Spaces Manager's comments (dated 13 October 2014) that consent should be refused to allow further survey work, it does not appear as though the Council made their specific concerns clear in this respect until May 2015.
6. Had this been communicated earlier to the applicant they could have undertaken the surveys during Spring 2015, and this could reasonably have meant that either appeal could have been avoided altogether, or identified for certain whether the scheme was acceptable on local biodiversity grounds. The failure by the Council to convey these concerns in a timely manner, and five months seems to be extraordinarily long time for comments received in October 2014 to be actioned, is unreasonable and has resulted in wasted and unnecessary costs for the appellant in submitting an appeal which may reasonably have been avoided by undertaking surveys in Spring 2015.
7. Whilst, it is very surprising that Natural England were not notified earlier of the scheme given the designated sites, their comments explicitly state that they have not considered protected species in this instance. Nonetheless, this does not alter the fact that Council knew in October 2014, from its own internal advisers, that more information was required. I also acknowledge the internal constraints of the Council; but this does not justify deferring the determination of a planning application well in excess of its target date.
8. I therefore find that the costs involved in addressing the key issues of the refusal, and the subsequent need to appeal, do represent an unnecessary expense for the applicant. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rochford District Council shall pay to Mr D Adams, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Rochford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Cullum J A Parker*      INSPECTOR