

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

6 September 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:

- 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 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. 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.
- 2.5 A key element of the legal process is the disclosure process, through which each party provides the other with documents upon which they intend to rely during the legal proceedings. Witness Statements and reports prepared by respective experts have now been exchanged.
- 2.7 A pre-trial review will take place on 20 September with the final hearing scheduled for 24 October - this is expected to take up to four weeks.

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 – 20/8/22	11	79

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 – 20/8	0	0	0	0.6

- 4.3 The data shows that whilst the frequency of incidences when the WHO annoyance threshold was rose during March – April 2022, the figures for May, June and July show a significantly more positive picture, with data for the latest eight weeks showing consistently low percentage exceedances of the annoyance threshold.
- 4.4 A 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.

Environment Agency 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.
- 4.5 The permanent capping of Phase 1 of the site has now been completed, with this being an important aspect of the “contain” element of the strategy.

- 4.6 Additional wells to facilitate gas capture have been installed on the site and the average gas collection value for the last few months has been steady at 2900 - 3000 m³ /hr. The additional capture of gas should lead to lower emissions of landfill gas to ambient air and reduce the negative experience of odour in the community.

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 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, and 19th July 2022

15. List of Appendices

- 15.1 None