

RE: DENBIGH QUARRY/GRAIG QUARRY

APPELLANT'S OPENING

Introduction

1. Mineral workings are there because society and the economy need them. They all have environmental effects and that is why we have planning conditions. This case is about planning conditions and nothing else.
2. Anybody who approaches the evidence in this case without regard to the purpose and effect of planning conditions which control development in accordance with accepted policies and environmental standards is, the Appellant will demonstrate, taking an unreasonable approach.

Denbigh Quarry and the Proposal

3. Denbigh Quarry (aka Graig Quarry) at Denbigh is a very long-standing source of minerals. It pre-dates the 1947 Act and first received a consent under an IDO¹.
4. It is an active limestone quarry, north of the town of Denbigh. The existing site is 28.3 ha².

¹ Planning Statement at §1.2.1 [CD 1.01]; see also §1.7.1 of the Officers' Report "*The quarry has a long history of quarrying activity, as it is understood it has been in existence for several hundred years. However, planning controls at the site were first introduced in 1948.*" at CD5.02, p71

² Planning Statement at §2.1.1 [CD1.01]

Application history

5. One of the features of a public inquiry is that it focusses on the points of objection, i.e. the points which are in issue between the parties, and so it should. However, it is also important to always keep in mind what is not in issue, and why that is so.
6. In this case, there has been very long engagement. The Council produced a scoping dated 14 August 2019. You will have read the pre-application consultation materials³ from 2019 and 2021. That was extensive consultation with over 1,300 addresses receiving leaflets. No statutory consultee raised objection in principle⁴, nor indeed did the Town Council, which stayed silent on the topic.
7. By February 2022 the environmental statement had been prepared and the application was made in June of that year⁵. That was a detailed, fully researched and assessed application. As is frequently the case for minerals applications, the Council sought additional detail on two specific points and did so via a request for further environmental information. Those points were: (1) noise and vibration, and; (2) dust and air quality⁶.
8. When specialist consultees were re-consulted, they had no objections to the proposals, subject to conditions⁷. The Town Council did object, principally on noise, vibration and dust issues, but is said nothing about the additional information which had been provided⁸.
9. In December 2023⁹, the application was reported to the Committee with an officers' report in support. That report extends from page 62 to page 92 of CD5.02, plus the 50

³ CD1.16 and CD1.17

⁴ The Wildlife Trust responded to say "*It is acknowledged that with good planning, mitigation and restoration in place, developments such as this can result net biodiversity benefit in the long-term and in our experience Breedon operates to high environmental standards. However, due to issues outlined below we have no option but to object to this development as it currently stands.*" CD2.10 (15th August 2022). Those issues were concerned with the dates of the surveys. It is unclear whether this objection is maintained in the light of scheme changes and updated ecological data.

⁵ CD1.02

⁶ See CD3.01 and 3.02 for the responses to the Reg 24 request

⁷ CD4.01 to 4.15, i.e. there were fourteen consultation responses from specialist consultees each of which raised no objection subject to conditions, plus the response from the Town Council which was on the only objection.

⁸ CD4.12, dated 21st September 2023

⁹ The agenda and officers report went out on 6th December 2023 and the meeting was held on 13th December 2023

conditions which it was recommended should be attached to the grant. There were very many local objections, with a focus on noise, vibration and dust, though other issues are raised which we see here raised in the evidence from SOGS¹⁰. On the other hand, there were representations in support, noting that society needs the minerals which are essential for builders, constructions projects and agriculture. There is local economic benefit and employment. There are sustainability benefits in locating a quarry in the Vale of Clwyd¹¹.

10. Via their detailed and careful 30-page report, the Council's experienced professional minerals planning officers considered the material planning issues by reference to the evidence and the extant policy. Officers considered each of 15 planning issues, starting with the principle. Officers noted¹²:

- a. The established principle of extracting limestone at the site
- b. Mineral extraction can only take place where the mineral is found
- c. The site is outside the Development Boundary in the adopted Local Development Plan
- d. The site is protected in the adopted Local Development Plan as a Mineral Safeguarding Area
- e. Minerals are an essential part of the economy
- f. Minerals enable the majority of other developments to occur
- g. 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
- h. The site is well located near strategic and regional road networks

11. As to need, officers advised Members of the Planning Committee that Denbigh Quarry has a key strategic role in limestone product supply¹³.

¹⁰ Save Our Green Spaces

¹¹ CD 5.02 at p68

¹² §4.2.1

¹³ §4.2.1, last paragraph on p76

12. Officers considered each of the identified effects of the development by reference to the relevant standards and guidance, having regard to the reasonable conditions which could and should be imposed on the grant of planning permission. Officers concluded¹⁴:

“In determining this application, the Council has had regard to the Policies of the Development Plan, and regional and national policy, legislation and guidance. Subject to the imposition of conditions as listed above, there is no sustainable planning reason why planning permission should be refused.”

13. Having been so advised, Members refused planning permission for three reasons. None of those reasons referred to the principle of development, the fact of agreed need¹⁵, the benefits nor the use of planning conditions.

14. The Appellant appealed to the Welsh Ministers on 25th April 2024.

15. Via a report dated 17th June 2024, Mr Duggan BSc(Hons) Dip TP MRTPI, an Inspector appointed by the Welsh Ministers, requested further environmental information. The request was in respect of surveys of protected species, and in respect of no other environmental issue. The Appellant provided the information sought. The Inspector concluded that the information provided was sufficient in respect of each of the following matters:

- i. Landscape and visual impact
- ii. Ecology (save for the survey data, which were then provided)
- iii. Archaeology and cultural heritage
- iv. Socio economic and human health
- v. Noise and vibration
- vi. Dust and air quality
- vii. Hydrology and flood risk
- viii. Agricultural land and soil resources
- ix. Effects on public rights of way
- x. Need for aggregate and importation of waste for restoration.

¹⁴ §5.9, p96

¹⁵ The second RfR referred to justification for the need but did not explain why the objective evidence from RTS2 was either wrong or insufficient justification.

16. In this context, the Appellant will contend at the conclusion of this Inquiry that the evidence which will be before the Welsh Ministers will comprise:
- a. Accepted and established principle of development
 - b. Accepted and established need
 - c. Accepted and established benefits
 - d. Cogent evidence and assessment of effects which is accepted by specialist consultees
 - e. Cogent, detailed and conclusive assessment by the Council's professional officers
 - f. Expert evidence which is not contradicted as to its method, data nor its interpretation by reference to accepted standards and policy.

The Appeal and the Issues

17. The appeal was considered by the Council as follows:

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

18. 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).”

19. The first and second RfR are, as we have noted, 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.

National and Local Policy

20. Need is accepted by the Council. It is not a topic for oral evidence. In closing, the Appellant will draw attention to the acceptance of need for the mineral in the Officers' Report, as we have already set out. It was accepted again recently in an Officers' Report for a time extension to a limestone quarry which officers recommended for approval and which Members turned away¹⁶. It follows that the need position is more acute than when the SoCG was signed by the Appellant and the Council.
21. Attention will also be drawn to RTS2¹⁷. The Council endorsed RTS2 on 26th January 2021. For the detailed reasons given by Mr Toland, it is the Appellant's case that the proposed extension at Denbigh Quarry would meet the sub-regional need for crushed rock aggregate, as agreed by the Council in The North-East Wales Statement of Sub-Regional Collaboration (SSRC)¹⁸.
22. In this regard, there is accordance with the Development Plan: Policy PSE17(ii). This establishes the role of the Regional Aggregates Working Party within development plan policy.
23. The remaining live issues in this appeal are about environmental effects. Planning policies in respect of minerals are, and always have been, framed in terms of acceptability. What is acceptable for noise, vibration and dust from a quarry is something which has long been the subject of measurement, standard setting and use of monitoring. There has never been, and there is not, any policy which seeks to prevent all or any effects.

¹⁶ Burley Quarry

¹⁷ Regional Technical Statement Second Review (RTS 2) (2020) (CD6.18)

¹⁸ Mr Toland's proof at his section 4.2, p 9-12

24. The Appellant will demonstrate that the Welsh Minister's policies and guidance are consistent with this proposition. The Appellant will further demonstrate that the development plan is consistent with the Welsh Minister's approach, e.g.¹⁹:

- a. Noise is to be kept to an acceptable level;
- b. Dust impacts are to be reduced (not eliminated);
- c. Blasting controls are to be suitable.

25. We now turn to the expert evidence which illustrates this policy approach.

Expert Evidence

26. The Appellant will show in respect of each of noise, vibration, air quality/dust that there are clear and well established standards and policies such as:

- a. 10dB above background and not above 55dB for noise from operations;
- b. Such is established in the Welsh Minister's guidance;
- c. Likewise, vibration can be measured and standards can be set – in this instance by measuring peak particle velocity and setting that at 6 mm/s;
- d. And blasting frequency, timing and notification can be conditioned and controlled;
- e. Dust management plans are a routine feature of minerals workings – see Mr Walton's Appendix 1 for an example.

27. There is no expert evidence from the Council. We shall invite you to conclude:

- a. The Council approached experts in noise, dust, blasting and minerals planning with a view to them appearing to give evidence at this Inquiry;
- b. No such expert was prepared to give evidence in support of the Council's position;
- c. The fallback position was to call the decision maker, i.e. a Councillor, to give evidence;
- d. Officers have supported Councillor Young in the preparation of his Written Statement;
- e. The Council has been advised that this is the best it can do in an attempt to save the costs position.

¹⁹ See PSE17(iv) at d, e and f in the Local Plan CD6.01 at p61

28. In opening, we do highlight the position which the Council creates. It is both unreasonable and potentially unfair. It is potentially unfair because the Council has failed to call any evidence which can be tested against acknowledged methods of assessing noise, vibration or air quality effects. For example, it is not productive to put Dr Farnfield's evidence to Ms Sirianni. Similarly, whether Councillor Young genuinely has a cogent understanding of the assessment and policy response to the effects of minerals development remains to be seen. The Council's advocate will certainly not be able properly to go beyond the evidence which makes up the Council's case, as produced by its witnesses themselves.

Conditions

29. The planning authority has refused permission for development on grounds which are clearly capable of being dealt with by way of condition. Any reasonable planning professional would conclude that suitable conditions would enable the development to proceed²⁰.

30. This will be shown to be the case in respect of all environmental effects and particularly in respect of the contested issues of air quality, noise and blasting. This will be demonstrated by reference to:

- a. The environmental information
- b. The operational history of the quarry
- c. The consultation responses
- d. The established policy and guidance
- e. The expert evidence

31. So, taking the example of noise, the Inquiry will be taken to both the ES and to the Noise Assessment of 2nd August 2023 which shows the detailed baseline monitoring, assessment of effects on each sensitive receptor and looks at those effects phase by phase²¹. The detail of this work will be relied upon to show that there are no additional

²⁰ DMM; Section 12 Annex, v2, May 2025, §3.11(c)

²¹ CD3.01 – the Regulation 24 Assessment, particularly at Table 1.14 at p21

mitigation measures required in order for the scheme to meet the planning conditions which were proposed by the Council's planning officers and which appear in the SoCG.

32. The detail is relied upon because it is the product of expert consultation. In the example of noise effects, the Council instructed Mr Darren Lafon-Anthony MSc MIOA FIQ, Director of Acoustics at Enzygo. He has thirty years of relevant experience²². He accepted both the methodology and the conclusions of the Noise Assessment²³ and recommended precisely the conditions which appear in the SoCG. So, it will be the Appellant's case that the experts have both undertaken careful assessment and agree on the appropriate planning conditions which will enable the development to proceed with acceptable noise effects.

33. The acceptability of those noise effects is not a threshold that the experts have conjured up. The experts have applied the Guidance in:

- a. MPG11²⁴
- b. MTAN 1²⁵

34. In turn, those assessments will be considered in the context of local and national policy, and particularly Policy PSE17 of the DLDP²⁶. This provides that *noise is to be kept to an acceptable level*²⁷.

35. The Appellant's simple proposition during the course of this Inquiry is that it is entirely content to accept a planning condition which fully reflects the Welsh Minister's long standing policy and guidance and that it has been demonstrated and agreed that proposal would operate well within those limits. It will further be demonstrated that the Council has ample powers to require both monitoring and, if it were necessary, to take enforcement action in order to ensure that the noise effects are acceptable. Given that such has not been necessary to date in the context of a quarry which has operated since the modern planning system existed and in the context of the modern conditions

²² CD4.08

²³ CD4.10

²⁴ CD6.16, particularly at §37

²⁵ CD6.15, particularly at §88

²⁶ Denbighshire Local Development Plan CD6.01, at p61

²⁷ See PSE17 (iv)(d), at p62 of the DLPD

imposed and reviewed pursuant to the ROMP provisions of the Environment Act 1995, it is highly surprising that it is necessary to call this evidence or to make these submissions at all.

36. Precisely the same position pertains in respect of all other effects: the expert evidence has been consulted upon and the Council's professional officers consider that the development would be acceptable with appropriate conditions.

5th August 2025

**RICHARD KIMBLIN KC
CHATURA SARAVANAN²⁸**

²⁸ Pupil