

The Case Manager
Able Marine Energy Port
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol, BS1 6PN

12th December 2012

Dear Sir or Madam,

**APPLICATION UNDER SECTION 95(4) OF THE PLANNING ACT 2008
FOR A PARTIAL AWARD OF COSTS IN ASSOCIATION WITH THE
PROPOSED ABLE MARINE ENERGY PARK BY ABLE HUMBER
PORTS LTD: Ref TRO 30001**

This application is submitted on behalf of Mr Stephen Kirkwood who is an “interested party” as defined in Section 102 of the 2008 Act.

The application is based upon a failure of the proponents of the scheme (Able UK Ltd) to behave in a reasonable or acceptable manner during the formal examination process causing the applicant to incur additional, unnecessary, and unforeseen expenses.

Specifically, the applicant was required to commission additional reports and undertake extensive research and analysis of new information submitted by Able UK Ltd during the examination stage - including a fundamental change in the technical arrangements for the nature compensation site at Cherry Cobb Sands and the introduction of a completely new area of land as wet grassland roosting habitat.

The submission of amended proposals for the Cherry Cobb Sands site mid-way through the examination process created additional work in assessing the significant amount of additional material - much of it of a highly technical nature. This in turn, gave rise to a need for attendance at two additional Hearing days and the submission of various reports, etc, none of which was anticipated at the beginning of the examination period.

The applicant maintains that such behaviour on the part of Able UK Ltd was unreasonable because they should have realised that the initial proposals would not function as predicted in the original submission. This led to the applicant - and others - carrying out research work and making submissions on aspects of the scheme that subsequently were withdrawn.

The applicant also maintains that Able UK Ltd failed to substantiate various parts of its submission including: Operation of the Regulated Tidal Exchange (RTE) scheme proposed at Cherry Cobb Sands; the nature and extent of land contamination within

the RTE area; and the true extent of likely flooding from drains backed up as a result of the RTE (and wet grassland) schemes.

Paragraph B3 of the current policy guidance on costs applications for Nationally Significant Infrastructure Projects cites the following as examples of unreasonable behaviour: -

“Introducing fresh or substantial evidence at a late stage necessitating the preparation and submission by any other party or parties of additional submissions or evidence to the Examining authority that would not have been required if the fresh or substantial additional evidence had been submitted on time”

“Withdrawal of any submission or evidence resulting in wasted preparatory work...”

“Resistance to or lack of cooperation with any other party in providing information...” (specifically in respect of land within the RTE area known to be contaminated).

In this case, the applicant alleges all three of these circumstances apply and, consequently, that a partial award of costs should be made in his favour against Able (UK) Ltd.

I look forward to your response in respect of this matter,

Yours faithfully,

David Hickling
(on behalf of Mr Stephen Kirkwood)