

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

17 October 2023

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<p><u>Purpose of the Report</u></p> <p>To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.</p>
<p><u>Recommendation</u></p> <p>Cabinet is recommended to:</p> <ol style="list-style-type: none">Note the contents of this update report.Endorse call for public inquiry into the regulatory performance of the Environment Agency
<p><u>Reasons</u></p> <p>To ensure Cabinet is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry landfill.</p>

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** 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). Following an appeal by Walleys Quarry Ltd, and a successful mediation process, 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 on 6 October 2022.
- 1.4** The Council continues to assess the prevalence of odours off site. If 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)]. 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.
- 1.5** Officers maintain an ongoing dialogue with Walleys Quarry Ltd, and with other agencies involved with the issue. Cabinet has received monthly updates on the issues relating to the odours, and Council has also been regularly updated.

2. Complaint Data

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

	Complaints to NuLBC	Complaints to Environment Agency
June 2023		
29/05/23 – 04/06/23	24	43
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

September 2023 04/09/23 - 10/09/23	26	71
11/09/23- 17/09/23	12	72
18/09/23- 24/09/23	8	31
25/09/23-01/10/23	8	26
October 02/10/23 – 08/10/23	7	37

- 2.2 Officers highlight any odour events where 10 or more odour complaints have been recorded. A single odour event occurred in the month of September on 15 September 2023 (10 odour complaints were reported). The overall trend of complaints remains downward, albeit with “spikes” in complaints from time to time when odours are prevalent.

3. Air Quality & Health

- 3.1 The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring stations. Data from these stations has been routinely published weekly by the Environment Agency.

- 3.2 Hydrogen sulphide levels have previously been reported and reviewed as part of this report and a full data set provided in Appendices. On 5 October, the Environment Agency provided an update, alerting the community to a problem with the reliability of the Hydrogen Sulphide (H₂S) monitoring data collected at the monitoring stations. This update is available at the following link [Latest News | Engage Environment Agency \(engagementhq.com\)](https://www.engagementhq.com/latest-news/)

- 3.3 In summary, the update advises that:

- *The issue relates to the calibration process for the H₂S analysers in all of the EA’s Mobile Monitoring Facilities (MMFs). This means that H₂S data collected by these analysers, including those currently at Walleys Quarry is likely to have a greater degree of uncertainty than previously understood.*
- *It is only the data for H₂S that is affected. The data for all other emissions is unaffected.*
- *Results from a correctly calibrated an analyser installed at MMF9 suggested it is likely that the original analyser had been under-reporting the levels of H₂S. The scale of this under-reporting will vary over time and between different H₂S analysers in the MMFs.*
- *Advice has been sought from the manufacturer and from independent experts to see if it is possible to reliably adjust the historic data to correct for this issue.*
- *The H₂S data being published from September is from the correctly calibrated analyser.*

- 3.4 Over the past few years when the odours from Walleys Quarry have been particularly problematic, the community have expressed considerable concern regarding the health impact of the elevated H₂S concentrations in the area around the site. The UKHSA and Staffordshire County Council’s Public Health team and Staffordshire and Stoke-on-Trent Integrated Care Board have reviewed the health advice to the

community in the response to the likelihood of historic under reporting of H₂S levels. The updated advice is:

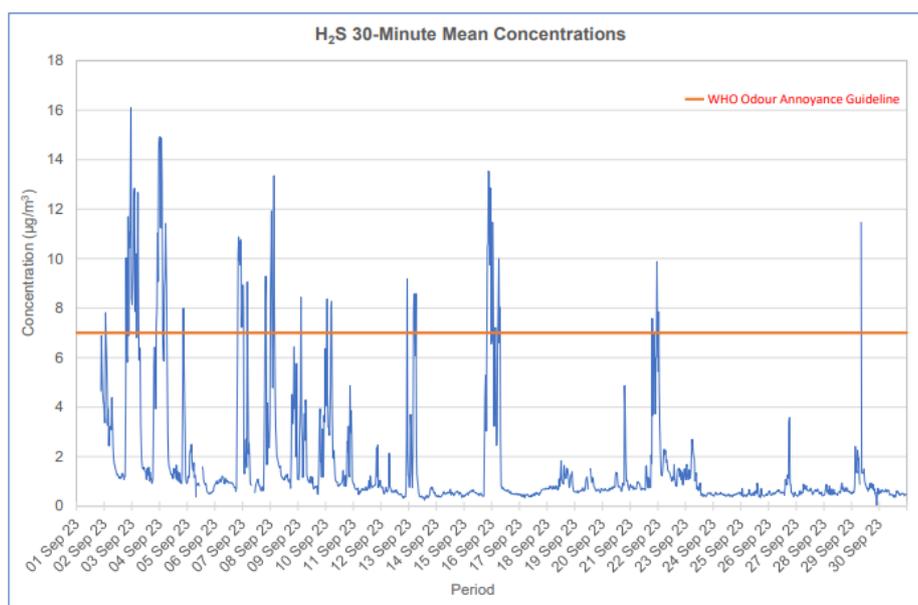
On 5 October 2023, the Environment Agency published concerns about the accuracy of their hydrogen sulphide monitors around the Walleys Quarry landfill site. This means that we cannot rely on this data to assess the risk to people’s health. The risk of long-term health problems is likely to be small but cannot be excluded at this stage. We know that some people continue to experience short term health effects. Advice for residents affected by the odour from landfill gas can be found on the Newcastle-under-Lyme Borough Council and Staffordshire County Council websites.

Health partners recommend that all appropriate measures continue to be taken to reduce the off-site odours from the landfill site, to reduce the health impacts experienced in the local community and maintain concentrations in the local area to levels that comply with the long term guidance value of 2 µgm³ and, therefore, do not pose long term risk to health.

- 3.5 Frequently asked question with regard to health have been provided and are available at the following link <https://www.staffordshire.gov.uk/Health-wellbeing-and-leisure/Keeping-well-and-staying-healthy/Walleys-Quarry-FAQs.aspx>
- 3.6 On 9th October 2023 the Environment Agency hosted an online public meeting with the community. The Environment Agency have published links to the recordings of this meeting, which are available at the following link [Latest News | Engage Environment Agency \(engagementhq.com\)](#)
- 3.7 The EA have published the monthly rectified monitoring data for September 2023. Due to the issue relating to the calibration process for the H₂S analysers H₂S data is presented only for MMF9.

The average hydrogen sulphide concentration during the month was 1.7 µg/m³ (1.1 ppb). This information is replicated below.

Figure 17. Time series plot of H₂S 30-Minute Mean Concentrations (µg/m³).



Levels of hydrogen sulphide were above 7 µg/m³ (4.67 ppb) World Health Organisation (WHO) odour annoyance threshold for 6.0 % of the monitoring period

The highest recorded 24-hour mean was 5.4 µg/m³ (3.6 ppb), which is lower than the 150 µg/m³ limit set as a guideline by WHO, in the context of human health.

4. **Environment Agency Regulatory and Enforcement Action**

- 4.1 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>
- 4.2 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.
- 4.3 The following table provides a summary of the published CAR forms since the last Cabinet report:

Date (2023)	CAR Reference	Assessment	Compliance score
31 March	DP373DC/0467684	Q1 Monitoring Data review January - March 2023	12.2
10 August	DP3734DC/0471278	Site inspection - unannounced	0
21 August	DP3734DC/0471954	Report/data - Cell 4 sidewall (lower) CQA (Report	0
24 August	DP3734DC/0472621	Site inspection - unannounced	0

5. **Implications arising from Inaccurate Air Quality Monitoring Data:**

Statutory Nuisance & Abatement Notice

- 5.1 The calibration error, and resulting inaccuracy in the air quality monitoring data, is specifically in relation to the levels of hydrogen sulphide recorded. This is the most reported and analysed of all the air pollutants measured at the MMFs as it is the main type of odour reported by the community. It is understood that the issue identified by the EA affects all monitoring undertaken in respect of Walleys Quarry.
- 5.2 The Borough Council has secured an abatement notice for a statutory odour nuisance arising from the site. Securing this involved a wide range of data and was not overly reliant on the air quality monitoring data now known to be under reported. The abatement notice is based on statutory 'nuisance' rather than the 'prejudicial to health' and is not considered to be impacted by the error in recording by the Environment Agency.
- 5.3 Consideration would need to be given, at the appropriate time, to the reliability of any air quality data being used in any action to enforce the abatement notice in the future, should that become necessary.

Health Advice

- 5.4 The health assessments and advice has been completed using the data from the MMFs including the assessment of hydrogen sulphide. The health partners have provided comments relating to their current advice as reported in section 3.4. Any further updates provided by health partners will be reported.

Community Confidence/Reassurance/Concern

- 5.5 Odour complaints relating to Walleys Quarry have been by far the biggest cause of complaint within the Borough. It is acknowledged that there has been a significant reduction in the intensity of the odour experienced since 2020/21. The identification of this error creates the conditions for reduced community confidence in both the grip which agencies have on the issue, and on the reliability of the cross-agency narrative which has been significantly shaped by the H2S data collected. Critically, it also creates the conditions for fresh concern about the health impact of long-term exposure to elevated background levels of H2S.
- 5.6 The Council will continue to work with partners and the community as the full implications of this issue are known and ensure that the best available information and advice is shared with the community in a timely manner. The Council continues to engage with Walleys Quarry Ltd and continue to monitor and investigate reports of odour spikes reported by the community.

Confidence in the Regulation of the Walleys Quarry Site

- 5.7 In March 2021, the Council raised concern with the Secretary of State for Environment, Food, and Rural Affairs regarding the regulatory performance of the Environment Agency and calling for an investigation. In response to the announcement that the H2S data which has been used to inform agency action and to reassure the community since 2016/17 cannot be relied upon, the leader of this Council, together with the leader of Staffordshire County Council, have written again to the Secretary of State, requesting a Public Inquiry. A copy of that request is contained in Appendix 4 to this report.
- 5.8 Through this report Cabinet is invited to lend its support to this request, and formally endorse the call for a Public Inquiry.

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 2 and 3.
- 6.2 The data from the Council covers the period from July to September 2023, and provides complaint numbers and officer assessments. Some of the data for the latter month is unavailable and will be updated in subsequent reports and previous air quality data, has also been removed.
- 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 3.

7. Proposal

7.1 Cabinet is recommended to:

- note the contents of this update report.
- endorse call for public inquiry into the regulatory performance of the Environment Agency

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, 19th September 2023.

17. List of Appendices

- 17.1** Appendix 1. Historical Complaint data
- 17.2** Appendix 2. NUL Key Performance Data
- 17.3** Appendix 3. WQL Key Performance Data
- 17.4** Appendix 4. Letter to the Secretary of State