

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

18th October 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 including a significant update in relation to the Councils Abatement Notice.

RECOMMENDATIONS

Cabinet is recommended to:

- 1. Note the contents of this update report**

Reasons

To ensure Cabinet is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry landfill and keep under review opportunities to take further action.

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 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.

2.4 Mediation

It is standard practice in any legal dispute for the parties to explore the possibility of a settlement outside of court. The court expects all parties to do this and there can be serious costs consequences at the end of a trial if the court feels that the parties have unreasonably refused to engage in settlement discussions.

At the end of September, once the position on witness evidence and expert’s reports was clear to both parties, the council and Walleys Quarry Limited (WQL) entered into a confidential mediation process to see whether a solution could be reached which would satisfy both parties and avoid the need for a full 4 week trial.

The mediation process was guided by the former Supreme Court Judge and environmental law specialist the Right Honourable Lord Carnwath of Notting Hill. As a result of that process, the council and WQL were able to agree terms for a settlement which enabled WQL to withdraw their appeal against the notice.

Details of discussions held during the mediation process remain confidential to the parties involved, however the agreement reached at the end of the process is not confidential.

On 6 October 2022, His Honour District Judge Grego approved the settlement that the parties had reached, and issued a court order upholding the Abatement Notice and dismissing WQL’s appeal. HHJ Grego is the judge who was overseeing the court case and who would have decided the matter following the four-week trial had a settlement not been reached.

2.5 Key elements of the settlement agreement

- **Walleys Quarry Ltd (WQL) have withdrawn their appeal.** This means that the council’s objective of having a legally enforceable Abatement Notice in place has been achieved. This is the best enforcement outcome that would have been possible to achieve in court.
- **There has been one minor amendment to the Abatement Notice.** The map of the area covered by the abatement notice has been amended to exclude the site itself, however the effect of the original notice outside of the site remains unchanged. All land and property protected by the original notice remain covered in the amended notice. This change was made as WQL are only required to abate the nuisance off site.
- **The agreement recognises that various plans which WQL have in place (for example; Phasing and Capping Plan; Gas Management Plan) currently represent Best Practical Means (BPM).** BPM is a set of plans and processes that should, if followed, prevent unacceptable levels of odours occurring. The council has accepted this on the advice of its specialist advisors who have undertaken a considerable amount of detailed work in reviewing WQL’s plans including critical challenge to WQL’s experts. This agreement also reflects the significant reduction in odours in recent months.

- **The agreement recognises that what constitutes BPM changes over time**, and it is for WQL to maintain BPM and demonstrate to the council that they are meeting BPM requirements at all time.
- **The agreement commits the council and WQL to engage constructively and in good faith** with one another, and for WQL to share information with the council relating to BPM, and for council officers to have access to inspect the site from time to time. This will allow the council to maintain an understanding as to whether the policies, procedures and practices adopted the WQL remain consistent with BPM over time.
- **The agreement commits WQL to specific measures relating to Community Engagement**, including:
 - publishing its operational plans,
 - providing advance notification of activities on site which might give rise to odours in the community,
 - refreshing the Liaison Committee,
 - and publishing recordings of its meetings online.
- **It reflects the council's intention to continue monitoring H2S levels in the community**, WQL have agreed to pay the council £60,000 towards this activity, in addition to £400,000 towards the council's costs incurred in responding to the appeal.

2.6 Benefits for the Community

The settlement agreed ratified by the court delivers more for the community than would have been achieved through a formal trial.

- An Abatement Notice is now in place requiring Walleys Quarry Limited (WQL) to abate the odour nuisance off site and prevent its reoccurrence. This provides a route to further action in the event of any future significant sustained problems.
- By WQL maintaining Best Practical Means (BPM), the community is afforded the best possibility of improved odour conditions off site.
- The council will be routinely working with WQL to understand how Best Practical Means (BPM) are being maintained.
- There is a structure to give the community access to information about activities on the site.
- Public funds expended on progressing the Abatement Notice have been significantly recouped.

These outcomes are more far reaching than what the council would have been able to achieve from simply defending an Abatement Notice at trial. A trial alone would not have delivered ongoing information to the community or the council which is reflected in the agreement

2.7 Next Steps

Council officers, including the Chief Executive, will be working closely with Walleys Quarry Limited (WQL) to ensure that all aspects of the agreement are implemented.

The council will continue to actively monitor the prevalence of odours off site and in the event that there are further instances of statutory nuisance identified by the council, the council's enforcement policy will guide the process to be followed. This could ultimately result in the council seeking permission from the Secretary of State for the Environment to prosecute. Such permission is required as the Environment Agency is primarily responsible for regulating this site.

3. Complaint Data

3.1 Below is a schedule of complaints received by the Council and by the Environment Agency during 2022, on a weekly basis. Complaints rise and fall broadly in line with the H2S levels recorded at the four monitoring stations around the site, with higher levels of H2S generally causing more annoyance in the community:

	Complaints to NuLBC	Complaints to Environment Agency
January 2022 3/1/22- 9/1/22	73	352
10/1/22 -16/1/22	258	1045
17/1/22 -23/1/22	134	651
24/1/22 – 30/1/22	25	139
February 2022 31/1/2 – 6/2/22	16	64
7/2/22 – 13/2/22	31	120
14/2/22 – 20/2/22	49	166
21/2/22 – 27/2/22	40	264
March 2022 28/2/22 – 6/3/22	118	571
7/3/22 – 13/3/22	72	285
14/3/22 – 20/3/22	224	1126
21/3/22 – 27/3/22	412	1848
28/3/22 – 3/4/22	243	1072
April 2022 4/4/22 -10/4/22	132	895
11/4/22 – 17/4/22	156	752
18/4/22 – 24/4/22	65	310
25/4/22 – 1/5/22	49	213
May 2022 2/5/22 – 8/5/22	39	193
9/5/22 – 15/5/22	35	160
15/5/22 – 21/5/22	43	134
22/5/22 – 29/5/22	20	81
June 2022 30/5/22 – 5/6/22	27	169
6/6/22 – 12/6/22	42	234
13/6/22 – 19/6/22	25	263

20/6/22 – 26/6/22	28	208
26/6/22 – 2/7/22	9	54
July 2022 3/7/22 – 9/7/22	4	34
10/7/22 – 16/7/22	14	72
17/7/22 – 23/7/22	21	52
24/7/22 – 30/7/22	12	93
August 2022 31/7/22 – 6/8/22	22	124
7/8/22 – 13/8/22	32	133
14/8/22 – 21/8/22	11	79
22/8/22 – 28/8/22	12	89
29/8/22 – 4/9/22	10	30
September 2022 5/9/22 – 11/9/22	9	64
12/9/22 – 18/9/22	13	83
19/9/22 – 25/9/22	14	79
26/9/22 – 2/10/22	13	58
October 2022 3/10 – 9/10		

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 through 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 (%)
19/4/21 – 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
7/2 – 13/2	0	0	0.9	2.4
14/2 – 20/2	0	3.6	0.3	2.4
21/2 – 27/2	0	4.8	0.6	8.0
28/2 – 6/3	2.4	0	0.3	15
7/3 – 13/3	0.3	3.3	4.2	6.0
14/3-20/3	3.3	8.1	10.8	21.2
21/3-27/3	6.8	10.1	21.1	43.2
28/3 – 3/4	1.9	9.3	18.8	25.2
4/4-10/4	1.8	2.5	6.1	26.0
11/4 – 17/4	11.9	6.6	9.6	19.7
18/4 - 24/4	7.1	1.8	2.7	10.4
25/4 -1/5	5.1	0	1.5	9.0

2/5 – 8/5	2.7	4.8	n/a	n/a
9/5 – 15/5	0.9	1.2	0	1.8
15/5 – 21/5	0.6	2.1	0	2.7
22/5 – 29/5	0.3	0	0	0.9
30/5 – 5/6	0.3	0	1.2	7.4
6/6 – 12/6	0.3	0.6	2.1	3.6
13/6 – 19/6	0	0.6	0.6	11
20/6 – 26/6	0	0.9	0.3	15.5
26/6 – 2/7	0	0	0	0
3/7 – 9/7	0	0	0	0
10/7 – 16/7	0	0	0	0.9
17/7 – 23/7	0	0	0.3	1.5
24/7 – 30/7	0	0	0.3	1.2
31/7 – 6/8	0	0	0	1.5
7/8 – 13/8	0	0	0	1.8
14/8 – 21/8	0	0	0	0.6
22/8 – 28/8	0	0.3	0	0
29/8 – 4/9	0	0	0	0
5/9 – 11/9	0	0	0	4.2
12/9 – 18/9	0	0.3	0	2.9
19/9 – 25/9	0	0	0	1.8
26/9 – 2/10	0	0	0	4.2

- 4.3 The data shows that whilst the frequency of incidences when the WHO annoyance threshold was exceeded rose during March – April 2022, the figures for May through to September continue to show a significantly more positive picture, with data for the latest 12 weeks showing consistently low percentage exceedances above the annoyance threshold.
- 4.4 As stated in previous reports, the critical issue now is to ascertain the extent to which the recent reductions reflect the impact of works undertaken on site to increase capping and improve gas management, or reflect the warmer weather, or some combination of the two. It is therefore necessary to maintain a clear focus on ongoing monitoring, surveillance and securing demonstrable and sustained improvement.
- 4.5 As the autumn approaches, a critical period is being entered during which it will become apparent whether the reduction in odours and nuisance exceedances continues at the levels experienced over the last 12 weeks or whether odours levels start to rise again as the colder temperatures return.

Environment Agency Regulatory and Enforcement Action

- 4.4 The Environment Agency has continued to provide weekly updates on their regulatory activity on the Walleys Quarry Landfill Citizens Space website. These updates reflect regular EA officer presence at the site to review progress with the Contain Capture Destroy strategy. The update from 22nd September 2022 contains the following information:
- 4.5 *Officers continue to carry out inspections on a regular basis. Work to deposit covering soils on the completed permanent geomembrane cap of Phase 1 is progressing.*
- 4.6 *The hydrogen sulphide fraction of the landfill gas that is captured and used in the gas utilisation engines has decreased from 1600 parts per million (ppm) last week to 1400 ppm this week. As*

a comparison in July 2021, the figure was 6500 ppm. The average gas collection value remains steady, with the current rate at approximately 3250 m3 /hr.

- 4.7 *Installation of the Phase 1 permanent cap and the Phase 2 temporary cap, together with gas collection improvements have had a positive effect in containing and capturing hydrogen sulphide.*
- 4.8 *We are currently updating the public facing plan that details our past, current and future plans to contain capture and destroy emissions of hydrogen sulphide. We hope to publish the plan very shortly.*

5. **Proposal**

Cabinet is recommended to:

- **Note the contents of this update report**

6. **Reasons for Proposed Solution**

- 6.1 To ensure Cabinet is kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry landfill and to keep under review opportunities to further action.

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 as soon as possible.

10. Financial and Resource Implications

- 10.1 There are none directly arising from this report.

11. Major Risks

- 11.1 There are no new 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, 2nd February 2022, 23rd February 2022, 23rd March 2022, 20th April 2022, 7th June 2022, 19th July 2022 and 6th September 2022

15. List of Appendices

- 15.1 None