
**APPELLANT'S GROUNDS FOR MAKING A
COSTS APPLICATION**

Extension Appeal

1. The appellant gives notice that it intends to make a costs application. The grounds are set out below. The grounds will be expanded upon and settled after the evidence has been heard.
2. The application is for a partial award of costs. The application is for the costs of and occasioned by the appeal, save in respect those costs which relate to acoustic evidence and dust evidence.
3. In the course of the appeal, the Council raised a question about background noise levels (SoC at §3.8 and §3.50). The appellant did not accept that there was any merit in the Council's point. However, the appellant took a pragmatic view and undertook further monitoring. The result was the same as that obtained previously. The appellant provided the full evidence to the Council and invited the Council not to contest the acoustic evidence on the basis that the appellant would not seek its costs on that issue.
4. Essentially the same point arose in respect of dust (SoC at §3.9 and §3.51) and the appellant took, and takes, the same pragmatic view.
5. The application is for a substantive award. The refusal was unreasonable.
6. The grounds on which an award of costs is justified are:
 - a. The RfR has been abandoned.

- b. The Council relied on a new case in its Statement of Case because no professional witness would support refusal for the reasons given.
- c. The new case was so different to the RfR that it had to go back to Committee.
- d. The Council called no witness in respect of any specialism which went to the question of amenity. The Council had no case on reasonable planning grounds, and its professional planning advisors knew that.
- e. The need for the inquiry has been driven by the members of the Council who have adopted an irrational position, i.e. a position which has not been explained by good planning reasons, supported by the evidence which is to be expected.
- f. No part of the environmental information has been contested. It is unreasonable to accept the contents of an Environmental Statement which demonstrates compliance with policy and guidance and then to refuse for unparticularised environmental reasons.
- g. To the extent that there was a concern about buffer distances, the Council declined to use a condition to limit the extent of working to a distance which it considered acceptable. In any event, it has now abandoned that policy point.
- h. The Council was opposed to the extension as a matter of principle. So much is clear from the refusal of the s73 application.

S73 Appeal

- 7. Paragraphs 1-6 are repeated.
- 8. The grounds on which an award of costs is justified are:
 - a. (a) to (g) in paragraph 6 above
 - b. It was unreasonable to refuse consent to continue to work mineral reserves which are presently consented, particularly in circumstances including:
 - i. There was no identified nor any identifiable health effect, as alleged in the members' RfR.
 - ii. The absence of any change at all in operations as a result of the proposal
 - iii. It was open to the Council, if the relevant tests for the imposition of a condition were met, to control the winning and working or mineral in order to address any effect which would have been unacceptable.
 - iv. There were no unacceptable effects – effects were acceptable.
 - v. The effect of the refusal upon the land bank.

- c. The Council simply opposed any continued quarrying. The members' position was that the quarry should close, regardless of development plan policy (which is not mentioned in RfR), the evidence as to environmental effects and of national planning policy in respect of a demonstrable need.
 - d. The members' decision was not a planning judgement. It was a decision to refuse which was entirely unencumbered by any reasonable planning consideration.
9. In determining the costs application, the Welsh Ministers will have to decide whether they wish to signal their support for a functioning and rational planning system.
10. The appellant will expand on the above matters and provide a costs application document to the Council on 24th June 2022.

RICHARD KIMBLIN QC
SIONED DAVIES

No5 Chambers

15th June 2022