

# Public Document Pack



**NEWCASTLE  
UNDER LYME  
BOROUGH COUNCIL**

**PLEASE NOTE THAT PRAYERS WILL BE HELD AT 6.50PM BEFORE THE COMMENCEMENT OF THE BUSINESS OF THE COUNCIL.**

**THE MAYOR REQUESTS THAT ANY MEMBER WISHING TO PARTICIPATE IN PRAYERS BE IN ATTENDANCE BY NO LATER THAN 6.45PM.**

## SUPPLEMENTARY AGENDA

Dear Sir/Madam,

You are summoned to attend the meeting of the Borough Council of Newcastle-under-Lyme to be held in the Jubilee 2 - Dance Studio - (Second Floor) - Brunswick street, Newcastle, Staffs on Wednesday, 21st July, 2021 at 7.00 pm.

## BUSINESS

- 5 WALLEYS QUARRY - UPDATE ON PROBLEM ODOURS IN THE BOROUGH (Pages 5 - 22)**

Yours faithfully

Chief Executive

## **NOTICE FOR COUNCILLORS**

### **1. Fire/Bomb Alerts**

In the event of the fire alarm sounding, leave the building immediately, following the fire exit signs..

Fire exits are to be found at the side of the room leading into Queens Gardens.

On exiting the building Members, Officers and the Public must assemble at the statue of Queen Victoria. DO NOT re-enter the building until advised to by the Controlling Officer.

### **2. Mobile Phones**

Please switch off all mobile phones before entering the Council Chamber.

### **3. Notice of Motion**

A Notice of Motion other than those listed in Procedure Rule 14 must reach the Chief Executive ten clear days before the relevant Meeting of the Council. Further information on Notices of Motion can be found in Section 5, Standing Order 20 of the Constitution of the Council.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.



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## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO FULL COUNCIL

21<sup>st</sup> July 2021

#### Walleys Quarry – Update on Problem Odours in the Borough

##### Addendum

### Introduction

1. Item 5 on the Full Council agenda for 21<sup>st</sup> July is a report on Walleys Quarry and the associated odour problems. This addendum is to update members on decisions taken by Cabinet at its meeting on 21<sup>st</sup> July.

### Cabinet Consideration of Odour Issues

2. Cabinet considered a two part report by the Chief Executive updating on the work being undertaken to assess whether the odours from Walleys Quarry amount to a Statutory Nuisance, and should therefore trigger the serving of an Abatement Notice. Part 1 of that report is a publically available report which summarised the various strands of evidence collected to date, and is appended to this addendum. Part 2 of the report (available to Councillors on request to the Chief Executive) is a confidential appendix which provided the advice of Officers in respect Statutory Nuisance relating to Walleys Quarry Ltd and any other interested parties, in terms of:
  - Evidence collated to date – across complaint data, air quality monitoring, community impact, assessments by Environmental Health Officers, measurements by handheld air quality monitoring equipment, potential alternative sources of the odour, and the conclusions of experts advising the Council.
  - Financial implications, detailing the scale of resource required to enable any Abatement Notice to be taken through any appeal process.
  - Legal process involved, summarising the steps in the process to be followed and the potential timescales involved in those processes.
  - Risks associated with the decisions recommended to Cabinet.
3. The decision regarding Statutory Nuisance and the serving of Abatement Notices is not a matter for Cabinet – rather it is a decision which is taken by the Head of Environmental Health Services as the appropriately qualified officer.
4. Having received and considered the officer advice, Cabinet resolved to:

**Approve an initial reserve of £1,000,000 to meet the costs associated with taking formal action (in the event of a decision to do so) and authorise the Executive Director- Operational Services in consultation with the Leader of the Council, to call on this reserve, to meet the potential cost associated with serving and progressing any notices served.**

5. This decision means that officers are now able to progress with taking enforcement action as and when required in relation to this matter.
6. The Head of Environmental Health Services has concluded that the odours do amount to a Statutory Nuisance. The Council has retained the services of a leading environmental QC to advise on the next steps and to ensure that any actions now taken are properly executed. This will involve ensuring that full consideration is given to the range of parties that an abatement notice should be served on, which could include contractors operating on site and companies within the same group as Walleys Quarry limited. Care also needs to be taken to ensure that any notices are precisely drafted so as to ensure that they survive any appeal process.

### **Legal Process**

7. Where a statutory nuisance is identified or considered likely to occur or recur, section 80 of the Environmental Protection Act 1990 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).
8. There is a right of appeal against any abatement notice issued on a number of grounds, and the appeal process represents a significant resource commitment for the council in both time and expense. Any appeal would be heard in the Magistrates Court.
9. If the council succeeds in securing an abatement notice following any appeal process, it would be at this stage (should it arise) that the Council could seek to prosecute for breaching the abatement notice. However, as 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 was able to prosecute any offence of breaching an abatement notice. It is a criminal offence to breach the terms of the abatement notice.

### **Community Support**

10. In addition to the issues addressed at Cabinet on 21<sup>st</sup>, the Leader of the Council has written to the Secretary of State for Environment, Food and Rural Affairs, Mr George Eustice MP regarding the provision of respite accommodation for residents most impacted by the ongoing odours. The Leader's letter, and proposal regarding respite accommodation is appended to this addendum

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET**

**21<sup>st</sup> July 2021**

**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 advise Cabinet on the case for serving a Statutory Nuisance Abatement Notice to address problem odours in the Borough associated with Walleys Quarry and to address the associated financial implications.

**RECOMMENDATIONS**

**Cabinet is recommended to:**

- (1) Note that despite the further works that have taken place at Walleys Quarry landfill site, a significant level of complaints continue to be received from residents of the Borough and air monitoring data continues to show odour levels in exceedance of annoyance levels.**
- (2) Note the officer advice regarding the evidence, risks, financial implications and potential outcomes surrounding formal Statutory Nuisance action as set out in the confidential appendix to this report.**
- (3) Approve an initial reserve in the sum of £1,000,000 to meet the costs associated with taking formal action (in the event of a decision to do so) and authorise the Executive Director – Operational Services In consultation with the Leader of the Council, to call on this reserve, to meet the potential costs associated with serving and progressing any Notices served.**
- (4) Agree to update Full Council on the decision and the next steps in the legal process.**

**Reasons**

**To ensure Cabinet are aware of the evidence, risks, financial implications and potential outcomes surrounding any decision to take formal Statutory Nuisance action and to make initial financial provision for those processes to commence in the event of a decision being taken to do so.**  
**To note that the decision to serve an Abatement Notice is not a Cabinet decision, but a decision that is taken by the Head of Environmental Services who is the appropriately qualified Officer.**

**1. Background**

- 1.1 Previous reports have detailed how for a number of years, parts of the Borough have suffered from problematic foul odours, widely believed to come from the Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd, part of the RED Industries group of companies. Addressing this issue has been a priority for the current administration, with a specific budget of £50,000 agreed in February to enable specialist advice to be secured and targeted work to be undertaken.**

- 1.2 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.
- 1.3 At the last meeting of the Cabinet, a number of actions were agreed including:
- (1) It be noted that a response has been received to the letter before action, served on Walleys Quarry Ltd, which was not, in the view of Officers, sufficient to address the concerns raised.
  - (2) It be noted that despite the works that had taken place at Walleys Quarry landfill site, a significant level of complaints continued to be received from residents of the Borough and air monitoring data continued to show odour levels in exceedance of annoyance levels
  - (3) A Special Cabinet Meeting be held on 21<sup>st</sup> July 2021 to carefully consider all of the evidence collated to date, and receive advice on whether or not an Abatement Notice should be served, and consider the financial implications of this.
- 1.4 Complaints associated with the site continue to be received in significant numbers, and the air quality monitoring equipment indicates that concentrations of Hydrogen Sulphide in the area remains high. This report does not provide an update on the odour issues locally, but rather addresses the situation regarding the evidence collected to date, and to provide advice regarding the servicing of an Abatement Notice.

## 2. Issues

### **Council Powers Regarding Statutory Nuisance**

- 2.1 The Environmental Protection Act 1990, section 79, is the legislation concerned with statutory nuisances. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance. As set out below, it places a duty on a local authority to serve an Abatement Notice where a statutory nuisance is identified or considered likely to arise or recur.
- 2.2 Section 79 defines (insofar as it is relevant), is as follows:-

**“79.— Statutory nuisances and inspections therefor.**

(1) Subject to subsections (1A) to (6A) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

...

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

...

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.”

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and



80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.’

- 2.3 Where a statutory nuisance is identified or considered likely to occur 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 occurrence or reoccurrence of the nuisance and may require works (or other steps) to be undertaken within specified timescales.
- 2.4 There is a right of appeal against any notice on prescribed grounds. There is a right of appeal against any Abatement Notice issued. The requirements of an Abatement Notice are often suspended whilst any appeal is determined.

### Odour Nuisance Investigations

- 2.5 Cabinet allocated a budget of £50,000 to enable officers to undertake the necessary investigations to establish whether the issues of odours from Walleys Quarry amounted to a Statutory Nuisance, requiring the Council to serve an Abatement notice. Officers have gathered and analysed a range of evidence which is summarised in this report and in its confidential appendix.
- 2.6 As the collation evidence was being progressed and analysed, officers served a letter before action on Walleys Quarry Ltd to give the company the opportunity to provide to the Council any information to satisfy it that the company has an effective action plan and acceptable timeline in place to prevent the emission of regular, persistent and offensive odours detectable beyond the site boundary. Whilst Walleys Quarry Ltd responded to this letter, it did not address the core request. The focus of the response was to suggest that the source of the odour lay elsewhere.
- 2.7 In the view of Officers, the response was insufficient to address the concerns raised. This is due to the operator’s reply failing to provide the Council with any information to confirm that it has an effective action plan and acceptable timescale in place to resolve the problem.
- 2.8 The Council’s Environmental Health Officers have been collecting and analysing a range of evidence regarding the odours experienced by residents in the Borough, and this is summarised below. A more detailed analysis is contained in the confidential appendix attached to this report as it will be necessary to treat this information as confidential in advance of potential legal proceedings.

### 3. Complaint data:

- 3.1 In the first 6 months of 2021 the Council has received a total of 18,227 complaints, and the Environment Agency 32,541 (including to 11<sup>th</sup> July). These are set out in the table below which also shows the complaints received by the Environment Agency.

Complaints To	Jan 2021	Feb 2021	March 2021	April 2021	May 2021	June 2021	July 2021 to 11/7	Total Year to date
Council	921	3263	4799	3316	3466	1880	628	18277
Environment Agency	2050	4098	6347	6181	8482	4444	939	32,541

- 3.2 Whilst complaint levels appear to have decreased, they continue at a level which indicates that the issue with odours escaping the site have not abated and continue to have a negative impact on residents. This incident remains, by some margin, the largest source of complaints received on any matter by the Council.

- 3.3 The complaints received by the Council have been captured in a dedicated odour complaint form, which allows each complainant to rate the odour on a scale of 0-6.
- 3.4 GIS maps of the distribution of complaints has also been collated. The trend of complaint data indicates that public concern regarding this matter is ongoing.

#### 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 will run until August utilising four static air monitoring stations. Data from these stations is reviewed to provide information in relation to two standards relating to Hydrogen Sulphide (H<sub>2</sub>S) – 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/m<sup>3</sup>, 30-minute average) over the last 12 weeks for the following percentages of each week:

Location	19/4 – 25/4	26/4- 2/5	3/5 – 9/5	10/5- 16/5	17/5- 23/5	24/5 – 30/5	31/5 – 6/6	7/6 – 13/6	14/6 – 20/6	21/6 – 27/6	28/6 – 4/7	5/7 – 11/7
MMF1 - Silverdale Cemetery	18%	4%	6%	15%	1%	7%	30%	1%	11%	2%	1%	5%
MMF2 - Silverdale Road	8%	10%	21%	20%	9%	15%	1%	10%	7%	1%	8%	18%
MMF6 - NuL Fire Station	4%	13%	6%	1%	10%	16%	6%	10%	9%	4%	8%	3%
MMF9 - Galingale View	21%	35%	48%	10%	53%	47%	18%	19%	13%	12%	10%	17%

- 4.3 From this data it continues to be apparent that whilst the periods when the annoyance level has been in exceedance has reduced overall, as the last week showed an increase of up to 10% on the previous week, there remains potential for significant odour complaints to occur over these periods, with the Galingale View area remaining the most significantly impacted.
- 4.4 Although the EA has ensured the operator has undertaken significant improvements to gas capture, capping and leachate management, it is considered premature to view the reductions in gas detected at the monitoring stations as a permanent reduction in gas escaping from the land fill as there may be seasonal atmospheric factors in play that reduce the detection of H<sub>2</sub>S gas at this time of year. Further measures such as on site gas emission testing will be necessary to determine whether there has been a significant reduction of gas escaping the landfill.

#### 5. **Community Impact Statements:**

- 5.1 Approximately 750 individual impact statements, surveys and letters have been submitted to the Council which detail how the impact of odours impact on the daily lives and health of residents. These provide a compelling statement of the experience of living with this odour:

- 49% Reported health Issues

- 44% Could not open their windows/air vents/doors to get fresh air
- 30% Reported odours in their property (house/flat)/odours in cars
- 11% Had difficulty sleeping/disturbed sleep/lack of sleep
- 22% Cannot use garden/enjoy garden properly/put washing out
- 16% Impacted by dirty roads/debris/acidic smell/noise/visual impact of operation/feeling unclean (hair/clothes)
- 18% Said it impacted on daily outdoor exercise
- 5% Avoid/dislike visiting areas in Newcastle where smells permeate (impact on local businesses)
- 4% Taste the smell/leaves strange taste in mouth/puts off food
- 6% report Odours in Schools and College/Hospital/Work places

## 6. **Health and Impact Survey Report**

- 6.1 Aaron Bell MP undertook a Health Impact Survey which generated 1,426 responses, capturing the range of impacts on residents which included symptoms of health impacts as follows:

82% Headaches  
71% Nausea/feeling sick  
61% Eye irritation  
51% Stress  
45% Anxiety  
38% Insomnia  
27% Depression  
24% Loss of appetite  
23% Other Breathing difficulties  
20% exacerbation of asthma/COPD  
17% Nosebleeds  
13% Vomiting  
10% Panic attacks  
14% Other

- 6.2 These health impacts are consistent with the sort term health impacts which Public Health England have advised would be consistent with exposure to Hydrogen Sulphide.

## 7. **Odour Tours:**

- 7.1 Environmental Health Officers have conducted “odour tours” between February and April 2021 at 6 locations, resulting in 28,164 individual odour ratings being recorded. The odour tours were completed by two officers for consistency, during the day time period, between February and April 2021 at 6 locations surrounding the landfill site. Officers rated the odour at set locations every 10 seconds for a 5 minute period in order to provide a consistent assessment of odours at locations around the Walleys Quarry site. Odours were recorded ranging from 0 - no odour to 5 – very strong odour.

## 8. **Environmental Health Officer visits**

- 8.1 Officers have responded to complaints in order to witness odour, these have been collated on the odour assessment sheets and/or in PACE notebooks. Night time call outs have been undertaken by EH staff during weekends and night times in April and from 3<sup>rd</sup> May to 23<sup>rd</sup> May, responding to 25 specimen properties call outs and also routine complaints. During these visits officers witnessed a range of odour levels.

## 9. **Jerome (Hydrogen Sulphide (H2S) monitoring equipment):**

9.1 The Council hired and deployed Jerome H<sub>2</sub>S monitoring devices. These were used in two ways. Firstly to support officer visits in response to call outs and secondly temporarily installed inside properties. The data collected from these devices identified concentrations of H<sub>2</sub>S in residents homes at a range of levels, including instances above the WHO “annoyance guideline level” (7 µg/m<sup>3</sup>, 30-minute average).

10. **Odour Expert reports:**

10.1 The Council has engaged odour experts who has produced the following:

- Review of the findings of the Council’s olfactory testing.
- Review of the EA Air Quality monitoring data.
- Reverse modelling of emissions from Walleys Quarry Landfill site

11. **Landfill Experts reports**

11.1 The Council has engaged a landfill expert who has appraised the current landfill operations, current gas management procedures and infrastructure and also undertaken an assessment of whether Best Available Technique is being utilised in the management of the site.

12. **Complainants monitoring records:**

12.1 Work has been undertaken with 25 specimen properties. Diary records were provided by some of these properties and a number of witness statements have also been provided from the residents.

13. **Witness statements**

13.1 Formal Witness statements have been collected from the following:

- Borough Council Environmental Health Staff undertaking monitoring, collation and assessment of data.
- Some of the occupiers of the 25 specimen properties Local Businesses, institutions and organisations impacted by the odour
- Expert witnesses (Odour & Landfill)

14. **Sources of Odour**

14.1 A review of alternative possible local sources of odour has been undertaken and to date no credible alternate source has been identified. The current and ongoing focus of the Environment Agency as the principal regulator of the landfill on gas containment, capture and destruction also confirms that the site is a source of odour being experienced by residents.

15. **Implications**

15.1 The portfolio of evidence summarised above will be used by the Head of Environmental Health Services to determine whether the issues of odour from Walleys Quarry amount to Statutory Nuisance, requiring the serving of an abatement notice. In anticipation of this matter being determined, Cabinet is invited to consider whether, on the strength of the evidence summarised above and expanded upon in the confidential appendix, it is prepared to make financial provision for the matter to be progressed. In reaching this decision, Cabinet will need to be aware of other relevant matters including:

- Legal Process

- Risks
- Financial implications

An analysis of these issues is set out in the confidential appendix to this report.

## 16. **Proposal**

- (1) Note that despite the further works that have taken place at Walleys Quarry landfill site, a significant level of complaints continue to be received from residents of the Borough and air monitoring data continues to show odour levels in exceedance of annoyance levels.
- (2) Note the officer advice regarding the evidence, risks, financial implications and potential outcomes surrounding formal Statutory Nuisance action as set out in the confidential appendix to this report.
- (3) Approve an initial reserve in the sum of £1,000,000 to meet the costs associated with taking formal action (in the event of a decision to do so) and authorise the Executive Director – Operational Services In consultation with the Leader of the Council, to call on this reserve, to meet the potential costs associated with serving and progressing any Notices served.
- (4) Agree to update Full Council on the decision and the next steps in the legal process.

## 17 **Reasons for Proposed Solution**

17.1 To ensure Cabinet are aware of the evidence, risks, financial implications and potential outcomes surrounding any decision to take formal Statutory Nuisance action and to make initial financial provision for those processes to commence in the event of a decision being taken to do so.

To note that the decision to serve an Abatement Notice is not a Cabinet decision, but a decision that is taken by the Head of Environmental Services who is the appropriately qualified Officer.

## 18. **Options Considered**

18.1 Consideration is being given to whether or not a Statutory Nuisance exists and/or is likely to occur or recur in the area of the authority. The Head of Environmental Health Services, being the duly authorised officer to make that determination, will form a view as to whether, or not, this test has been met. If the view is formed that a Statutory Nuisance exists/or is likely to occur or recur, subject to any observations of Cabinet that may alter that view, the Council has a duty to serve an abatement notice.

## 19. **Legal and Statutory Implications**

19.1 The Environmental Protection Act 1990, section 79 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.

19.1.1 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.

19.1.2 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.

- 19.1.3 Where a statutory nuisance is identified or considered likely to occur 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).
- 19.1.4 By virtue of paragraph 195 (Appendix 4, Scheme of Delegation – Specific Functions; Appendix C, Delegation of Environmental Health and Licensing Decisions) of the Constitution (pg100), the decision to serve notices pursuant to S80 of the 1990 Act is delegated to the Head of Environmental Health Services as the duly authorised and qualified officer.
- 19.1.5 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 issued 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.
- 19.1.6 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.
- 19.1.7 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.
- 19.1.8 It is not possible to predict, with any certainty, the amount of a fine the court is likely to impose in respect of a breach of an abatement notice, because it will depend entirely on the circumstances in any given case. There will be a number of complex variables that the court would need to consider.
- 19.1.9 The courts will refer to the Sentencing Guidelines, which start by requiring an analysis of the degree of culpability and the level of harm caused. In addition, the courts are required to have regard to the financial means of the defendant. As a medium sized company (£10-£50m turnover) the starting point for any fine would range between £3000 and £400,000, depending on the degree of culpability and level of harm caused by the breach in question.
- 19.1.10 If a prosecution is brought in respect of a number of offences then the “totality principle” comes into play whereby the court must consider if the total sentence is just and proportionate in respect of the offending behaviour taken as a whole. The “starting point” fine would then be increased or reduced accordingly. The Guidelines indicate an “offence range”, taking all of these factors into account, of between £100 and £3m.
- 19.1.11 The magistrates' court can also make a compensation order, to compensate any person who has suffered personal injury, damage or loss as a result of the statutory nuisance offence.
- 19.1.12 Where an offence committed by a company is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of,

any director, manager, secretary or similar company officer, they may also be guilty of that offence and liable to be proceeded against.

## 20. Equality Impact Assessment

20.1 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.

## 21. Financial and Resource Implications

21.1 There is no initial cost from the serving of an Abatement Notice, however, if an appeal is made against the notice and legal proceedings are required, there will be a significant financial and resource implications which will require funding via the proposed Reserve contained in the confidential appendix attached to this report.

21.2 It is proposed that an initial Reserve of £1m be established in order to fund any anticipated costs associated with serving the Abatement Notice. The Council has completed a review of its Financial Risk Assessment in respect of its General Fund Reserve of £3m and as a result propose to make available £1m from the General Fund Reserve to cover any potential costs associated with the issue of the Abatement Notice.

21.3 In addition to the financial impact servicing an Abatement Notice might have, there needs to be consideration given to the additional officer resource required.

21.4 It should also be noted that the Council is continuing to seek external funding to assist with this issue and updates will be provided in due course.

## 22. Major Risks

22.1 Risks are analysed in full in the appendix to this report.

## 23. Unsustainable Development Goals (UNSDG)



## 24. Key Decision Information

24.1 This is a Key Decision.

## 25. Earlier Cabinet/Committee Resolutions

25.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and most recently, Cabinet on 21 April 2021, 9<sup>th</sup> June 2021 and 7<sup>th</sup> July 2021

## 26. List of Appendices

Walleys Quarry Odour Report – Confidential appendix.



Our ref:

Your ref:

Date: 18th July 2021

Mr George Eustice MP  
Secretary of State for Environment, Food & Rural Affairs

By e-mail only: [george.eustice.mp@parliament.uk](mailto:george.eustice.mp@parliament.uk)



Castle House  
Barracks Road  
Newcastle-under-Lyme  
Staffordshire  
ST5 1BL

Dear George

**Walleys Quarry Landfill Site, Newcastle-under-Lyme Staffordshire**  
**Support for Residents Suffering from Odours**

You will be aware from previous correspondence that Newcastle residents continue to suffer from the effects of foul odours arising from the Walleys Quarry landfill site in the Borough. This has been the subject of a 10-minute rule by your colleague Aaron Bell MP, and adjournment debate, and indeed has this week been raised at Prime Minister's Questions.

Since January the Council has received over 18,000 complaints about this matter, and the Environment Agency has received over 32,000 complaints in the same period. Air quality around the Walleys Quarry site is now continuously monitored by 3 monitoring stations, and this data is analysed by experts at Public Health England, and the output from this does not make comfortable reading. Hydrogen Sulphide concentrations at some of the stations are above the World Health Organisation "annoyance" level for up to 53% of the time, and never less than 10% of the time. Other stations are recording lower levels, but still at concentrations which are above the "annoyance" threshold for significant portions of the time. Residents are living with this day in and day out, with disturbed sleep, headaches, nose bleeds, and mental health impacts being routinely reported. Public Health England have indicated that the longer this situation prevails, the more they will be concerned about the cumulative impact of the gas on health in the community.

I have asked my officers to prepare a scheme which would allow residents who are most affected by the exposure to Hydrogen Sulphide to be afforded some respite, as might be provided to other people living in stressful situations. A copy of the proposal is attached. You will see that this is not an overly generous scheme, affording those affected to one weekend respite break away from their home every six months. Even cautious estimates as to the demand still put such a scheme beyond the resources of a small district Council.

That this problem exists at all is due to two issues – a landfill operator who has not run their site as it should have been run, and a regulator, in the form of the Environment Agency, who have taken their eye off the ball and allowed the operator to get away with it for too long. My residents are living with the consequences.

I am writing to you today to ask that you work with the other relevant departments and secure, for Newcastle-under-Lyme, the funds required to provide the respite provision set out in the attached proposal.

I would also like to invite you to visit Newcastle under Lyme to see at first hand the situation that my residents are enduring.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Tagg', with a long horizontal flourish extending to the right.

**Councillor Simon Tagg**  
**Leader of the Council**  
[simon.tagg@staffordshire.gov.uk](mailto:simon.tagg@staffordshire.gov.uk)

Cc Aaron Bell MP for Newcastle-under-Lyme

## **Walleys Quarry – Respite Accommodation**

### **Context**

1. During the spring & early summer of 2021 the Council has jointly funded air quality monitoring in the vicinity of Walleys Quarry together with the Environment Agency and Staffordshire County Council. As part of this work Public Health England have evaluated the data collected to identify the associated health impacts.
2. The data provided to Public Health England (PHE) has been compared to available health-based air quality guidelines and standards or assessment levels for hydrogen sulphide, particulate matter, nitrogen dioxide, and methane. Their analysis has shown two isolated instances where concentrations of H<sub>2</sub>S was above the World Health Organisation (WHO) 24-hour average guideline value for hydrogen sulphide. This is the guideline above which there is an increased risk to health. Their analysis identified that across the four monitoring sites there are frequently concentrations in excess of the WHO “annoyance” threshold, above which the noxious odour will be noticeable to residents.
3. Public Health England have concluded that the risk of long term harm to physical health is low, but that short term problems such as irritated eyes, nose and throat, nausea, headaches or dizziness are of increased likelihood. PHE acknowledge that this kind of persistent, unpleasant odour can affect people’s mental wellbeing, causing stress, anxiety, problems sleeping and disruption to general activities. This is borne out by the direct reporting to the Council by residents, with an analysis of 750 on-line Impact Statements showing:
  - 46% reporting Mental Health generally (feeling low due to lack of sleep/feeling drained), depressed, anxious, stressed, feeling trapped
  - 49% reporting Migraines/Headaches/Dizziness
4. In addition to the PHE position, there have been representations made by some local GPs and consultants regarding the adverse impact of the odours on their patients locally.

### **The Case for Respite Accommodation**

5. The current situation regarding Walleys Quarry is such that there is a credible prospect of residents living with problematic odours for some time. As such, at its June meeting, Cabinet agreed to evaluate the option of securing provision of respite accommodation.
6. The concept of respite breaks, and their positive impact on mental health and personal resilience, is well understood in the arena of social care. Providing an opportunity for a person dealing with a significant stressful situation with some time, even if only 3 or 4 times a year, to have time away from that situation, is recognised to have a positive impact.
7. In the case of individuals living with the persistent foul odours associated with Walleys Quarry, the Council is keen to find some mechanism to enable those most at risk from

the potential mental and physical health impacts to be afforded some respite from the odours with the objective of increasing their resilience and ability to cope.

### Scheme Outline & Scope

- Scheme open to any Newcastle-under-Lyme resident, and any family members with whom they live, whose GP confirms they have a health condition which is being adversely impacted by the odours from Walleys Quarry to the extent that short term respite is required;
- Respite for 1 two day break in any 6 month period;
- Respite accommodation to be in Staffordshire, to support local economy;
- Respite accommodation to be either 2-3 Star on Dinner, Bed, and Breakfast basis OR 2-3 Star Self Catered;
- Scheme to run for one year.

### Likely Demand

8. The Council has received complaints from just over 7000 individual households during 2021. A number of sources indicate that approximately 50% of people impacted by the odour report significant health impacts:
  - a. On line Impact Statements indicate that c.50% report some form of health impact;
  - b. A Survey by Aaron Bell MP found that c.50% felt the odour had either a severe or significant impact on their physical health; c.60% felt the odour had either a severe or significant impact on mental health; c.60% felt the odour had a severe or significant impact on their sleep.
9. This analysis would suggest that there are c.3500 households who *MAY* benefit from some form of respite accommodation, although this is difficult to assess with any accuracy. Equally, ahead of consulting directly with GPs it is difficult to assess the extent to which they would “prescribe” respite breaks, or what the take-up would be by the individuals concerned. For the purposes of estimation, assume:
  - Of the 3500 households reporting health impacts, assume 20% take up respite – 700
  - Of the 700, assume 50% require one room; 50% require 2 rooms. c. 1050 rooms;
  - Assume all two night respite breaks, repeated twice during programme = 2100 2 night breaks
  - Basic DBB or Self Catering available at c.£250 per two night stay per room – Budget in respect of the assumed 20% take up will be c. **£525,000** (Note – this is a very basic cost per stay, and may increase - a 30% margin of error would increase cost to c.£680,000);
  - Note, if take up is 30%, rather than 20%, costs rise to **£787,500 - £1,023,000**

Budget Provision for respite accommodation would need to be in the range £525,000 - £1,000,000 if wholly funded for participating households. This can only be an approximation as there is no way of knowing at this stage quite what the take up would be.

## **Legal Basis**

10. The Council does not have a duty to provide respite accommodation in this circumstance, but does have the discretionary power to do so. The Council could adopt a policy to provide respite from nuisance/annoyance using its powers of general competence under S2 of the Localism Act 2011. That provides a power to Councils to do anything (lawful) to promote the social, environmental or economic wellbeing of its area. Subject to the views of the Director of Public Health, provision of respite to its residents from environmental annoyances could be capable of qualifying as a social wellbeing improvement.
11. The scheme as designed is not to respond to a specific incident, but rather to an ongoing situation. As such it is not a scheme which could be progressed under Civil Contingencies powers, or be funded through the Belwin scheme which protects Council's from the resource demands of the immediate response to an emergency.
12. The detail of the scheme will need to be worked up to ensure clear and consistent parameters:
  - To the public, in explaining the rationale for the scheme, and its limits;
  - Around Means Testing of applicants – there could be no case for using public funds to provide respite to households with the means to provide such relief for themselves, therefore some parameters for means testing will be required;
  - To GPs who will be assessing eligibility on behalf of the Council, and to ensure robust assessment by GPs, and consistent application of the scheme to avoid any actual or perceived abuse;
  - To define a rationale for this scheme to be restricted to impacts of Walleys Quarry – in the normal run of events, the Environmental Health Service receive numerous representations each year from people expressing a wish to be rehoused, or have a break from whatever nuisance they are experiencing, and make one or two referrals per year to Social Services relating to suicide threats. If the scheme is limited to those suffering due to Walleys Quarry, there is a reasonable risk of complaint or challenge from others who would consider their situation to be analogous. A challenge on this basis would be difficult to defend without a clear policy position as to why this particular nuisance was being prioritised.

## **Budget Provision**

13. The Council does not have budget provision for this scheme. If minded to progress such a scheme a proposal would need to be made to the Government to fund the scheme. The financial risks associated with such a scheme include the unknown numbers of take up by residents. In addition to the numbers of take up there are financial risks associated with the length of time the scheme runs for. As previously noted in the report, the expected duration of the scheme will be for one year, however there is a risk that the odours, and therefore demand for such a service continue for longer, requiring consideration to be given to extending the scheme. These unknown risk areas could see the estimated costs of between £525,000 - £1,000,000 increases significantly, therefore funding such a scheme would need to be via a ring financed government grant.

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