

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

2 February 2022

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Environment & Recycling; One Council, People & Partnerships

Ward(s) affected: All

Purpose of the Report

To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Cabinet is recommended to note the contents of this update report.

Reasons

To ensure all members are kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry.

1. Background

- 1.1 For a number of years, parts of the borough have suffered from problematic foul odours from the Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd, part of the RED Industries group of companies. The Environment Agency is the lead regulator for such sites, testing and enforcing compliance with the permit under which the site operates. The Council also has a role in influencing the operation and performance of such sites, where an operator fails to comply with actions required under an abatement notice issued by the Council in relation to any statutory nuisance caused by the site.
- 1.2 In March 2021, Council held an extraordinary meeting to receive the report of the Economy, Environment and Place Scrutiny Committee review into the Walleys Quarry issues, and to debate a motion demanding the immediate suspension of operations and acceptance of waste at the Walleys Quarry Landfill site.
- 1.3 In July 2021 Council received a report by the Chief Executive updating on the issues pertaining to the question of Statutory Nuisance.
- 1.4 Cabinet has received monthly updates on the issues relating to the odours.

2. Statutory Nuisance

- 2.1 Following extensive work, officers determined that the odours from the Walleys Quarry site amount to a Statutory Nuisance and, on 13th August 2021, served an Abatement Notice on Walleys Quarry Ltd.

- 2.2 The Abatement Notice afforded Walleys Quarry Ltd a period of 5 months to abate the nuisance, with this timeframe being informed by discussion on the nature and extent of potential works required at the site with colleagues from the Environment Agency and with our own landfill expert.
- 2.3 On 2 September 2021, Walleys Quarry Ltd lodged an appeal against the Abatement Notice with the Magistrates Court. This has the effect of “stopping the clock” on the 5 month timeframe to abate the nuisance. The timeframe for abating the nuisance will now be set by the Court, assuming that the appeal is not upheld.
- 2.4 On 3rd November, representatives for the Council and Walleys Quarry Ltd attended a case management hearing at Newcastle Magistrates Court. This hearing dealt with the administration of the appeal, setting out a timetable leading up to a trial of the issues in June 2022.

3. Complaint Data

In 2021, the Council received a total of **22,239** complaints. This figure represents two thirds of the overall complaints for all the various environmental services contacts for that year. i.e in 2021, there were 33,245 contacts in total, of which Walleys Quarry complaints were 22,239 and all other environmental contacts put together were 10,803. In the same period, the Environment Agency received **43,262** complaints about Walleys Quarry

| 2021 | Jan | Feb | Mar | Apr | May | June | July | Aug | Sep | Oct | Nov | Dec |
|-------|------|------|------|------|------|------|------|------|------|-----|------|-----|
| NuLBC | 993 | 3372 | 4913 | 3421 | 3565 | 2049 | 1747 | 893 | 630 | 190 | 251 | 185 |
| EA | 2050 | 4098 | 6347 | 6181 | 8482 | 4444 | 4245 | 2329 | 2328 | 842 | 1046 | 870 |

- 3.1 Whilst complaint levels appear to have overall decreased, they continue at a level which indicates that the issue with odours escaping the site have not abated and continue to have a negative impact on residents. This incident remains, by some margin, the largest source of complaints received on any matter by the Council. In January 2022 complaints regarding odours increased alongside increases in H₂S recorded at monitoring stations around the site, as shown below

| 2022 | Dec 6-12 | Dec 13-19 | Dec 20-26 | Dec 27-2 | Jan 3-9 | Jan 10-16 | Jan 17-23 | Jan 24- 30 |
|---|----------|-----------|-----------|----------|---------|-----------|-----------|------------|
| Complaints to NuLBC | 28 | 82 | 28 | 28 | 73 | 258 | 87 | |
| Complaints to EA | 94 | 400 | 166 | 147 | 352 | 1045 | | |
| % time above Annoyance Threshold MMF1 (Silverdale Cemetery) | 0.6 | 0.9 | 0 | 0 | 1.2 | 14.9 | | |
| % time above Annoyance Threshold MMF2 (Silverdale Rd) | 0 | 0 | 0 | 0 | 0 | 11.9 | | |
| % time above Annoyance Threshold MMF6 (Fire Station) | 0.9 | 3 | 0 | 0 | 2.1 | 21.4 | | |
| % time above Annoyance Threshold MMF9 (Galingale) | 2.4 | 18.5 | 3 | 2.4 | 16.2 | 53.3 | | |

4. Air Quality Monitoring Stations

- 4.1 The Council, Staffordshire County Council, and the Environment Agency are jointly funding a campaign of air quality monitoring which has been extended to run until March 2022 utilising four static air monitoring stations. Data from these stations is reviewed to provide information in relation to two standards relating to Hydrogen Sulphide (H₂S) – the WHO Health threshold and the WHO annoyance threshold, with this analysis published by stakeholders.
- 4.2 Hydrogen sulphide concentrations were above the World Health Organization's odour annoyance guideline level (7 µg/m³, 30-minute average) over the last 37 weeks of 2021 for the following percentages of each week:

| Location | MMF1 - Silverdale Cemetery (%) | MMF2 - Silverdale Road (%) | MMF6 - NuL Fire Station (%) | MMF9 - Galingale View (%) |
|---------------|--------------------------------|----------------------------|-----------------------------|---------------------------|
| 19/4 – 25/4 | 18 | 8 | 4 | 21 |
| 26/4 – 2/5 | 4 | 10 | 13 | 35 |
| 3/5 – 9/5 | 6 | 21 | 6 | 48 |
| 10/5 – 16/5 | 15 | 20 | 1 | 10 |
| 17/5 – 23/5 | 1 | 9 | 10 | 53 |
| 24/5 – 30/5 | 7 | 15 | 16 | 47 |
| 31/5 – 6/6 | 30 | 1 | 6 | 18 |
| 7/6 – 13/6 | 1 | 10 | 10 | 19 |
| 14/6 – 20/6 | 11 | 7 | 9 | 13 |
| 21/6 – 27/6 | 2 | 1 | 4 | 12 |
| 28/6 – 4/7 | 1 | 8 | 8 | 10 |
| 5/7 – 11/7 | 5 | 18 | 3 | 17 |
| 12/7 – 18/7 | 0.4 | 2.4 | 2.1 | 23 |
| 19/7 – 26/7 | 3.6 | 0 | 3.6 | 16 |
| 27/7 – 1/8 | 1.8 | 1.5 | 11 | 26 |
| 2/8 – 8/8 | 1 | 4 | 5 | 10 |
| 9/8 – 15/8 | 0.3 | 7 | 3 | 6 |
| 16/8 – 22/8 | 1 | 1 | 4 | 6 |
| 23/8 – 29/8 | 0 | 0 | 1.5 | 17 |
| 30/8-5/9 | 0 | 0 | 0.3 | 2.1 |
| 6/9 -12/9 | 0 | 1 | 13 | 18 |
| 13/9 – 19/9 | 0 | 0.6 | 7.3 | 11.7 |
| 20/9- 26/9 | 3 | 2 | 6 | 11 |
| 27/9-3/10 | 0 | 0 | 0 | 0.3 |
| 4/10 – 10/10 | 0 | 0 | 0.3 | 5 |
| 11/10 – 17/10 | 0 | 0.5 | 1.5 | 9 |
| 18/10-24/10 | 0 | 0 | 0 | 1.5 |
| 25/10-31/10 | 0 | 0 | 0 | 0 |
| 1/11 – 7/11 | 2.9 | 0 | 3.3 | 13.5 |
| 8/11 – 14/11 | 0 | 0 | 1 | 10 |

| | | | | |
|---------------|------|------|------|------|
| 15/11 – 21/11 | 0 | 0 | 0 | 1.2 |
| 22/11-28/11 | 0 | 0 | 0 | 11 |
| 29/11-5/12 | 0.6 | 0.9 | 0 | 9 |
| 6/12 – 12/12 | 0.6 | 0 | 0.9 | 2.4 |
| 13/12-19/12 | 0.9 | 0 | 3 | 18.5 |
| 20/12-26/12 | 0 | 0 | 0 | 3 |
| 27/12-2/1/22 | 0 | 0 | 0 | 2.4 |
| 3/1-9/1 | 1.2 | 0 | 2.1 | 16.2 |
| 10/1-16/1 | 14.9 | 11.9 | 21.4 | 53.3 |
| *17/1-23/1 | * | * | * | * |

*To be updated at the meeting

- 4.3 The data shows that over 2021 the frequency of incidences when the WHO annoyance threshold is exceeded appears to have reduced, however, the more recent data indicates that the issue is by no means abated, and odours will recently have given rise to annoyance to residents – as reflected in the complaints data.

5. Proposal

- 5.1 Cabinet is recommended to note the contents of this update report.

6. Reasons for Proposed Solution

- 6.1 To ensure Cabinet are kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry.

7. Options Considered

- 7.1 To provide regular updates to Council

8. Legal and Statutory Implications

- 8.1 Part III of the Environmental Protection Act 1990 is the legislation concerned with statutory nuisances in law. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance:-

- The Environmental Protection Act 1990, section 79 sets out the law in relation to statutory nuisance. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance.
- The relevant part of Section 79 defines a statutory nuisance as any smell or other effluvia arising on industrial, trade or business premises which is prejudicial to health of a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether or not a statutory nuisance exists.
- Where a statutory nuisance is identified or considered likely to arise or recur, section 80 of the Act requires that an abatement notice is served on those responsible for the nuisance. The abatement notice can either prohibit or restrict the nuisance and may require works to be undertaken by a specified date(s).
- There is a right of appeal against any abatement notice issued on a number of grounds, one of which is that the site operator is using "best available techniques"

to prevent the odours complained of. Compliance with the Environmental Permit issues by the Environment Agency, and any actions required by the Environment Agency will often be sufficient to demonstrate that an operator is using “best available techniques” and that can result in an abatement notice being quashed on appeal.

- The appeal process represents a significant resource commitment for the council in both time and expense, so it is important for the Council to be content that it stands a reasonable prospect of defending an appeal against any abatement notice that it issues.
- If the council succeeds in securing an abatement notice following any appeal process, it is then a criminal offence to breach the terms of the abatement notice. Because the site is regulated by the Environment Agency under an Environmental Permit, the council would need to obtain the consent of the Secretary of State before it is able to prosecute any offence of breaching an abatement notice.

9. Equality Impact Assessment

9.1 The work of the Council in this regard recognises that the problematic odours in the area may impact on some groups more than others. The work is focussed on removing this impact.

10. Financial and Resource Implications

10.1 There are none directly arising from this report.

11. Major Risks

11.1 There are no risks beyond those explored in previous reports.

12. Unsustainable Development Goals (UNSDG)



13. Key Decision Information

13.1 As an update report, this is not a Key Decision.

14. Earlier Cabinet/Committee Resolutions

14.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021, 7th July 2021, 21st July 2021, 8th September 2021, 13th October 2021 and 3rd November 2021, 17th November.

15. List of Appendices

15.1 None