

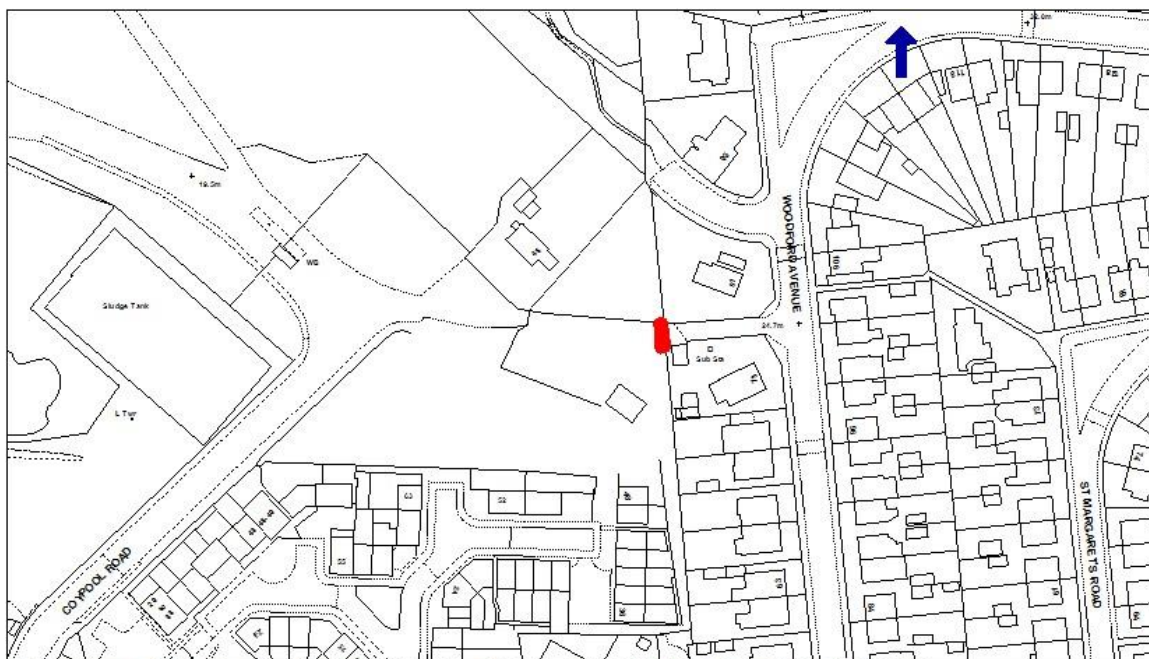
# PLANNING APPLICATION REPORT



<b>Application Number</b>	16/00664/FUL	<b>Item</b>	07
<b>Date Valid</b>	15/04/2016	<b>Ward</b>	Plympton St Mary

<b>Site Address</b>	THE FORMER CHINA CLAY DRYER WORKS, COYPOOL ROAD PLYMOUTH		
<b>Proposal</b>	Application to remove condition iii of permission 689/74/1(b) (this relates to the former access off Woodford Avenue)		
<b>Applicant</b>	Marshmills Limited		
<b>Application Type</b>	Full Application		
<b>Target Date</b>	<b>15/07/2016</b>	<b>Committee Date</b>	<b>Planning Committee: 07 July 2016</b>
<b>Decision Category</b>	Major - more than 5 Letters of Representation received		
<b>Case Officer</b>	Alan Hartridge		
<b>Recommendation</b>	Refuse		

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## 1. Description of site

The site address on the application form is The Former China Clay Dryer Works, Coypool Road. The accompanying plan shows the application boundary as a strip of land across the end of a 30m long road that affords access from Woodford Avenue in the east to an electricity substation to the south east of the application boundary. It is a narrow private road without footways or a vehicle turning area. The red line boundary defines the location of a wooden gate that has recently been erected to replace a wall that was demolished by the applicants and the gate is unlocked to facilitate access to the Coypool Dryer site by the applicants.

It is considered to be relevant to also describe the wider area beyond the red line boundary (mentioned as the site address) as the original planning permission and the condition are in respect of access to/exit from the China Clay Dryer complex. The mineral activities and clay dryer operations at the china clay dryer works have ceased and the area comprises degraded, despoiled land and buildings. Access by Imerys to the north of the former works (containing unused concrete settlement tanks) has been restricted by Concise Construction and a gate and deer fence across that part of Coypool Road owned by Imerys (west of the Triumphal Crescent estate) now limits access to the China Clay complex by Concise Construction.

## 2. Proposal description

This wall blocked access from Woodford Avenue to the Marsh Mills China Clay Dryer works and was in place for over 40 years whilst access to the works has been provided from Coypool Road in accordance with the planning permission issued in 1974 for the construction of that road (plan ref 689/74/1(b)—see section 4). The applicants recently decided to demolish the wall in breach of a planning condition imposed upon the 1974 permission as a condition imposed by the local planning authority requires the private access road from Woodford Avenue to be blocked permanently to safeguard public safety and the amenities of nearby residents.

The application is made under Section 73 of the Town and Country Planning Act which is for planning permission for the development of land without complying with the planning condition imposed as part of the planning permission in 1974.

Planning condition (iii) imposed on 689/74/1(b) states:

**“Within one month of the proposed road being brought into use any existing accesses from the site to Woodford Avenue must be permanently closed up to the satisfaction of the local planning authority and notwithstanding the provisions of the Town and Country Planning General Development Order 1973, as amended, no new access shall be formed without the express consent of the Local Planning Authority”**

**Reason: “to safeguard public safety and the amenities of nearby residents”.**

A wall across the former access road was subsequently constructed in about 1977 to the satisfaction of the local planning authority and this complies with the requirements of the condition.

The applicants claim that the 1974 permission was granted without reference to the landowners at that time and that the planning condition is now restricting their access from Woodford Avenue to that part of the Dryer site that their client owns. They point out that the Clay Dryer operations have ceased and that access via Coypool Road has been physically closed to them. They state:

**“Marsh Mills Ltd require access to the former china clay site for security and emergency purposes, and to undertake site safety inspections, ground investigation and other general surveying and assessments work to determine levels of contamination and any required remediation.”**

The applicants have demolished the wall and installed a gate in its place to facilitate vehicular access.

The applicants decided to submit this s73 application to delete the 1974 planning condition stating that this application is not 'retrospective'. They have recently confirmed that the application is to 'regularise' use of this access which is currently in use every day. Vehicles have accessed the site for survey work and a security company are contracted to undertake a tour of the entire site once every 24 hours. The gate is opened and closed every day (on occasion at night time).

The applicants have also suggested that an alternative planning condition warrants consideration.

**“Unless otherwise agreed with the Council access and egress to and from the site via the gated entrance between 73 and 91 Woodford Avenue shall exclude any activities related to clay drying operations or other operations ancillary to that use and shall only be used for site security and emergency purposes, and to undertake site safety inspections, ground investigation and other general surveying and assessments work and to determine levels of contamination and any required remediation.”**

### 3. Pre-application enquiry

Although the applicants were made aware of the 1974 planning permission for Coypool Road and the reason for the planning condition to secure permanent closure of the substandard access, there was no prior notice given to the local planning authority about their intention to demolish the wall that blocked the access road from Woodford Avenue. This is addressed in section 8.

The local planning authority have been made aware of the dispute between Imerys and the applicants over redevelopment potential of the Dryer complex and this dispute has led to each party restricting access to the other. This was made clear during a series of pre-application meetings to discuss the applicant's development intentions for part of the former china clay complex and local members were made aware of this dispute in November. Notice was not given at that time that the wall would be removed and replaced by a gate (14/01359/MAJ and 15/00452/MAJ –Development Enquiry Service meetings).

### 4. Relevant planning history

In 1951 the Plympton St.Mary Rural District Council granted planning permission for clay drying at Marsh Mills in association with the extensive Lee Moor mineral workings and conditions were imposed following an appeal in 1958. The conditions have subsequently been reviewed in accordance with legislation relating to Reviews of Old Mineral Permissions (ROMPs) by Devon County Council.

689/74/1(b) –Construction of new access road for Marsh Mills China Clay Works and adjoining industrial land at Marsh Mills China Clay Works. Granted subject to conditions **9<sup>th</sup> October 1974**. In November 1975 the council refused an amendment to the condition to allow employees to enter the site via the Woodford Avenue access in their private motor vehicles.

93/00886 and 95/00011 Change of use of part of the china clay site to transport depot granted personal planning permission (to EEC) **2<sup>nd</sup> March 1995**

08/01686 and 08/02095 Screening and scoping opinions issued by DCC under the EIA Regulations requiring an ES to be submitted for the Lee Moor/Head-on/Marsh Mills ROMP. A ROMP application submitted in **October 1998** and is being handled by Devon County Council. The scoping opinion was issued **30<sup>th</sup> January 2009** and the proposed condition for Marsh Mills Dryers requires the approval of a Restoration and Aftercare Scheme.

14/00755/ESR10 and 14/00956/ESR10 Screening and Scoping Opinions under Regulation 5 of the Environmental Assessment Regulations 2011 –requiring an EA for an urban development of 12.1 hectare of the Coypool Marsh Mills china clay works

## 5. Consultation responses

### Police Architectural Liaison Officer

The Police Architectural Liaison Officer has made the following comment: “The Devon and Cornwall Police would advise that Coypool Road is adequately designed for emergency vehicles. The existing planning permission granted for this road in 1974 would appear to be sound. By Imerys agreeing not to restrict such access along Coypool Road for emergency vehicles this should be sufficient to allow access for emergency situations.

The planning condition imposed in 1974 prevents use of a substandard link between the drier complex and Woodford Avenue and Devon and Cornwall police would prefer that Coypool Road is used instead.”

### Western Power Distribution

Western Power Distribution has made the following comment “Following legal consultation we have decided not to comment on this application. It is very clear that we have full legal right of unobstructed access to the substation that we will enforce whoever owns or develops the site.”

### Local Highway Authority

The Local Highway Authority has made the following comment: “The site is located at the end of a private road which runs about 30m in length and extends from the site boundary in the west to Woodford Avenue at the eastern end. This private road is substandard and unsuitable to provide access to a Development - it is constructed so that two vehicles are unable to pass, with no footways and no vehicle turning. The road serves only an electrical substation and the rare vehicular traffic which this requires. The road is inadequate to serve the mineral complex /industrial type development which is currently permitted at the site, for the demolition of any buildings remaining on site or to remove material from the site.

Since 1974 access to the land has been obtained via Coypool Road however this access is now closed due to a dispute with Imerys and Imerys state that emergency access is available and that they are willing to discuss provision of access for other purposes by agreement.

A number of LOR’s objections concern traffic impact on Woodford Avenue. However, it is unclear whether the proposal to carry out ground investigation and other stated uses would generate a noticeable increase in traffic levels on Woodford Avenue. The applicants suggest that a modified condition would be acceptable and consideration has been given to this. But the access is of a substandard nature and was deemed to be unsuitable to be used as an access for vehicles which would arguably be unsafe and have impacts on the amenity of residents. An access gate has been created and the applicant states that regular access for Security Guards to the site needs to continue. On balance there would be no objection to a pedestrian only access serving the site if such a Condition limiting this was warranted and enforceable.

Suggest refusal for the following reasons:

Sub Standard access:

It is considered that the proposed access arrangement is unsuitable for its intended use and is therefore likely to give rise to issues of personal and highway safety, and damage to amenity which is contrary to Policy CS28 and CS34 of the adopted City of Plymouth Local Development Framework Core Strategy adopted April 2007.”

## 6. Representations

### **29 Objections refer principally to the adequacy of the Coypool Road access and the inadequacy of the former access and the key issues are summarised below.**

1) Industrial traffic constituted a nuisance prior to provision of the two-way Coypool Road suitable for HGV traffic. There have been demographic changes and population increases since 1974. This access was blocked to safeguard public safety and the amenities of nearby residents and opened up at a time when traffic flows are much heavier. The disturbance to residents would not be justified because of a current dispute between a landowner and a company seeking a planning permission for development of part of the China Clay site. The two owners should be encouraged to work together to produce a single plan to realise the full development potential of the Dryer complex using the Coypool Road access provided for this purpose.

2) It would result in the use of the substandard narrow access close to a sharp bend and it would be dangerous with slow moving vehicles entering traffic flow on a blind bend. The road is only 4.5 metres wide and traffic entering or leaving the site would pass the primary living space window on the front corner of a neighbouring dwelling with an impact on their privacy as a HGV driver could see over the fence into their bungalow which is occupied by a housebound invalid and the traffic would have a detrimental effect on health, peace and enjoyment of home and garden. This access is not wide enough for 2 way traffic therefore any vehicles approaching the entrance would have to wait causing more back up of traffic along the residential road if the road was already occupied. The fire service would have difficulty in servicing any incident. The existing access does not even comply with a modest R32 Narrow Access Way as per Devon Highways Design Guide Part 1.

### **59 Objections refer principally to the unwarranted use of Woodford Avenue for HGV traffic and such impact upon safety and amenities. The key issues are summarised below.**

1) Woodford Estate is a quiet residential estate and the roads are not designed for industrial lorries/trucks adding to congestion and degrading the resident's standard of living. Access off Woodford Avenue would incur unacceptable dust, noise and air pollution, heavier traffic flow, congestion at the Plymouth Road junction and possible damage to resident's vehicles trying to gain access in and out of the site. The traffic volume on Woodford Avenue is already an issue and there would be a safety problem with parked cars on both sides of the road and the road used by cyclists, as the estate cannot support additional volume of traffic and HGVs that would ultimately be created following this access being opened up. Construction traffic lorries should not be allowed to carry the Drying Shed's asbestos waste through a housing estate used by children/people walking along Woodford Avenue

### **14 Objections refer principally to the applicants disregard for damaging impact upon local residents and planning procedures. The key issues are summarised below.**

1) Very disappointed at the lack of consultation and engagement by the developers with the local community and our councillors. The applicant is attempting to run roughshod over the planning consent system/ concern about the manner in which the wall was removed without prior consultation or decision/the applicants should be made to restore the wall they have illegally removed and follow proper procedure (and action should be taken over this illegal act). It should not be approved just because it seems expedient. As a night worker the disruption (noise disturbance from load-bearing vehicles and drivers) that has already been caused has demonstrated what it would be like if there was continuous use of this access. Diggers have been turning up early mornings causing problems. The applicant states they need access to "allow site investigations and assessment

work to determine levels of contamination and any required remediation” The developers by disregard of planning procedures and taking down of the wall prior to permissions have already availed themselves of various site visits and surveys have already taken place. By “remediation”, the applicant does not provide any further information, but this phrase would mean that there could be thousands of tons of rubble from the old china clay works redundant buildings that would have to be moved off the site via the proposed access via Woodford Avenue.

2) This request is incredibly flawed and unnecessary and no matter the time limit this is for it would bring great disruption, harm and noise to the area. We (the general public) know that any 'one month' limit is highly likely to be ignored.....as are any other restrictions (and the recent unauthorised access proves this).

3) One objector suggests limiting the access solely for small, i.e. car, access to view and assess site would no doubt be acceptable, but any heavier traffic passing between people's homes is not.

**3 objections and 1 concern about impacts upon wildlife** particularly on the bats, owls and deer populations in the woodland

### **Letter of Objection from Imerys Planning Estates Coordinator**

The key objection points are summarised below :

- 1) The original 1974 planning decision is lawful and the fact that the landowners claim they were not informed is irrelevant .The planning condition was justified and is relevant with increased traffic use of Woodford Avenue.

The rationale remains for the original condition being imposed and complied with and its removal would have a detrimental effect on the local residents of Woodford Avenue, particularly when considered against the already enhanced pressure on the local road network caused by increased numbers of motor vehicles using the Avenue since the 1974 decision. The condition was deemed necessary, at that time, to address the issue of traffic levels on Woodford Avenue. It would be entirely reasonable for this application to be fully informed by the provision of a Transport Assessment.

In accordance with the NPPF para 35, weighted consideration should be made for the encouragement of local residents to walk and to and use public transport. The likelihood of the interruption of their amenity with increased traffic through an access which has been unused for 42 years would be detrimental to pedestrians and cyclists in Woodford Avenue.

- 2) The planning condition requires a permanent closure and not one that expires on cessation of china clay production
- 3) Access for survey work is unjustified as Imerys has remediated the environmental condition of those parts of the site, which have now reverted to the control of Marsh Mills Ltd (*Subsequent emailed that the lease area is free from contamination and there is no requirement for further surveys or work to be undertaken until such time as a full planning application is submitted to PCC* )
- 4) Coypool Road access is barred to the applicants due to landowner health and safety management obligations and Imerys continues to offer to engage in a positive dialogue with them for an agreement to use the private access for certain activities and so render the current application wholly unnecessary. (*Subsequent emailed that they would consider allowing pedestrian access for a guard from their Woodford Road entrance*)

- 5) There are no health and safety grounds on which this application should be consented as full access for the emergency services can be provided from the Imerys entrance on Coypool Road (*Subsequent email gives additional details relating to this*)
- 6) If planning permission were to be granted, creating a lawful right of access via the previously stopped up access, this is likely to result in a situation where future unfettered access will be achieved. Whilst Concise Construction Ltd have offered to enter in to a unilateral agreement to prevent access to the site for the purpose of industrial use (B2 and B8), no guarantee has been given that the access would not be exploited for residential or other uses.

## 7. Relevant Policy Framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007). In the case of this application, it also comprises the Waste Development Plan Document.

The development plan is currently being reviewed as part of the Plymouth Plan. The Plymouth Plan-Part One was approved by the City Council in September 2015. The Plan, which incorporates draft development plan policy, has been prepared following a consultation process. As such it is a material consideration for the purposes of planning decisions.

The policies contained in National Planning Policy Framework (the Framework) and guidance in National Planning Practice Guidance (NPPG) is also material considerations which should be taken into account in the determination of planning applications. Due weight should be given to relevant policies in existing and emerging plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The Framework provides that the weight to be given to an emerging draft plan is also to be determined according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given). The Plymouth Plan is at a relatively early stage of preparation.
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given).

At the heart of the Framework is a presumption in favour of sustainable development. In the context of planning applications, this means approving development proposals that accord with the development plan without delay but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits;  
or

- Specific policies in the Framework indicate development should be restricted.

## 8. Analysis

1. This application has been considered in the context of the development plan (Core Strategy numbers CS19, CS28 and CS34) the draft Plymouth Plan (PP30), the Framework (paras 17, 32, 188, 203, 207) and other material policy documents (the Waste Development Plan Document proposal W1) as set out in Section 7.

### 2. Lack of pre-application discussions and need for the S73 application to regularise the use of the access

The applicants demolished the wall to enable access in breach of the requirements of the planning condition and without any pre-application discussions or notice given to the local planning authority. This approach is considered to be contrary to the advice given in NPPF (para 188) which points out that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

3. National Planning Guidance states that new issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, a section 73 application can seek a minor material amendment, where there is a relevant condition that can be varied. The National Planning Guidance encourages pre-application discussions in advance of an application being submitted to judge the appropriateness of the minor material amendment route. It is considered to be unfortunate that his approach was not followed but it is considered that the lack of pre-application discussion is not a material planning consideration.
4. The applicants have been made aware of the concerns of local residents about the removal of the permanent blockage; they have continued to use the access by vehicles despite requests to stop (section 6). Planning officers have an interest in this matter, mindful that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control in accordance with NPPF (par 207). NPPF (par 203) states that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations”.
5. It is considered that consideration needs to be given to the applicants to justification for the action taken in consideration of this S73 application is to regularise access. The following matters are considered relevant:
  - Whether it is reasonable to accept the applicants submission that the cessation of clay dryer operations and restriction of their use of the Coypool Road removes the need for compliance with the existing planning condition, and warrants the removal of the wall and replacement with a gate and
  - Whether the suggested alternative condition is warranted.



This is considered in the following sections of this report (paragraphs 6- 28 below).

**6. Vehicular activity associated with the Clay Dryer complex and the requirements of the existing planning condition.**

Planning decisions should take account of whether safe and suitable access to a site can be achieved for all people. It is considered that the planning authority's permission for construction of the Coypool Road accords with this requirement and that the associated planning condition was essential to the provision of a safe and suitable access.

7. NPPF (para206) requires planning conditions to be relevant, enforceable, precise and reasonable. It is suggested that the existing planning condition does this. It is clear about what is required: "existing accesses from the site to Woodford Avenue must be permanently closed up" and "no new access shall be formed without the express consent of the Local Planning Authority" to safeguard public safety and the amenities of nearby residents
8. The condition does not differentiate between vehicular and pedestrian access and it is clear that a permanent closure of the access is required and it is not time-limited and not one that lapses when Clay Dryer operations cease. It is the case that an authorised mineral related activity that has ceased might be brought back into use for various reasons over time, perhaps arising from new market demand or new ownership. Furthermore the mineral planning authority has a responsibility to try to obtain a reclamation scheme once authorised mineral-related activity has ceased. In this respect, it is considered that the use of Coypool Road for such traffic is still relevant and the condition restricting access to Woodford Avenue is still relevant.
9. The permanent closure across this narrow access road prevented traffic flows to Woodford Avenue from not only the Clay Dryer complex but also from the industrial estate south of the complex. The wall erected to comply with requirements of the planning condition was required to 'permanently' prevent this route as it involved use of a substandard access road and the likelihood of adverse impacts upon safety and residential amenity. The condition requiring a permanent closure seems to have been a reasonable requirement.
10. Although operations at the Dryer complex have presently ceased, potential vehicular activity has not. Although it is understood that Imerys employed specialist external consultants to survey that part of the Clay Dryer complex formerly leased from the current owner for any contaminants over an 18 month period and carried out remediation works at ground level, it is reasonable to suggest that vehicular access is still required for clearance of buildings/structures /waste material when carrying out a reclamation scheme and the planning condition preventing egress onto Woodford Avenue is therefore still relevant. The condition does not state that it is for a temporary period and that it lapses once the stage has been reached when clay drying operations cease and when the required reclamation operations are warranted. The Clay Dryer complex contains large scale vacated buildings that need to be cleared and it is considered that the routing of such traffic has to be carefully considered. On balance it is considered that the planning condition resulting in a permanent closure of the access to Woodford Avenue is still relevant as public safety and the amenities of nearby residents would be detrimentally affected by the passage of HGVs on that route along a road that the highway authority consider to be sub-standard.
11. The provision of a permanent closure would have prevented vehicular flows from the northern part of the complex (owned by Imerys) had it been brought into use as a strategic

integrated waste management site in accordance with the approved Waste Development Plan 2006-2021 (proposal W1) . It is considered that only Coypool Road would provide the suitable standard of access required by that policy. The condition requiring permanent blockage of the access to Woodford Avenue is still reasonable as that road is narrow and unsuitable for accommodating waste management traffic.

12. The existing condition is clear that it is not one that lapses when a dispute breaks out between landowners or their representatives. At present officers understand the owners of Coypool Road (Imerys) have a dispute with the applicant and this is referred to by many objectors. Disputes with landowners and/or their agents over development matters are not uncommon and need not be material planning considerations and this one seems to be in respect of redevelopment potential and this is not under consideration as part of this S73 application. However the dispute has involved the erection of a gate across Coypool Road and this is of concern to the applicants and in this respect it is relevant to note that Imerys state that they are open to negotiation about further access to enable the requirements of the original condition to be met. Disputes can be short-lived and it is suggested that in weighing up planning considerations, weight should be given to the reason for the condition to safeguard public safety and the amenities of nearby residents. It is considered that this is reinforced by the NPPF. A core planning principle to underpin decision-taking (as stated in the NPPF (para 17) is that planning should not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives. It is considered that the local planning authority's decision in imposing the condition on the 1974 permission, requiring a permanent blockage of the substandard access, effectively reflects this core planning principle.
13. In conclusion it is considered that it would be unreasonable to accept the applicant's submission that the cessation of Clay Dryer operations and restriction of their use of the Coypool Road is sufficient justification for not complying with the scheme approved by the local planning authority that resulted in a blocking wall being constructed, and is not sufficient justification for removal of the wall and replacement with a gate to facilitate access.

#### **14. Whether the suggested alternative condition is warranted.**

The applicants state that the access shall only be used for site security and emergency purposes, and to undertake site safety inspections, ground investigation and other general surveying and assessments work and to determine levels of contamination and any required remediation. These are considered in the paragraphs 15-18 below together with consideration of the modified condition that would be acceptable to them (see section 2). In considering whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations (NPPF 203) it is relevant to consider whether the suggested condition would be necessary and relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (NPPF para 206 extract).

15. The applicants suggest that activities associated with clay drying and other operations ancillary to that use would be excluded from using the access but it is **unclear** what regularising access entails for “**other general surveying and assessments**” and there is local concern that this could result in unnecessary safety and local amenity impacts. This warrants consideration.

16. The applicants have made it clear in pre-application discussions that they do not seek to restore their client's land to landscaped green space. Despite a request made on 31<sup>st</sup> March 2016 to cease use of this access and block off the access the applicants have failed to do so and have still been using the narrow road for vehicles to gain access for surveying purposes. It is unclear whether these "general surveying and assessment" surveys are for the purposes of informing speculative redevelopment potential (as this site is not allocated for development) and have been asked to clarify their statement that "limited additional traffic movements are anticipated" but have not done so at the time of writing this report. It is considered that the suggested alternative condition is imprecise about the scale/nature and timing of vehicular activity associated with "general surveying and assessment" and what that means as survey work for reclamation purposes has been completed under the control of an Environment Agency Permit.
17. It is considered that there is sound advice from the highways authority that this access road is narrow and unsuitable for such vehicular activity. Access for the purposes of "general surveying and assessment" has not been justified and it would be likely to give rise to issues of personal and highway safety, and damage to amenity which is contrary to Policy CS28 and CS34 of the adopted City of Plymouth Local Development Framework Core Strategy adopted April 2007.
18. The applicants suggest that **access by emergency service vehicles** is required to their clients land and that the 1974 planning condition requiring a permanent closure of the Woodford Avenue access is unreasonable in preventing this as a gate has been erected by Imerys across the Coypool Road preventing such access by that route. Because of this, they suggest that the modified condition is warranted. However Imerys have made arrangements to address the issue to enable emergency services to access the former Clay Dryer complex by Coypool Road. They have a single point of contact for the public and the emergency services to contact in the case of an incident and it is manned 24 / 7 and a large sign has now been fitted to their gate with contact numbers for all the emergency services clearly displayed. The deer fence (a few metres in from our entrance gate) has been removed and replaced with a red / white plastic chain to demarcate their boundary.
19. The Civil Contingencies and Emergency Planning Office is aware of the change in circumstances of the site and Imerys have made it quite clear that if the emergency services need to act quickly to force entrance through any part of our site then this is perfectly acceptable to them.
20. In the circumstances it is considered that the suggested modified condition requiring access for emergency service vehicles off the substandard access is unnecessary. Refusal to modify the existing condition for this reason would be reasonable. Such would accord with the views of the highways authority and the Police Architectural Liaison Officer. Vehicular use of the substandard access for such purposes would be likely to have unwarranted detrimental impacts contrary to advice in the NPPF (par 17). CS 28 and CS34.
21. The applicants state that access is needed to their client's part of the former China Clay Dryer complex **for site security** as the gate erected by Imerys across the Coypool Road prevents such access by that route. This is one of the reasons for their suggesting the modified planning condition and for contracting a security company to undertake a tour of the entire site once every 24 hours.

22. There is a vacant bungalow to the west of the application site and it is understood that it was recently broken into and some damage may have been caused. At the time of writing this report the applicants have not responded directly to a query of whether it is their client's intention to keep the bungalow vacant. However, they have clarified that access to the bungalow is not a requirement of the modified condition suggested as part of this S73 application.
23. CS32 relates to the requirements of new development to incorporate well designed security features and places with designed with management and maintenance in mind, but this is hardly applicable in this case as the S73 application does not facilitate any development.
24. It is considered that security may be needed for effective stewardship of wildlife in accordance with CS19, particularly deer and protection of the bat population, but this reason for requiring access is not mentioned by the applicants and the majority of the woodland areas are outside the land area owned by the applicant's client.
25. It seems that site security is required to that part of the complex containing vacant/derelict buildings. There is a security fence in place on some of the boundaries to that area of land but no CCTV surveillance as mineral operations are not underway. The applicants state that they require vehicular access to enable a security firm to tour the site. They have not suggested that pedestrian access would suffice (but this is considered in paragraph 29 below)
26. The Highway Authority points out that the substandard access has no pedestrian path is narrow and is used by vehicles serving the Western Power substation. It is considered that the modified condition suggested by the applicants is unnecessary as the most appropriate access for vehicular access is via Coypool Road and the current dispute needs resolution between both parties to facilitate this. Assurances on this have been received. Imerys offer to engage in a positive dialogue with the applicants for an agreement to use their private access for this. They also need to access their land (containing mineral tanks to the north of the Adams family land) for security purposes.
27. Such an agreement is still being encouraged by the local planning authority in accordance with NPPF 17 in finding ways to limit unwarranted vehicular activity to enhance and improve the amenities of Woodford Avenue residents.
28. Refusal to accept the suggested modified condition need not unreasonably impact on the deliverability of a development as this S73 determination has no implications for any new development and as Imerys require access to their land refusal to accept the modified condition need not place unjustifiable and disproportionate financial burdens on the applicant. It is suggested that the proposed modification of the condition in the manner suggested is unnecessary.

## **Other matters**

### **Limitation to pedestrian only access**

29. Consideration needs to be given to whether a modified planning condition restricting access to a **pedestrian only access** is warranted and would be enforceable.
30. The private road in question is substandard and unsuitable to provide vehicular access and is so narrow that two vehicles are unable to pass although the vehicular traffic resulting from

maintenance of the electrical substation is slight. However, there are no footways for pedestrian use as there are at Woodford Road to north of this blocked access road and this could provide a more appropriate pedestrian access route onto the applicant's complex. Imerys have confirmed that they would not object to this (access from this direction would involve crossing a strip of land owned by them). This option would not require revision to the condition imposed by the local planning authority in 1974 and would be a wider road for parking a security van and provide a safer route for pedestrian access for security personnel.

31. At the time of writing this report the applicant's response to this suggestion is not available but should be by the date of your meeting. However, on the information available at this time it seems that a modified planning condition restricting access to a pedestrian only access is not warranted. Alternative pedestrian access points can and should be encouraged. The concerns of residents and the Highway Authority and Police Architectural Liaison Officer about the lack of sound and reasonable justification for removing a permanent road blockage to open up this substandard access route after 42 years warrants support in the interests of safety and residential amenity and such would accord with CS 28 and CS32 and CS34.

**32. Potential redevelopment of the former clay dryer site**

The applicants point out that the majority of objections/representations submitted are concerned about increased traffic levels as a result of the wider redevelopment of the former clay dryer site, and concerns regarding construction traffic using the access. There has been a public consultation exercise by the applicants relating to a possible mixed use of development of the Coypool complex and also pre-application discussions with officers concerning a possible residential development of part of the complex.

33. There is mention of NPPF (para 32) in the Letters of Representation (section 6 above). This states that developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. However, there is currently no planning application for such uses and permission for such access cannot be granted through the present section 73 application and to that extent it is considered that the applicant's advice is sound that these are not material considerations.

## **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## **10. Local Finance Considerations**

N/A

## **11. Planning Obligations**

N/A

## **12. Equalities and Diversities**

N/A

### 13. Conclusions

It is considered that the requirements of the 1974 planning permission are clear and that the condition effectively removed the option for a growing volume and range of traffic to use both Coypool Road and Woodford Avenue to enter and exit the China Clay complex and industrial land to the south of it. The scheme approved in compliance with the condition thereby reduced the impact of the proposed Coypool Road mineral –related development and is needed to safeguard public safety and the amenities of nearby residents on Woodford Avenue. It would have been unreasonable at that time to impose an alternative condition that would not adequately safeguard public safety and amenities of nearby residents and a permanent closure of a substandard access road is warranted. It concluded that, on the basis of the information currently available, there is inadequate justification for removing or modifying the requirements of the condition at this time and after some 42 years and a permanent closure needs to be re-instated.

Officers have taken account of the NPPF and S38 (6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal does not accord with policy and national guidance and specifically NPPF17, 203 and 206 and CS 28 and CS 34

Further information may be received from the applicants prior to the Committee and any material planning points will be reported in the normal way. In the event that this application is refused, as is being recommended, formal enforcement action will be pursued at the earliest opportunity to secure the cessation of the unauthorised use and compliance with the planning condition (iii) of Planning Permission 689/74 I(b). This would involve issuing a Notice requiring the access point to be physically sealed, and thereby returning it to its state prior to its recent unauthorised re-opening.

### 14. Recommendation

In respect of the application dated **15/04/2016** and the submitted drawings, it is recommended to:  
**Refuse**

### 15. Reasons

Refusal

(1) It is considered that the existing planning condition should not be relaxed or modified as its requirements are clear and there is inadequate justification for amending it as this would result in unsuitable access arrangements likely to give rise to issues of personal and highway safety, and damage to amenity which is contrary to Policy CS28 and CS34 of the adopted City of Plymouth Local Development Framework Core Strategy adopted April 2007 and to the advice in NPPF (17,203 and 206).

### Relevant Policies

The following (a) policies of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and supporting Development Plan Documents and Supplementary Planning Documents (the status of these documents is set out within the City of Plymouth Local Development Scheme) and (b) relevant Government Policy Statements and Government Circulars, were taken into account in determining this application:

CS28 - Local Transport Consideration

CS34 - Planning Application Consideration

CS19 - Wildlife

NPPF - National Planning Policy Framework March 2012

Waste DPD WI - Waste DPD policy WI