RE: DENBIGH QUARRY/GRAIG QUARRY

UPDATED COSTS APPLICATION

INTRODUCTION

1. This is an updated application for an award of costs. The Appellant has made it very clear to the Council, from the outset of the appeal, that it would apply for its costs of the appeal. The appellant set out its grounds in writing on 19th July 2025. The Appellant undertook to update its grounds after the statements of evidence had been served and the Public Inquiry had heard the evidence. This document brings the application up to date as at the close of the evidence. The Appellant will address the grounds orally after closing submissions have been made.

2. The application 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.

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

4. The essential sequence of events is as follows:

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 Feb 2025	Council serves its SoC
March 2025	Reply to the Council's SoC
14 February 2025	Abandonment of reasons for refusal one and two
8 July 2025	Service of the statements of evidence
5 August 2025	The Inquiry opened and sat for two days, followed by a site visit

5. 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)."

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

RfR Abandoned

8. The first and second RfR were 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 as is demonstrated by the fact that the Council was unable to call any evidence in support of them. This position applies to all three reasons for refusal as Councillor Young agreed with commendable frankness.

9. It took in excess of a year for the Council to concede that it could not support two thirds of its case. During that time, the appellant had to prepare the appeal, its witnesses and instruct its agent and counsel. Those costs were thrown away.

<u>First RfR</u>

10. The first RfR was that *"It is the opinion of the Local Planning Authority that the proposed lateral extension to Graig Quarry would have an unacceptably negative impact on protected species and the special characteristics and features of the Crest Mawr and Graig Quarry Sites of Special Scientific Interest."* This RfR contends that there would be an impact on two SSSIs.

11. There is no such evidence.

12. The statutory consultees were content that permission should be granted. NRW gave express consideration to the identified protected species: GCN; bats; Hazel Dormouse. Subject to conditions, it had no concerns in August 2023 [CD4.05] nor in November 2023 [CD4.13].

13. NRW also gave express consideration to each of the SSSIs. It said:

"Based on the information submitted, we consider that the proposed development is not likely to damage the features for which the below sites are of special interest.

- *Crest Mawr Wood*
- *Graig Quarry"*

14. NRW noted the Dust Impact Assessment and agreed with it.

15. There is no contrary evidence whatsoever. The first RfR was always untenable.

16. It was never any part of the first RfR to complain about the survey data. To try to save the costs position, the SoC attempted to change the first RfR into a survey/out of date point. The Appellant strongly disagrees with the Council's assertion in the SoC that "*In the absence of up to date surveys, it was not possible to conclude the measures proposed to prevent harm to ecological and biodiversity interests or mitigation were appropriate or adequate."* [Council's SoC at §5.4]. It is a particularly bold position to take given that the Council had asked for the application to be delayed until the s73 application had been decided. In other words, the reason for the delay lies with the Council.

<u>Second RfR</u>

17. The second RfR was *"It is the opinion of the Local Planning Authority that the proposal contains insufficient justification for the development of an extension to the quarry and the restoration by importation of inert waste material, on an unallocated site in the open countryside."*

18. This opinion was not tenable.

19. First, it is contrary to the evidence supplied in the Planning Statement which relied on RTS2 [CD1.01 at section 4.6]. There was therefore ample justification. The Council had itself approved RTS2. Officers had advised members via a detailed report that there was an identified and unmet need [CD5.02 at p75]:

"A sub-regional collaboration agreement for the North-East Wales sub-region is now in place between Denbighshire, Wrexham and Flintshire. The North-East Wales Statement of Sub-Regional Collaboration (SSRC) states that;

"This SSRC confirms that the authorities of the North-East Wales sub-region have agreed that any shortfall of crushed rock would be considered as a sub-regional apportionment shortfall, and this shortfall would be met by either; extensions to existing crushed rock quarries in the sub-region, or a new crushed rock quarry site also within the sub-region. A new site promoted by a landowner or minerals operator provides far more certainty to delivering the sub-regional apportionment as opposed to a blanket 'area of search' or 'preferred area' approach proposed in an LDP."

This document has been agreed and endorsed by all the Local Authorities in the subregional area. On 7th April 2021, the members of the Denbighshire County Council Strategic Planning Group endorsed the adoption of the SSRC. This was then followed by a delegated decision to adopt the SSRC made by the Lead Member for Planning, Public Protection and Safer Communities on 22nd April 2021."

20. Members were advised of a 3 million tonne shortfall for crushed rock over the plan period.

21. The minutes of the Council's meeting show that Hannah Parish (the Manager of the North Wales Minerals and Waste Planning Service) expressly addressed members on need. On a sub-regional level there is a demonstrable need, she told members. She explained why there were no allocations in the local plan – there was no identified need when the plan was drafted.

22. It was unreasonable for members to reject the proposal for the reasons given in RfR 2, contrary to the evidence and contrary to sound professional advice. That unreasonable position is now confirmed by the SoCG at §§6.3 to 6.7. The need is agreed.

<u>The Council's Remaining Case</u>

23. The Council's case, as disclosed by its SoC was therefore radically different to that on which it refused permission. The members refused permission because they said that there was an impact on protected species. They said that the special features of two SSSI's were affected by the proposal. They said that there was no demonstrable need and relied on the absence of an allocation, and the development boundary.

24. By the time that the Council came to draft its SoC it knew that:

a. No officer within the North Wales Minerals and Planning Service would give evidence in support of either RfR1 nor RfR 2;
b. No external consultant or other professionally qualified and experienced person would support either RfR 1 nor RfR 2;
c. All that remained in terms of objection was 'amenity' which was not particularised in RfR 3;
d. No officer within the North Wales Minerals and Planning Service would give evidence in support RfR 3, whether it was put in terms of noise, blasting, dust or air quality;
e. No external consultant or other professionally qualified and experienced person would support any objection based on of noise, blasting, dust or air quality;
f. It would have to rely upon a Councillor and member of the Committee to give evidence in support of RfR 3;
g. It would have no other planning evidence either as to policy nor as to the planning balance.

25. Notwithstanding this perilous position, the Council has ploughed on. It faced a position in which there was an acknowledged need, to be met at an existing and very long-standing quarry, for which there was no evidence to contradict any of the conclusions on environmental effects as set out and consulted upon in an Environmental Statement, the scope of which the Council has itself specified.

26. In that context we turn to the position at the conclusion of the oral evidence.

RfR 3

<u>The Evolution of the Council's Case</u>

27. The third RfR is unreasonably vague. It left the Appellant in the dark as to what the Council's true reason for refusal was. Was it dust? Was it air quality?

28. The Council's case was not even clear to the Council. It took from 25th April 2024 when the appeal was submitted to 14th February 2025 when the Council finally produced a SoC for it to decide what its case was.

29. No part of the SoC nor any part of the written statements explained why blasting and noise effects could not yield acceptable effects. Rather, the Council's case can only be understood as setting a threshold of no effects. That is unreasonable in the context of the over-arching policy of the Welsh Ministers, the planning history and agreed need.

30. We now turn to the case which the Council did run.

Blasting

31. The Council has run its case primarily on the effects of blasting. It has done so in the context of:
    a. Not relying on any measured effect of one or more blasts. In other words, the Council has not sought to say that at location X the vibration was Y and this was unacceptable by reference to standard Z. This is despite the fact that the Council has years of monitoring data including during the application and appeal periods. The data are the dog which did not bark.
    b. Without any expert evidence as to either blasting or minerals planning.
    c. The Council having had, and taken, the opportunity to agree a new blasting regime.
    d. The Appellant having operated the site and provided details of the blasting operation and its effects and then called expert evidence in support.
    e. The Appellant's blasting operations having been accepted without intervention or action by the Council.

32. It is unreasonable for a mineral planning authority to run such a case. It is an embarrassment to the planning system.

33. First, the planning system expects an applicant to support an application with the relevant information to inform both the decision and the conditions which control the effects of the development. In the case of EIA development, information is required to be certified as produced by competent professionals. It is consulted upon by other competent professionals. If the data and the consultation responses that the effects are acceptable then an applicant will reasonably expect that outcome to be accepted by the decision maker.

34. Second, this is particularly the case in respect of effects which can be quantified, and blasting is a type-example of such an effect.

35. Third, where the proposal is in respect of an existing development which is to be continued or modified and so the assessment is not predictive but rather an assessment of actual, real and recent data, the position is very clear: if there is actual compliance with established standards then a decision maker has no reasonable basis on which to object to the effects.

36. In this case, the Council seek to justify a departure from these three fundamental points. It must persuade you and the Welsh Ministers that it may reasonably depart from blasting standards which have been set by the Welsh Government, and which it has itself accepted at this very site and without criticism of the operation or its effects. It is highly unreasonable for a Council to run any such argument.

37. MTAN 1 was published in March 2004. It is based on long-established research and British Standards[1]. The Welsh Government:
    a. Notes that blasting can result in impacts which cause concern[2]
    b. Notes that it is often difficult to reconcile mineral extraction with comfort and amenity of neighbours[3]
    c. MPAs and site operators need definitive advice to ensure consistency[4]
    d. That definitive advice is set out in detail[5]
    e. Conditions to control effects should address days, times, ground vibration maxima and monitoring[6]
    f. Nowhere is it suggested in MTAN1 that blasting effects might result in refusal of planning permission. Rather, the acceptable effects are to be set by reference to the Welsh Ministers definitive advice.

38. Effects of blasting on amenity are known, understood and acknowledged in the Welsh

[1] See the footnotes 50 and 51 in MTAN1 at page 32
[2] §78
[3] §79
[4] §79
[5] §80-82
[6] §83

Minister's definitive advice. There is no scope within that advice for generalised and unconstrained objection. Still less is there any scope to fail to craft conditions which are specific to the location and circumstances.

39. The Welsh Government has confirmed this approach recently via both the substantive and costs decisions at Craig yr Hesg. These decisions confirm points of principle which are applicable in other cases, namely the application of the definitive guidance on blasting controls which is set out in MTAN1[7] and that generalised amenity effects are not a proper basis for the refusal of planning permission.

40. From the above it is clear that the Council has failed to produce evidence to substantiate the impact of the proposal, contrary to professional and technical advice without there being reasonable planning grounds to do so.

41. Further, the Council has refused planning permission on a ground clearly being capable of being dealt with by way of condition, which would have enabled quarrying to continue, as it has done for many years, subject to the Council's controls.

Noise

42. We now address noise so far as that is relied upon as an issue which is distinct from blasting.

43. The Council was unreasonable to refuse planning permission on grounds of noise impacts for similar reasons to those explained above in respect of blasting. There was no substantial evidence to justify a departure from the evidence provided by the appellant, the advice provided by the Council's own specialist consultants and its experienced planning officers. All of this is in the context of an operating site with no history of noise problems.

44. Noise effects are clearly capable of being dealt with by way of conditions.

[7] CD7.2 at §§35 & 59: *"The Inspector has considered the impact of blasting operations on local residents with reference to guidance and limits recommended in MTAN1 and notes blasting operations will continue to be required at the appeal site. The Inspector is satisfied, subject controls, including public liaison, the proposal would not have an unacceptable effect on local amenity in terms of blasting and vibration. (IR 382 – 386)"* The Welsh Ministers agreed with the Inspector's reasoning and conclusions.

45. The Council has been driven to present a case which has no foundation in any evidence which contradicts the noise assessments. It has no equivalent to Mr Baxter. The unedifying consequence is that one saw the very officers who advised that that there were no sustainable reasons for refusing planning permission, giving instructions to Counsel on the cross-examination of Mr Baxter. This produces the farcical situation in which Mr Baxter had to attend the inquiry to answer questions which had little, if any, foundation in the Council's own evidence. This is not a criticism of Counsel, who was doing the best in the circumstances which presented themselves. It is a criticism of the Council which provoked the need to call Mr Baxter to answer a non-existent noise case.

46. Mr Baxter confirmed, and the Council has no answer to:

    a. Audibility is not impact
    b. MTAN limits include protection of amenity; they are not arbitrary; they are based on evidence and planning history
    c. It is very unlikely that there would be harm to amenity under MTAN noise levels
    d. Planning conditions produce acceptable noise effects.

47. We turn now to look at the Council's case overall, at the end of the evidence.

AN UNREASONABLE REFUSAL

48. 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.

49. 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.

50. Councillor Young accepted each of these points:

    a. The need for the mineral
    b. The established principle of extracting limestone at the site
    c. Mineral extraction can only take place where the mineral is found
    d. The site is outside the Development Boundary in the adopted Local Development Plan
    e. The site is protected in the adopted Local Development Plan as a Mineral Safeguarding Area
    f. Minerals are an essential part of the economy
    g. Minerals enable the majority of other developments to occur
    h. It is far more sustainable to work new consented reserves immediately adjacent to where there is existing plant and infrastructure rather than a greenfield site where multiple 'less optimal' solutions may be required
    i. The site is well located near strategic and regional road networks.

51. The proposal both complies with the development plan and has a notable planning history of receiving consent, being monitored by the Council and the absence of any formal or informal intervention or enforcement. It is development which has been unreasonably delayed by the planning authority.

52. The Council has no credible evidence in support of its position. Councillor Young signed off his evidence, but he did not write it. That irregular position is as unreasonable as it is startling.

53. For these reasons, 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

CHATURA SARAVANAN

18th August 2025