**RE: DENBIGH QUARRY/GRAIG QUARRY**

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**COSTS APPLICATION**

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**Introduction**

1. This is an application for an award of costs. It is made against the Council as Mineral Planning Authority. It is an application for a full award of costs. Its basis is that the refusal of planning permission was unreasonable, giving rise to the unnecessary expense of the appeal.

2. For the avoidance of doubt, this is not an application for costs against the invited/interested party.

3. The essential sequence of events is as follows:

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| December 2019 | Pre-application consultation and advice [CD1.17] |
| August 2023 | Regulation 24 consultation |
| 6 December 2023 | Officer's report |
| 13 December 2023 | Refusal contrary to officer advice, for three reasons |
| 25 April 2024 | Appeal made against the refusal of planning permission |
| 22 May 2024 | Council asks Committee Members to appear at the Inquiry |
| 22 Nov 2024 | Start date letter |
| 12 Dec 2024 | Council seek agreement to first extension of time for SoC |
| 15 Jan 2025 | Council seek second extension of time for SoC |
| 14 February 2025 | Abandonment of reasons for refusal one and two |

4. The remaining RfR was the third of three RfR:

"It is the opinion of the Local Planning Authority that the proposed lateral extension to the quarry would have a negative impact on the amenity and well-being of local residents. The proposal is therefore considered to be contrary to Local Development Plan Policies PSE 16 'Buffer Zones', PSE 17 'Future Mineral Extraction' and advice contained in Minerals Technical Advice Note 1 'Aggregates', Technical Advice Note 21 'Waste', the Development Management Manual and Planning Policy Wales 11 (Including updated Chapter 6)."

5. The first and second RfR are not defended. The appellant does not accept the Council's reasons for not defending the first and second RfR as set out in its Statement of Case at §§5.1 to 5.13. Those RfR were untenable from the outset and the Council has not been able to call any evidence in support of them.

**The Guidance**

6. The power to make an award of costs is not subject to any statutory limitation. The Welsh Government has produced guidance in the Development Management Manual at Annex 12. Its contents are familiar and well established: see particularly §§1.2; 2.1; 2.8.

7. Relevant examples given in the Guidance as to unreasonable conduct by a planning authority are:

(a) Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
(b) Failure to produce evidence to substantiate the impact of the proposal, or each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without there being reasonable planning grounds to do so);
(c) Refusing permission on a ground clearly being capable of being dealt with by way of condition, where it is concluded that suitable conditions would enable the development to proceed.

**Grounds**

8. The Appellant will make this costs application at the end of the Inquiry. The Appellant will refer to the evidence and the closing submissions.

9. The proposal accords with the development plan: Committee Report at §5.3. Moreover, it complies with the relevant policy and guidance of the Welsh Government. The development should clearly have been permitted. There has never been a sustainable reason to refuse planning permission: Committee Report at §5.9. As a result of the unreasonable refusal, it has been necessary to appeal, bringing about wasted cost and causing substantial delay.

10. The issues which the Council has raised at the Inquiry are technical issues upon which there are relevant standards, methods of assessment and limit values. Noise, dust, air quality and blasting are each subject areas which are properly and typically the subject of expert analysis. The Appellant has produced such evidence which has been the subject of proper consultation with expert consultees. None of those consultees object to the proposal, nor do they contest the Appellant's assessments, reports and proposals.

11. The Council has rejected those carefully developed studies, which its own specialist consultants agree with, without any contrary credible evidence. The Council has aggravated this situation by seeking to rely solely upon the evidence of objectors. This is not to minimise the role of public participation and these submissions should not be characterised as such. Rather, there has been a failure to substantiate any of the alleged impacts on proper planning grounds.

12. The Appellant will refer to the Welsh Ministers' costs decision in respect of Criag yr Hesg in this regard.

13. More particularly, the Appellant will contend:
    a. There is no of history of complaints on air quality/dust issues prior to the appeal being lodged
    b. Noise impacts were scoped out with the Council
    c. There is no history of complaints in respect of noise

d. Existing planning condition 26 and its associated scheme of dealing with the blasting is recently agreed and operational. Nothing has changed.
e. The Council has had ample opportunity to record the blasting effects of which they now complain, but have failed to do so. The case is unevidenced assertion.

14. All minerals developments have effects. The question is whether those effects are acceptable. The measure of acceptability is expressed in guidance values and policies which are capable of measurement, quantification, monitoring and enforcement. There is no question that each of noise, dust, air quality and blasting effects are capable of being controlled to acceptable levels by use of suitable planning conditions. There may be a proper debate about the terms of those conditions, but it is wrong-headed and simply untenable to refuse planning permission on such grounds for minerals development. This is still more so in respect of a development which is well-established, monitored and brings the winning and working of minerals no closer to receptors than the existing.

15. For these reasons, as will be developed during the course of the evidence and in submissions, the Council should pay the Appellant's costs. This is not a marginal costs case. It is a clear case in which the Welsh Ministers are confronted with wilful disregard for well-developed policies, guidance and practices on which minerals planning has been founded for decades.

**RICHARD KIMBLIN KC**

**21st July 2025**