

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

19 September 2023

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Sustainable Environment; 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 progress in relation to agreement reached following mediation with the operator.

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. To note the current odour complaint and data available, which shows an improvement in the odour issue.

1. Background

- 1.1 For a number of years, parts of the borough have suffered from 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 (EA) 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 amounted to a Statutory Nuisance and, on 13 August 2021, served an Abatement Notice on Walleys Quarry Ltd. (WQL).
- 2.2 The Abatement Notice afforded WQL 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 and odour experts.
- 2.3 On 2 September 2021, WQL 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 At the Cabinet meeting on 18 October 2022, Members received a report detailing the outcome of a mediation process that had been undertaken. 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.
- 2.5 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.
- 2.6 The 5-month compliance period ended at midnight on 5 March 2023 meaning that the notice can be enforced, should there be evidence to substantiate a breach and Walleys Quarry Ltd are not following best practice in operating the landfill site.
- 2.7 The Council will continue to assess the prevalence of odours off site. In the event that there are further instances of statutory nuisance identified which amount to a breach of the Abatement Notice, the Council’s Enforcement Policy will guide the process to be followed [Reference: [Environmental Health enforcement policy – Newcastle-under-Lyme Borough Council \(newcastle-staffs.gov.uk\)](https://www.newcastle-staffs.gov.uk/environmental-health-enforcement-policy)]. This would determine what action the Council would take, and whether that would be formal or informal. Enforcement is usually considered sequentially but should the circumstances or nature of the breach be such, escalation direct to prosecution is possible. The Council would need to obtain the consent of the Secretary of State before it is able to prosecute an offence of breaching an abatement notice, as the site is permitted by the Environment Agency.
- 2.8 Progress with key elements of the settlement agreement

As part of the Agreement, Council officers, including the Chief Executive are meeting with senior representatives of Walleys Quarry Limited (WQL) to ensure that all aspects of the agreement are implemented. Meetings are taking place on a regular basis with the outcome to date including:

- a. WQL have published a comprehensive set of its operational plans on its website in a publicly accessible format. [Reference: <https://walleysquarry.co.uk/site-permits-and-policies#MGMTPlans>]
- b. WQL notify any operational changes that may impact on odour emissions from the site. Notifications are published on the WQL ‘Latest Information’ webpage. In February advance notice was given by WQL of the installation of new vertical wells that had the potential to create short-lived odour emissions. [Reference: <https://walleysquarry.co.uk/#information>]

- c. A set of standard key performance indicators in a score card format monitor the performance of the operator. Further detail is provided in Section 6.
- d. The last Liaison Committee meeting took place on 22 June 2023 and a viewable recording of the meeting is available at the link below. Updates were provided by Walleys Quarry Limited, Environment Agency, Staffordshire County Council, Borough Council, Silverdale Parish Council and resident representatives. [Reference: [Walleys Liaison Committee Meeting 22nd June 2023 173150 Meeting Recording - YouTube](#)] The next meeting is planned for 28 September 2023.
- e. The agreement requires WQL to notify the Council of any written amendments to the listed Operational Plans/Procedures within 48 hours of such notification by the Environment Agency, and this has occurred in line with the agreement. As an example, in July WQL notified of the installation of up to 13 additional vertical gas collection wells with the works scheduled to commence on 31 July 2023.
- f. In April 2023, Officers undertook a site visit and inspection of the landfill site, looking at the current on-site operations.

3. Complaint data

- 3.1 Below is a schedule of complaints received by the Council and by the Environment Agency over the last 3 months, 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. Historical complaint data is attached to this report as Appendix 1.

	Complaints to NuLBC	Complaints to Environment Agency
June 2023	24	43
29/05/23 – 04/06/23		
05/06/23 – 11/06/23	19	75
12/06/23 – 18/06/23	76	154
19/06/23 – 25/06/23	80	170
26/06/23 – 02/07/23	40	99
July 2023		
03/07/23 - 09/07/23	18	46
10/07/23 - 16/07/23	20	54
17/07/23 - 23/07/23	15	73
24/07/23 - 30/07/23	28	97
August 2023		
31/07/23 - 06/08/23	21	67
07/08/23 - 13/08/23	7	30
14/08/23 - 20/08/23	10	44
21/08/23 - 27/08/23	8	38
28/08/23 - 03/09/23	11	59

- 3.2 Officers highlight any odour events where 10 or more odour complaints have been recorded. A single odour event occurred in July and in August:

- Thursday 27 July 2023 – 10 odour complaints
- Tuesday 01 August 2023 - 12 odour complaints

3.3 Officers are continuing to review the increase in complaints in April, May and June. Since the previous report to Cabinet the EA have issued two Compliance and Assessment Reports (CAR) that highlight non-compliances with permit conditions that have the potential to cause off-site odour (07 June 2023 and 19 June 2023). Further details are contained in Section 5 of this Report. Officers will consider the findings of the EA as part of that review.

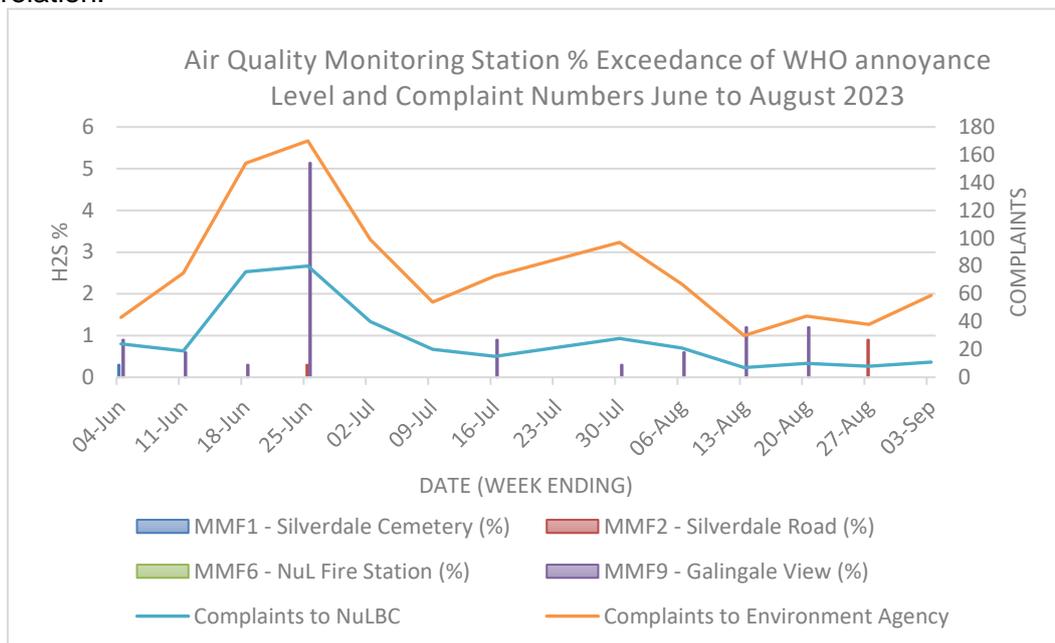
4. Air Quality Monitoring Stations

4.1 The Council, Staffordshire County Council, and the Environment Agency are jointly funding a campaign of air quality monitoring 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 odour annoyance guideline, with this analysis published by stakeholders. In June 2023 MMF6 at NUL Fire Station was removed by the EA. This is due to it consistently recording low (Zero) results. The following link explains the reasons for the removal of MMF6 <https://engageenvironmentagency.uk.engagementhq.com/air-quality-monitoring/widgets/70807/videos/4024>

4.2 Over the last 3 months, no H₂S concentrations were above the World Health Organisation's health threshold (150 µg/m³, 24-hour average). H₂S levels were above the odour annoyance guideline level (7 µg/m³, 30-minute average) for the following percentages of each week. Historical data is attached to this report in Appendix 2.

Location	MMF1 - Silverdale Cemetery (%)	MMF2 - Silverdale Road (%)	MMF6 - NuL Fire Station (%)	MMF9 - Galingale View (%)
June 2023	0.3	0	0	0.9
29/05/23 – 04/06/23	0	0	0	0.6
05/06/23 – 11/06/23	0	0	0	0.3
19/06/23 – 25/06/23	0	0.3	0	5.14
26/06/23 – 02/07/23	0	0		0
July 2023	0	0		0
03/07/23 - 09/07/23	0	0		0
10/07/23 - 16/07/23	0	0		0.9
17/07/23 - 23/07/23	0	0		0.3
24/07/23 - 30/07/23	0	0		0.6
31/07/23 - 06/08/23	0	0		
August 2023	0	0		1.2
07/08/23 -13/08/23	0	0		1.2
14/08/23 - 20/08/23	0	0.9		0
21/08/23 - 27/08/23	0	0		0
28/08/23- 03/09/23	0	0		

4.3 The complaint and air quality data has been combined and shown in the graph below. The complaint numbers and % exceedance of the WHO annoyance level shows good correlation.



4.4 The UKHSA report 'Health Risk Assessment of air quality monitoring results' July 2023 states 'the concentrations of hydrogen sulphide were above the WHO odour annoyance guideline value for less than one percent of the time at all three of the monitoring sites'.

4.5 Each monitoring station (MMF1, MMF2 and MMF9) records the H2S percentage exceedance over a week which results in 15 readings over a 5-week period. In the 5-week period beginning on 03/07/23:

- 0% exceedance was recorded for 80% of the time (12 readings)
- Between 0% and less than 1% exceedance was recorded for 20% of the time (3 readings)
- Greater than 1% exceedance was recorded for 0% of the time (0 readings).
- The peak weekly exceedance during this period was 1.2 % which is lower than the previous reported peak of 5.14%.

4.6 The UKHSA report 'Health Risk Assessment of air quality monitoring results' August 2023 has not been published and is awaited.

4.7 In the 4-week period beginning 07/08/23:

- 0% exceedance was recorded for 75% of the time (9 readings)
- Between 0% and less than 1% exceedance was recorded for 8% of the time (1 readings)
- Greater than 1% exceedance was recorded for 17% of the time (2 readings)
- The peak weekly exceedance during this period was 1.2% which is the same as the previous reported peak.

5. Environment Agency Regulatory and Enforcement Action

- 5.1 The Environment Agency has continued to provide updates on their regulatory activity on the Walleys Quarry Landfill and can be accessed here:
<https://engageenvironmentagency.uk.engagementhq.com/hub-page/walleys-quarry-landfill>.

These updates reflect regular EA officer presence at the site to review progress with the Contain Capture Destroy strategy. The Compliance Assessment Reports (published on the EA website) provide further details of the site visits undertaken:

07 June 2023 – unannounced site inspection to assess general compliance with permit conditions. The CAR report issued on 23 June 2023 identifies non-compliance in that ‘the Phase 3 capping works did not take place in accordance with the approved construction proposals, specifically sections 4.6.4 and 4.9.1 of the CQA Plan. The change to the approved construction proposal is likely to have an impact on the performance of the following element of the design, namely the geotextile below the welded geomembrane layer, areas of which were left exposed by the unwelded and/or inadequate geotextile overlaps. The Environment Agency had not agreed any change to the approved construction proposals. This is a non-compliance which could have a minor effect on quality of life if it were not addressed promptly and adequately, due to an increased risk of odorous gas emissions escaping beyond the site boundary causing offence to residents’ sense of smell, along with those who work nearby’. The EA assessed this as a **category 3** non-compliance according to the Compliance Classification Scheme.

19 June 2023 – unannounced site inspection

On 19 June 2023 the Environment Agency conducted an unannounced site inspection to assess the engineering and capping works, and compliance with permit conditions.

The EA identified that Walleys Quarry Ltd (WQL) had failed to install adequate temporary clay capping to the flanks of Phases 1, 2, 3 and 4 (defined areas of the landfill where waste has been deposited).

The EA assessed this as a **category 2** non-compliance according to the Compliance Classification Scheme (CCS), as it is reasonably foreseeable that there could be a significant impact on quality of life if not addressed promptly and adequately. This is due to an increased risk of fugitive emissions of landfill gas with the potential for off-site odour to cause offence to local residents.

The EA have required WQL to install any missing temporary clay capping over the flanks to the approved standard by 30 September 2023. The EA have stated: ‘we will monitor the progress of work and may consider taking enforcement action if necessary’.

4 July 2023 – announced site inspection to assess general compliance with the permit conditions and to discuss progress with engineering works

12 July 2023 – unannounced engineering site inspection the primary purpose of which was to inspect the Phase 4 clay sidewall liner works being undertaken

18 July 2023 – unannounced site inspection to assess general compliance with permit conditions and to sample any waste fines accepted on site during the inspection

- 5.2 The EA welcomed the report compiled by Defra's Chief Scientific Adviser's Office (External link) and have taken time to carefully consider the report and its recommendations. The EA state that many of the report's recommendations are consistent with measures the EA have required Walleys Quarry Ltd to implement, as set out in their Plan to reduce hydrogen sulphide emissions. The EA have considered the report fully and their response to the recommendations can be found here.
- 5.3 The EA state that the Hydrogen Sulphide concentrations 'continue to be greatly reduced compared with the period when monitoring began, in both the source emission and ambient air measurements. Air quality monitoring data provides additional confidence that the EA's 'ongoing regulation is ensuring the source emission of hydrogen sulphide from the landfill site continues to remain low'.
- 5.4 The EA highlight 'it is important to note that there will always be short-term fluctuations in the concentrations of hydrogen sulphide leaving the site, especially given the low concentrations we are monitoring. The causes can include factors such as the impact of improvement works being carried out on site and changes in the weather'.

6. Key Performance data

- 6.1 Through the settlement agreement both Walleys Quarry Ltd and the Council have developed key performance indicators in relation to relevant data from each organisation. These key performance indicators are shown in Appendix 3 and 4.
- 6.2 The data from the Council covers the period from June to August 2023, and provides complaint numbers, air quality data, H₂S and officer assessments. Some of the data for the latter month is unavailable and will be updated in subsequent reports.
- 6.3 The data from Walleys Quarry Limited provides data on waste acceptance, odour management, landfill operations, landfill gas management, leachate management and information relating to the EA regulator as the primary regulator of the site. The data is supported by explanatory notes, is contained within Appendix 4.

7. Proposal

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

8. Reasons for Proposed Solution

- 8.1 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.

9. Options Considered

- 9.1 To provide regular updates to Council.

10. Legal and Statutory Implications

- 10.1 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 or a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether 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).
- 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 the abatement notice.
- The Act provides powers in respect of a breach. If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, they shall be guilty of an offence. If this is on industrial, trade or business premises shall be liable on conviction to an unlimited fine. It is a defence that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

11. **Equality Impact Assessment**

- 11.1 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 minimising this impact as soon as possible.

12. **Financial and Resource Implications**

- 12.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 12.2 From April 2023 there is £100k reserved for legal action associated with Walley Quarry landfill site. In the event that formal action is required, a separate report will be brought to full Council to approve additional funds.

13. **Major Risks**

- 13.1 A GRACE risk assessment has been completed including the following main risks:
- Failure to achieve a reduction in odour levels;
 - Community dissatisfaction at odour levels;
 - The ability to take enforcement action against abatement notice;
 - Failure to evidence a breach of the abatement notice;
 - Secretary of State refuses permission to undertake prosecution proceedings.
- 13.2 Controls have been identified and implemented in order to control these risks, the main controls include:

- Provisions in settlement agreement ensures greater transparency for public;
- Provisions in settlement agreement ensures regular meetings with Walleys Quarry which enable issues to be discussed;
- Dedicated officer resource for Walleys Quarry work has been secured;
- Continued air quality monitoring provision;
- Robust procedure for investigating complaints with experienced officers;
- Specialist expert advice maintained;
- Multi-Agency partnership working continues.

14. Unsustainable Development Goals (UNSDG)



15. Key Decision Information

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

16. Earlier Cabinet/Committee Resolutions

16.1 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, 6th September 2022, 18th October 2022, 8th November 2022, 6th December 2022, 10th January 2023, 7th February 2023, 13th March 2023, 5th April 2023, 6th June 2023, 18th July 2023.

17. List of Appendices

- 17.1 Appendix 1. Historical Complaint data
- 17.2 Appendix 2. Historical Monitoring Station data
- 17.3 Appendix 3. NUL Key Performance Data
- 17.4 Appendix 4. WQL Key Performance Data