

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

07 November 2023

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<u>Purpose of the Report</u>		<u>Key Decision</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.		
<u>Recommendation</u>		
Cabinet is recommended to:		
1. Note the contents of this update report.		
<u>Reasons</u>		
To ensure Cabinet is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry landfill.		

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
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 2023		
02/10/23 – 08/10/23	8	37
09/10/23 - 15/10/23	29	64
16/10/23 - 22/10/23	22	81

23/10/23 - 29/10/23	26	115
30/10/23 - 05/11/23	4	

2.2 Officers highlight any odour events where 10 or more odour complaints have been recorded. There has been 1 odour event in the month of October:

- Wednesday 25 October 2023 - 13 odour complaints

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 \(engagementhq.com\)](#)

3.3 Following the EA announcement, NULBC Officer undertook odour assessments at set locations using the calibrated mobile Jerome monitor(s). Monitoring was undertaken for 5 minutes at set locations on 7 separate dates namely;

- 09 October (6 locations),
- 10 October (6 locations)
- 11 October (6 locations)
- 12 October (6 locations)
- 16 October (5 locations)
- 17 October (7 locations)
- 18 October (7 locations)

The monitoring was undertaken on weekdays and during normal working hours. It is acknowledged that this was a ‘snapshot’ and potentially did not represent levels experienced by the community over a 24-hour period. However, it was important to react to the EA announcement that the levels at MMF (Mobile Monitoring Facility) 9 indicated ‘under reporting’ of hydrogen sulphide.

Officers undertook 54 odour assessments in total (note: at some locations there was a second Officer undertaking odour assessments).

Odour related to the landfill was detected on 13 out of 54 odour assessments. The highest level of hydrogen sulphide detected was 4.18ppb (over a period of 5 minutes) at Cemetery Road. The remaining readings were below 4ppb. For reference the monitoring range for the Jerome monitors is 3ppb – 10,000ppb.

- 3.4** On 19 October 2023, the EA calibrated the H2S analysers in MMF1 and MMF2. The EA have sufficient confidence in the raw data recorded for the week commencing 16 October 2023 to allow the EA to restart publishing data from MMF1 and MMF2. The latest H2S data is set out in the table below, defining the proportion of the time periods where H2S levels were above the WHO Odour Annoyance guideline of 7ug/m3.
- 3.5** The latest H2S data is set out in the table below, defining the proportion of the time periods where H2S levels were above the WHO Odour Annoyance guideline of 7ug/m3.

Time Period	Percentage of time the location recorded hydrogen sulphide concentrations above the WHO annoyance guideline level		
	MMF1	MMF 2	MMF 9
02 October – 08 October 2023			0%
09 October – 15 October 2023			9.4%
16 October – 22 October 2023	0.9%	0.0%	7.8%
23 October – 29 October 2023	13.7%	3.0%	10.4%

Environment Agency Regulatory and Enforcement Action

- 3.6** 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>
- 3.7** 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.
- 3.8** The following table provides a summary of the published CAR (Compliance Assessment Report) forms since the last Cabinet report:

Date of Report	Date issued	CAR Reference	Assessment	Compliance score
24/08/23	30/08/23	DP3734DC-0472621	Site inspection (unannounced) to assess current engineering works and general compliance with permit conditions	0
08/09/23	18/09/23	DP3734DC-0474301	Site inspection (unannounced) to assess current engineering works and general compliance with permit conditions	4

22/09/23	26/09/23	DP373DC-0475663	Site inspection (announced) to assess current engineering works and general compliance with permit condition	0
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- 3.9** On 19 October 2023, the EA issued WQL with a Regulation 36 Enforcement Notice following an unannounced site inspection on 2 October 2023, when officers were not satisfied that the remedial actions required in respect of Phase 4 had been completed. WQL has previously been given until 30 September 2023 to install any missing temporary clay capping over the flanks of tipping Phases 1,2,3 and 4. The EA stated that WQL 'has had a reasonable time to either install any missing temporary capping or provide Construction Quality Assurance validation reports to demonstrate that the required capping had been installed to the required standard'. The Enforcement Notice requires outstanding capping to be completed by 12 December 2023. 'That is, before the onset of winter when conditions for capping are more difficult and there is poorer air dispersion.' The EA anticipate that 'this will reduce the risk of exposure to emissions of landfill gas for the community'.

4. Key Performance Data

- 4.1** 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.
- 4.2** The data from the Council covers the period from August to November 2023, and provides complaint numbers and officer assessments.
- 4.3** 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 KPI data and explanatory notes for October is awaited and will be contained within Appendix 3.

5. Proposal

5.1 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 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.

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 minimising this impact as soon as possible.

10. Financial and Resource Implications

10.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.

10.2 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.

11. Major Risks

11.1 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.

11.2 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.

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, 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, 17th October 2023.

15. List of Appendices

- 15.1** Appendix 1. Historical Complaint data
- 15.2** Appendix 2. NUL Key Performance Data
- 15.3** Appendix 3. WQL Key Performance Data