

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**CORPORATE LEADERSHIP TEAM'S**

**REPORT TO CABINET**

**06 February 2024**

**Report Title:** Walleys Quarry – Odour Issues

**Submitted by:** Chief Executive

**Portfolios:** Sustainable Environment; One Council, People & Partnerships

**Ward(s) affected:** All

<p><b><u>Purpose of the Report</u></b></p> <p style="text-align: right;"><b><u>Key Decision</u></b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.</p>
<p><b><u>Recommendation</u></b></p> <p><b>Cabinet is recommended to:</b></p> <p>1. <b>Note the contents of this update report.</b></p>
<p><b><u>Reasons</u></b></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.

	<b>Complaints to NuLBC</b>	<b>Complaints to Environment Agency</b>
<b>November 2023</b>		
06/11/23- 12/11/23	40	123
13/11/23- 19/11/23	35	119
20/11/23- 26/11/23	36	135
27/11/23 - 03/12/23	115	265
<b>December 2023</b>		
4/12/23- 10/12/23	83	151
11/12/23- 17/12/23	48	180
18/12/23 -24/12/23	28	79
25/12/23-31/12/23	44	129
<b>January 2024</b>		
01/01/24 - 07/01/24	236	627
08/01/24 - 14/01/24	76	268
15/01/24 - 21/01/24	270	824
22/01/24- 28/01/24	86	261

- 2.2** Officers highlight any odour events where 10 or more odour complaints have been recorded. There have been 22 odour events in the month of January, which is a significant increase in the number of odour events compared to previous months.
- 01 January to 08 January (8 consecutive days)
  - 11 January

- 13 to 19 January (7 consecutive days)
- 24 January to 26 January (3 consecutive days)
- 29 to 31 January (3 consecutive days)

The overall trend is for “spikes” in complaints when odours are prevalent. The highest number of complaints reported to the Council was on Thursday 18 January 2024 at 142 complaints.

### **2.3 NULBC Odour Assessments**

Officers have undertaken odour assessments during normal working hours and out of hours. The monitoring has been reactive to odour complaints and proactive where low odour dispersion is predicted.

The type of monitoring includes spot assessments (instantaneous assessments) and assessments made over a 5-minute period where the odour intensity is recorded every 10 seconds.

This report focuses on the 5-minute odour assessments.

35 odour assessments were undertaken on 9 separate dates in January. 29 assessments detected landfill related odour. 24 out of 29 assessments detected distinct or strong landfill related odour on:

- 03 January
- 04 January
- 05 January
- 06 January
- 07 January
- 12 January
- 15 January
- 18 January

### **Mobile Air Quality Monitoring (using Jerome monitor)**

- 2.4** Officers have monitored the levels of hydrogen sulphide within the community using the mobile Jerome monitor. The highest level of hydrogen sulphide recorded was 345ppb at Cemetery Road on 15/01/24 at 22:36.

### **NULBC Actions**

- 2.5** It is disappointing to report that over this winter period there has been a deterioration in the odour conditions from Walleys Quarry as shown in the data reported. This has continued into January.
- 2.6** Officers are awaiting the rectified air quality data for January published by the EA to compare the data against the findings from Officer assessments and the Jerome air quality data.
- 2.7** Following the Council's request to Walleys Quarry Limited to review the upturn in November and December odour, they have provided areas of risk for fugitive emissions, along with the actions taken by WQL in these areas. This comprises the following areas:
- Internal waste flanks and surfaces which is actioned through ongoing temporary capping and specifically following engineering works to the facility to install 5 new,

full-depth leachate wells and permanent capping of an area to the southeast of the facility, which although not at height could be completed ahead of schedule.

- Operational area which is actioned through landfill gas extraction from operational areas through installation of vertical, temporary horizontal and pin wells (see 3.8).
- Gas collection which is actioned through completion of sector review relating to gas balancing, with a change agreed with EA of up to 25% balance gas. The aim of increasing the percentage balance gas concentration is to potential increase gas flow.
- Expert review which has been agreed and commission by WQL and NuLBC to review all aspects of gas capture, collection and treatment at the facility, along with review of critical policies and procedures. The objective is to identify any areas which may positively impact gas control and advise upon their practical application.
- Landfill Gas Management which is actioned through the implementation of the Landfill Gas Management Plan and review of the Gas Utilisation Plant and associated infrastructure.

**2.8** A further request is being made to Walleys Quarry for their investigation findings for the January odour events and any remedial action taken or planned.

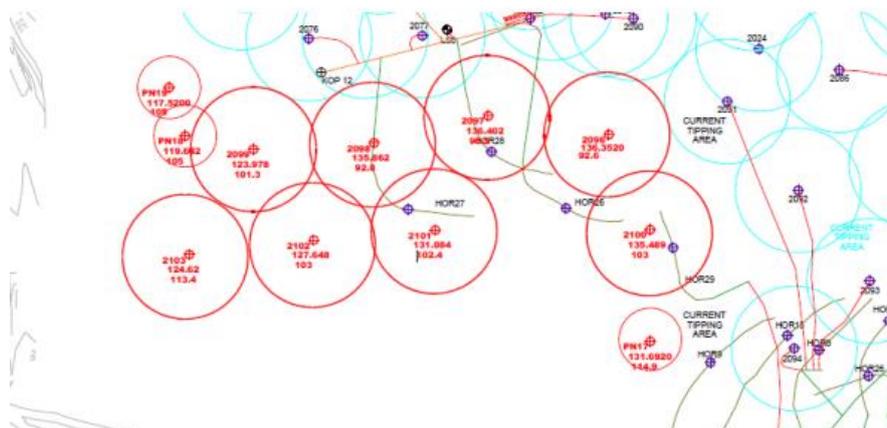
**2.9** Officer monitoring and assessments will continue to be undertaken in February, both in and out of office working hours to continue monitoring and to respond to the issues raised.

**2.10** Council will be receiving an update report at the meeting on 14 February in relation to the recent increase in odour.

### **Walleys Quarry Update**

**2.11** Walleys Quarry Limited issued a press statement on 15 January 2024 as follows:

“As part of its ongoing commitment to the development of the Walleys Quarry facility and to ensure we maintain our position in respect of compliance, Walleys Quarry Ltd (WQL) will be undertaking the installation of up to 8 vertical wells in newly deposited waste within the operational areas of the facility. These works, scheduled to commence 15 January 2024 will be undertaken through the process of Construction Quality Assurance (CQA), whereby the specification and installation of the new infrastructure is subject to review and approval by the Environment Agency. These substantial works demonstrate the ongoing commitment of WQL and its partners to the development of the landfill and specifically the landfill gas extraction and control system, a process guided by the Landfill Gas Management Plan and aligned with the principles of Best Available Technique (BAT) - which forms the fundamental principles of WQL’s management systems, policies and procedures. It is not anticipated that the works will lead to any off-site impacts”.



### 3. Air Quality & Health

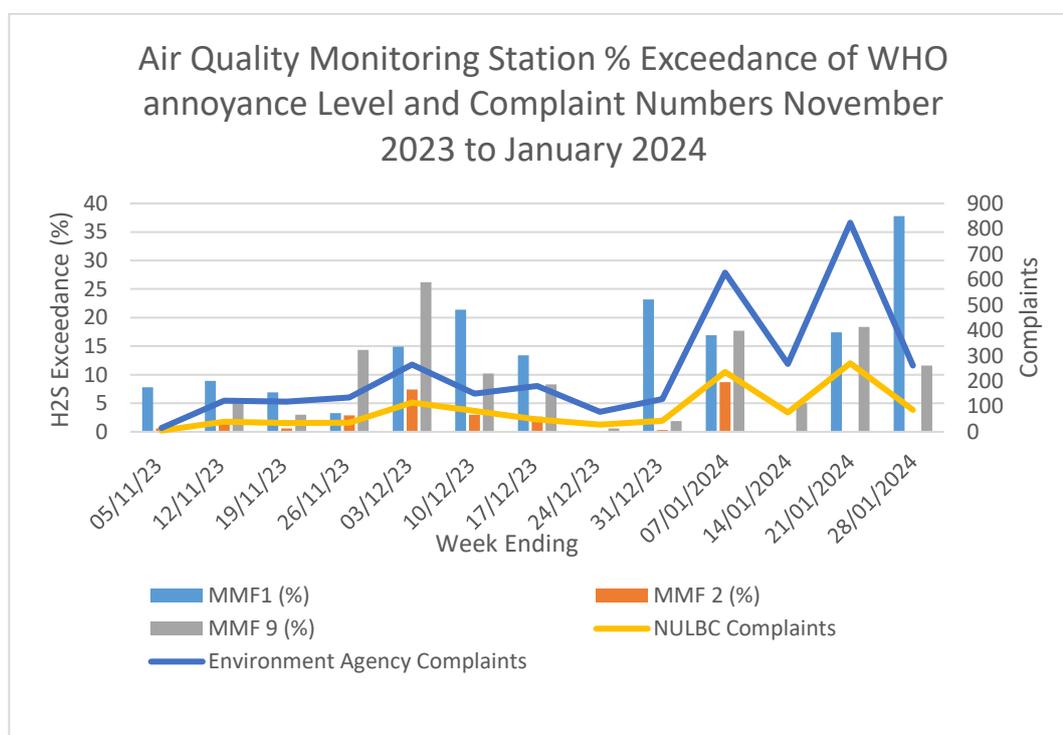
- 3.1** The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring stations. Data from these stations has been routinely 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 (H<sub>2</sub>S) 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** On 19 October 2023, the EA calibrated the H<sub>2</sub>S 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 H<sub>2</sub>S data is set out in the table below, defining the proportion of the time periods where H<sub>2</sub>S levels were above the WHO Odour Annoyance guideline of 7ug/m<sup>3</sup>.
- 3.4** The latest H<sub>2</sub>S data is set out in the table below, defining the proportion of the time periods where H<sub>2</sub>S levels were above the WHO Odour Annoyance guideline of 7ug/m<sup>3</sup>.

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	7.8

23 October – 29 October 2023	13.7	3.0	10.4
30 October – 5 November 2023	7.8	0.6	NR
6 November – 12 November 2023	8.9	1.5	5.6
13 November – 19 November 2023	6.9	0.6	3
20 November – 26 November 2023	3.3	2.9	14.33
27 November – 3 December 2023	14.9	7.4	26.2
4 December – 10 December 2023	21.4	3.0	10.2
11 December – 17 December 2023	13.4	2.68	8.33
18 December – 24 December 2023	0	0	0.6
25 December- 31 December 2023	23.21	0.3	1.9
01 January – 07 January 2024	16.9	8.7	17.7
08 January – 14 January 2024	0		5.0
15 January – 21 January 2024	17.4		18.4
22 January – 28 January 2024	37.8		11.6

NR= not reported

- 3.5** The complaint data and weekly % exceedance of the WHO annoyance level have been combined and is shown on the graph below. This shows good correlation between the two, apart from the week ending 31<sup>st</sup> December and 28 January where complaints are much lower than the H2S exceedance level at MMF1.



- 3.6** The EA have been required to remove the Mobile Monitoring Facility (MMF) 2 from the Silverdale Pumping Station in mid-January 2024 due to construction works beyond their control. MMF 2 was removed week commencing 8 January 2024.
- 3.7** On 19 January the EA updated on the issue with H2S data being recorded by the analysers and that the degree of uncertainty.

- We have developed a method that could allow us to adjust historic H2S data. This method is the subject of an independent peer review. We anticipate that the group's findings will be finalised by the end of January 2024. We are regularly updating partners and the local community on this issue.
- We have engaged an independent third party accredited by the United Kingdom Accreditation Service (UKAS) to audit our 3 MMFs in the vicinity of Walleys Quarry. The audit will begin once they have obtained the necessary H2S calibration gas, which is not easily available commercially. This means there may be a short delay.

**3.8** EA Officers conducted a site inspection on Wednesday 24 January 2024. "During the inspection they established that Walleys Quarry Ltd (WQL) had carried out works to reduce uncontrolled emissions from the operational area (tipping face), which were required following an inspection on 13 December 2023.

The works consist of:

- 8 vertical, deep gas wells which have been connected to the landfill gas management system.
- 3 pin wells that will be connected to the landfill gas management system by 28 January 2024.
- 2 horizontal gas wells along the southern boundary.
- A further horizontal well, which is due to be installed by 28 January 2024.

In addition, temporary clay capping is being installed on the top of Phase 4 and Phase 5, and on the western facing flank of Phase 6. Nine pin wells are being installed along the northern boundary of the site".

### **Environment Agency Regulatory and Enforcement Action**

- 3.9** 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>
- 3.10** 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.
- 3.11** The following table provides a summary of the published CAR (Compliance Assessment Report) forms since the last Cabinet report:

<b>Date of Report</b>	<b>Date issued</b>	<b>CAR reference</b>	<b>Assessment</b>	<b>Compliance Score</b>
30/11/23	14/12/23	DP3734D C/0484162	Site inspection (unannounced)	0

### **Key Performance Data**

- 3.12** 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.
- 3.13** The data from the Council covers the period from November 2023 to January 2024, and provides complaint numbers and officer assessments.

**3.14** 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 December are contained in Appendix 3. The KPI data for January is awaited and will be uploaded later as an addition to Appendix 3.

#### **4. Proposal**

##### **4.1 Cabinet is recommended to:**

- Note the contents of this update report.

#### **5. Reasons for Proposed Solution**

**5.1** 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.

#### **6. Options Considered**

**6.1** To provide regular updates to Cabinet.

#### **7. Legal and Statutory Implications**

**7.1** 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.

## 8. Equality Impact Assessment

- 8.1 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.

## 9. Financial and Resource Implications

- 9.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 9.2 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.

## 10. Major Risks

- 10.1 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.
- 10.2 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.

## 11. UN Sustainable Development Goals (UNSDG)





**12. Key Decision Information**

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

**13. Earlier Cabinet/Committee Resolutions**

**13.1** This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9<sup>th</sup> June 2021, 7<sup>th</sup> July 2021, 21<sup>st</sup> July 2021, 8<sup>th</sup> September 2021, 13<sup>th</sup> October 2021, 3<sup>rd</sup> November 2021, 17<sup>th</sup> November, 1<sup>st</sup> December 2021, 12<sup>th</sup> January 2022, 2<sup>nd</sup> February 2022, 23<sup>rd</sup> February 2022, 23<sup>rd</sup> March 2022, 20<sup>th</sup> April 2022, 7<sup>th</sup> June 2022, 19<sup>th</sup> July 2022, 6<sup>th</sup> September 2022, 18<sup>th</sup> October 2022, 8<sup>th</sup> November 2022, 6<sup>th</sup> December 2022, 10<sup>th</sup> January 2023, 7<sup>th</sup> February 2023, 13<sup>th</sup> March 2023, 5<sup>th</sup> April 2023, 6<sup>th</sup> June 2023, 18<sup>th</sup> July 2023, 19<sup>th</sup> September 2023, 17<sup>th</sup> October 2023, 7<sup>th</sup> November 2023, 5<sup>th</sup> December 2023, 16<sup>th</sup> January 2024.

**14. List of Appendices**

- 14.1** Appendix 1. Historical Complaint data
- 14.2** Appendix 2. NUL Key Performance Data
- 14.3** Appendix 3. WQL Key Performance Data