

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO COUNCIL

23 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 Council on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Council 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, and Council has also been regularly updated.

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.
- 2.5 A key element of the legal process is the disclosure process, through which each party provide the other with documents upon which they intend to rely during the legal proceedings. In early February the first part of this process was completed but each party are also seeking from the other additional documents and court time will now be required to determine which documents will need to be released. This has the effect of extending the timetable and it is now anticipated that the trial of the issues will take place in the late summer/early autumn of 2022.
- 2.6 No agreement has been reached with Walleys Quarry Ltd to seek to resolve this matter through mediation.

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	Feb 31/1 – 6-2	Feb 7/2- 13/2
Complaints to NuLBC	28	82	28	28	73	258	134	25	13	31

Complaints to EA	94	400	166	147	352	1045	651	139	64	
% time above Annoyance Threshold MMF1 (Silverdale Cemetery)	0.6	0.9	0	0	1.2	14.9	6	0	0	
% time above Annoyance Threshold MMF2 (Silverdale Rd)	0	0	0	0	0	11.9	7	0	0	
% time above Annoyance Threshold MMF6 (Fire Station)	0.9	3	0	0	2.1	21.4	10	0	0	
% time above Annoyance Threshold MMF9 (Galingale)	2.4	18.5	3	2.4	16.2	53.3	41	5.1	0	

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) 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	6	7	10	41
24/1 – 30/1	0	0	0	5.1
31/1-6/2	0	0	0	0

- 4.3 The data shows that over 2021 and into 2022 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.
- 4.4 During January 2022 there were two weeks when the H₂S concentrations recorded at the 4 monitoring stations were significantly elevated – with odours exceeding the WHO annoyance threshold for over half of the week at the galingale site from 10th to 16th January. This was the highest recorded H₂S concentration since May 2021.
- 4.5 Coming as it did almost one year since the exceptionally bad weekend for odour pollution in February 2021, this spike in H₂S in January 2022 was particularly concerning. The UK Health Security Agency do not rule out the risk to health due to the length of time that H₂S levels have been elevated. The approach of managing landfill gas through a strategy of “contain, capture, destroy” remains in place, but the iterative, operator led, approach being followed to deliver this leaves the community with no visibility on a credible plan to direct remediation of the problem. This in turn leaves no clarity on the issue of when the odours will cease to be a problem for local residents.
- 4.6 In response to the high volume of odour complaints associated with the increase in H₂S levels, the Environment Agency undertook an inspection of the site on 14 January 2022 to review gas management data from the landfill. Whilst they believe they have identified contributing factors for the increased odour around the site in the first two weeks of January and have informed Walleys Quarry Ltd of their findings, the Environment Agency is unable to provide details of this as Walleys Quarry Ltd have 28 days within which to challenge these findings.

Cabinet Resolutions

- 4.7 At its February 2nd meeting, Cabinet considered a report on the current position regarding Walleys Quarry. The ongoing situation has led Cabinet to question the effectiveness of the Environment Agency's regulatory approach and, together with Staffordshire County Council, the Leader has sought a meeting with the Secretary of State and DEFRA officials to discuss alternative interventions which might be made.
- 4.8 In addition, Cabinet have directed the Chief Executive to lodge a formal complaint with the Chief Executive of the Environment Agency regarding the effectiveness of their regulation of the site. A copy of this complaint is appended to this report.

5. Proposal

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

6. Reasons for Proposed Solution

- 6.1 To ensure Council is 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, 3rd November 2021, 17th November, 1st December 2021, 12th January 2022, and 2nd February 2022.

15. List of Appendices

- 15.1 Copy letter dated 10.2.22 from NBC to Sir James Bevan

Our ref:

Your ref:

Date: 10 February 2022



Sir James Bevan
Chief Executive
Environment Agency

Castle House
Barracks Road
Newcastle-under-
Lyme
Staffordshire
ST5 1BL

By e-mail only: xxxxxxxx

Dear Sir James

Formal Complaint – Ineffective Enforcement at Walleys Quarry, Newcastle under Lyme

You will be very familiar with the ongoing problem experienced by residents of Newcastle under Lyme of Hydrogen Sulphide (H₂S) pollution from the Walleys Quarry Landfill operated by Walleys Quarry Ltd under a permit granted by the Environment Agency. The community experience foul odours on a near daily basis and, in light of the time that H₂S levels have been elevated, the UK Health Security Agency cannot rule out a risk to health caused by exposure to the gas.

Whilst the problem has been ongoing for a long time, the situation became significantly worse in the winter of 2020-2021, with a now infamous weekend of extreme odours from 26th to 28th February 2021. Over the past year colleagues from Newcastle under Lyme Council have been working with the Environment Agency and other partners through a Strategic Co-ordinating Group to secure a co-ordinated solution to the problem, recognising that the Environment Agency is the lead enforcement authority for the site.

As we approach the anniversary of the February 2021 pollution incident the local community experienced a further two weeks of heightened pollution in January, where the World health Organisation annoyance threshold was exceeded for up to 53% of the week. This is deeply concerning and it is now clear that we are not in a position to address with any confidence the three key questions which the community wish to see addressed:

- Will the pollution from the site harm my health?
- What is being done to stop the odours?
- When will the odours stop?

In terms of the first question, UKHSA do not rule out the risk to health. In terms of the second question, whilst the solution likely lies in the “contain, capture, destroy” strategy, the iterative, operator led, strategy being followed to deliver this leaves the community with no visibility on a credible plan to direct remediation of the problem. This in turn leaves absolutely no clarity on the answer to the third question. This situation, after almost a year of intensive work, is intolerable.

That this situation is ongoing has left senior Councillors at Newcastle under Lyme with no confidence in the effectiveness of the Environment Agency’s regulatory approach, and , together with colleagues from Staffordshire County Council, the Leader of Newcastle under Lyme Council and myself are now seeking a meeting with the Secretary of State and DEFRA officials to discuss alternative interventions.

Contacting the Council: Telephone 01782 717717
E-mail customerservices@newcastle-staffs.gov.uk · www.newcastle-staffs.gov.uk

In March 2021 I wrote to the Secretary of State, George Eustace, to raise concerns about the regulatory performance of the Environment Agency with respect to Walleys Quarry. In response, Minister Rebecca Pow directed me to the Environment Agency's complaints process, which at that time I did not consider to be an appropriate route to follow. Ahead of a meeting with DEFRA to discuss the Walleys Quarry situation, I am now writing to formalise a complaint that the Environment Agency's regulatory approach to the Walleys Quarry site has been ineffective and woefully slow to deliver for the residents of the Borough. It is unclear whether the fault lies in the regulatory regime itself of the local team's application of it, and I would leave this for you to determine in investigating this complaint.

In terms of remedy, we are seeking the delivery of a clear, time-bound, and effective plan to bring the odour pollution from the site to an end.

Yours sincerely

MARTIN HAMILTON

Martin Hamilton
Chief Executive

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