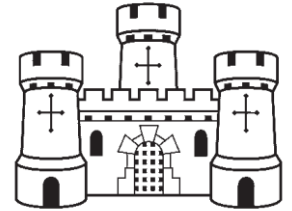


# Public Document Pack

**Date of meeting** Wednesday, 8th September, 2021  
**Time** 2.00 pm  
**Venue** Astley Room - Castle  
**Contact** Denise French 742211



**NEWCASTLE  
UNDER LYME**  
**BOROUGH COUNCIL**

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

## Cabinet

### SUPPLEMENTARY AGENDA

#### PART 1 – OPEN AGENDA

##### 5 WALLEYS QUARRY - ODOUR ISSUES

(Pages 3 - 16)

Report to follow

**Members:** Councillors Simon Tagg (Chair), Stephen Sweeney (Vice-Chair), Gill Heesom, Trevor Johnson, Paul Northcott and Jill Waring

**Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.**

**Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.**

#### **SUBSTITUTE MEMBER SCHEME** (Appendix 9, Section 4 of Constitution)

The Constitution provides for the appointment of Substitute members to attend Committees. The named Substitutes for this meeting are listed below:-

Substitute Members:

*If you are unable to attend this meeting and wish to appoint a Substitute to attend in your place you need to:*

- Identify a Substitute member from the list above who is able to attend on your behalf
- Notify the Chairman of the Committee (at least 24 hours before the meeting is due to take place) NB Only 2 Substitutes per political group are allowed for each meeting and your Chairman will advise you on whether that number has been reached

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

**Contacting the Council:**

Switchboard 01782 717717 . Text 07800 140048

Email [webmaster@newcastle-staffs.gov.uk](mailto:webmaster@newcastle-staffs.gov.uk).

[www.newcastle-staffs.gov.uk](http://www.newcastle-staffs.gov.uk)

**NOTE:** THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY THROUGH THE FIRE EXIT DOORS.

ON EXITING THE BUILDING, PLEASE ASSEMBLE AT THE FRONT OF THE BUILDING BY THE STATUE OF QUEEN VICTORIA. DO NOT RE-ENTER THE BUILDING UNTIL ADVISED TO DO SO.

## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

8 September 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 latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

#### **RECOMMENDATIONS**

**Cabinet is recommended to 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;
- that officers have served an Abatement Notice on Walleys Quarry Ltd in relation to the Statutory Nuisance caused by the site;
- that an appeal against the Abatement Notice has been lodged in the Magistrates' Court;
- the ongoing work to address the issues being experienced by residents and businesses.

#### **Reasons**

To ensure Cabinet are kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry.

#### **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 budget 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 Funding allocated by Cabinet to research the case around Statutory Nuisance has been expended as follows:

- Specialist landfill and air quality consultancy advice: £26,895
- Legal, Financial and Counsels advice: £18,150
- Equipment hire and purchase: £6,022

## 2. Statutory Nuisance

2.1 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. Following extensive work, officers determined that the odours from the Walleys Quarry site amount to a Statutory Nuisance and, on 13<sup>th</sup> August 2021, serviced an Abatement Notice on Walleys Quarry Ltd. The Abatement Notice is attached at Appendix 1 of this report. To provide members with clarity over aspects of the Notice, officers advise that:

- The Notice gives Walleys Quarry Ltd a period of 5 months to abate the nuisance. This timeframe was arrived at having discussed the nature and extent of potential works required at the site with colleagues from the Environment Agency and with our own landfill expert. The timeframe for abatement needs to be a credible one in terms of deliverability, hence the notice not requiring instantaneous abatement; it recognises that works will need to be undertaken on site, and allows a reasonable period of time for that to happen.
- The map appended to the Abatement Notice sets out the geography within which the nuisance needs to be abated. This geography has been arrived at through analysis of evidence and also reflects the fact that the actions required to secure abatement within this geography will equally deliver abatement of any nuisance further from the site;
- The operator has the opportunity to appeal the Abatement Notice within a period of 21 days from service of the notice on a number of prescribed grounds.

2.2 On 2 September 2021, Walleys Quarry Ltd lodged an appeal against the Abatement Notice with the Magistrates Court. The appeal is on a wide number of grounds, but does not raise any points that the Council was not anticipating, and in respect of which thorough work was carried out prior to making a decision about whether or not an Abatement Notice should be served.

2.3 The next stage in the process will be for the court to arrange a case management conference to evaluate how long is likely to be required to hear the case, set a date for the hearing and then make an order dealing with things like disclosing and filing documents and witness statements, which must happen before any hearing can take place. There will also be a very strong expectation of the court that the parties enter into a mediation process outside of the court proceedings which can be a swift and cost effective alternative to litigation. Solutions reached through mediation are binding, and court proceedings can be continued in the event that the mediation process is not successful.

## 3. Complaint Data

3.1 In the first 8 months of 2021, the Council has received a total of 20,082 complaints, and the Environment Agency 38,126.

Complaints 2021	Jan	Feb	March	April	May	June	July	Aug	Total Year to date

Council	921	3263	4799	3316	3466	1880	1648	833	20,126
Environment Agency	2050	4098	6347	6181	8482	4444	4245	2329	38,126

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.

#### 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 has been extended to run until March 202 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 18 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	12/7 - 18/7
	%	%	%	%	%	%	%	%	%	%	%	%	%
MMF1 - Silverdale Cemetery	18	4	6	15	1	7	30	1	11	2	1	5	0.4
MMF2 - Silverdale Road	8	10	21	20	9	15	1	10	7	1	8	18	2.4
MMF6 - NuL Fire Station	4	13	6	1	10	16	6	10	9	4	8	3	2.1
MMF9 - Galingale View	21	35	48	10	53	47	18	19	13	12	10	17	23

Location	19/7 - 26/7	27/7 -1/8	2/8- 8/8	9/8- 15/8	16/8 - 22/8	23/8 - 29/8
	%	%	%	%	%	%
MMF1 - Silverdale Cemetery	3.6	1.8	1	0.3	1	0
MMF2 - Silverdale Road	0	1.5	4	7	1	0
MMF6 - NuL Fire Station	3.6	11	5	3	4	1.5
MMF9 - Galingale View	16	26	10	6	6	17

- 4.3 From this data it appears that whilst the odour issue persists, the frequency of incidences when the WHO annoyance threshold is exceeded appears to be reducing, albeit less so at the Galingale View monitoring site than at the others. This will not necessarily equate with the lived experience of residents who may well continue to smell the gas at levels below the WHO annoyance threshold.
- 4.4 Although the EA has required the operator to undertake significant improvements to gas capture, containment and destruction, as well as 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. Jerome (Hydrogen Sulphide (H<sub>2</sub>S) monitoring equipment)

- 5.1 In order to ensure that the Council and its partners have current information about the incidence of H<sub>2</sub>S related odours inside their properties, the Council has procured two Jerome hand held monitoring devices. These will be deployed in selected residents' homes or local businesses for extended periods of time as well as assisting Officers complaint investigations. The data will allow the Council and its partners to assess to any ongoing incidences of high gas levels, or, in the absence of such spikes, provide assurance to the community

## 6. Community Tensions

- 6.1 In recent weeks community concern regarding the odours from Walleys Quarry has manifested itself in a mix of planned and spontaneous demonstrations at the Walleys Quarry site. Arising from these demonstrations, the police have made four arrests relating to obstruction of the highway or obstruction of business.

## 7. Sources of Odour

- 7.1 A review of alternative possible local sources of odour has been undertaken and to date no credible alternate source has been identified.

## 8. **Proposal**

Cabinet is recommended to note:

- a. 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;
- b. that officers have served an Abatement Notice on Walleys Quarry Ltd in relation to the Statutory Nuisance caused by the site;
- c. that an appeal against the Abatement Notice has been lodged in the Magistrates' Court;
- d. the ongoing work to address the issues being experienced by residents and businesses.

## 9. **Reasons for Proposed Solution**

- 9.1 To ensure Cabinet are kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry.

## 10. **Options Considered**

- 10.1 To provide regular updates to Cabinet

## 11. **Legal and Statutory Implications**

- 11.1 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 of a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether or not 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).
  - 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 Environment Permit issues 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.
  - 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.

- 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.

## 12. Equality Impact Assessment

12.1 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.

## 13. Financial and Resource Implications

13.1 There are none directly arising from this report.

13.2 Funding allocated by Cabinet to research the case around Statutory Nuisance has been expended as follows:

- Specialist landfill and air quality consultancy advice: £26,895
- Legal, Financial and Counsels advice: £18,150
- Equipment hire and purchase: £6,022

## 14. Major Risks

14.1 There are no risks beyond those explored in previous reports.

## 15. Unsustainable Development Goals (UNSDG)



## 16. Key Decision Information

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

## 17. Earlier Cabinet/Committee Resolutions

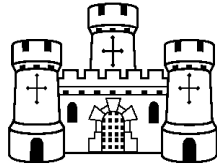
17.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9<sup>th</sup> June 2021 and 7<sup>th</sup> July 2021 and 21<sup>st</sup> July.

## 18. List of Appendices



1. Abatement Notice

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**NEWCASTLE·UNDER·LYME**  
**BOROUGH COUNCIL**

**ENVIRONMENTAL PROTECTION ACT 1990 PART III ('the Act')**  
**Abatement Notice in respect of a Smell Nuisance**

**Ref: U/005442**

To: Walleys Quarry Ltd. (Company number 09910638)

Of: Borough House, Berkeley Court, Borough Road, Newcastle-under-Lyme, Staffordshire, ST5 1TT

**TAKE NOTICE** that the **Borough Council of Newcastle-under-Lyme** being satisfied of the existence and likely recurrence of smell amounting to a statutory nuisance under section 79(1)(d) of the Act at:

Premises (including land) falling wholly or partially within the area encompassed by the boundary line identified on the attached plan reference NULBC01

Within the district of the said Council and caused by:

**Smell arising from the industrial, trade or business premises known as Walleys Quarry Landfill, Cemetery Road, Newcastle-under-Lyme, Staffordshire, ST5 6DH.**

**HEREBY REQUIRE YOU** as the person responsible for the cause of the said nuisance at the premises from which the smell is or would be emitted, to abate the nuisance within 5 MONTHS from the service of this notice or, if an appeal is made, the date when the magistrates' court determines any such appeal.

**AND ALSO HEREBY PROHIBIT YOU** from causing, permitting or otherwise allowing the recurrence of the nuisance thereafter.

~~**THIS** is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisances (appeals) Regulations 1995 applies, and in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, [the nuisance to which this notice relates is [injurious to health] [likely to be of a limited duration such that suspension would render the notice of no practical effect]] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance].~~

**IF** without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to an unlimited fine.

Further if you fail to comply with this notice, the Council may itself do whatever is required to achieve compliance with this notice and abate the nuisance, recovering from you the necessary expenditure incurred.

Dated 13<sup>th</sup> August 2021

Signed:

**Mrs NESTA BARKER**  
**Head of Environmental Health Services**

[Time copy served \_\_\_\_\_]

Please address any communication concerning this Notice and quoting Ref: U/005442 to:-  
Newcastle under Lyme Borough Council.  
Environmental Health Division  
Castle House, Barracks Road  
Newcastle-Under-Lyme,  
Staffordshire ST5 1BL

**N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days from the date of service of this notice. See notes attached.**

## STATUTORY NUISANCE APPEALS REGULATIONS 1995 (SI 1995/2644)

### 2. APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

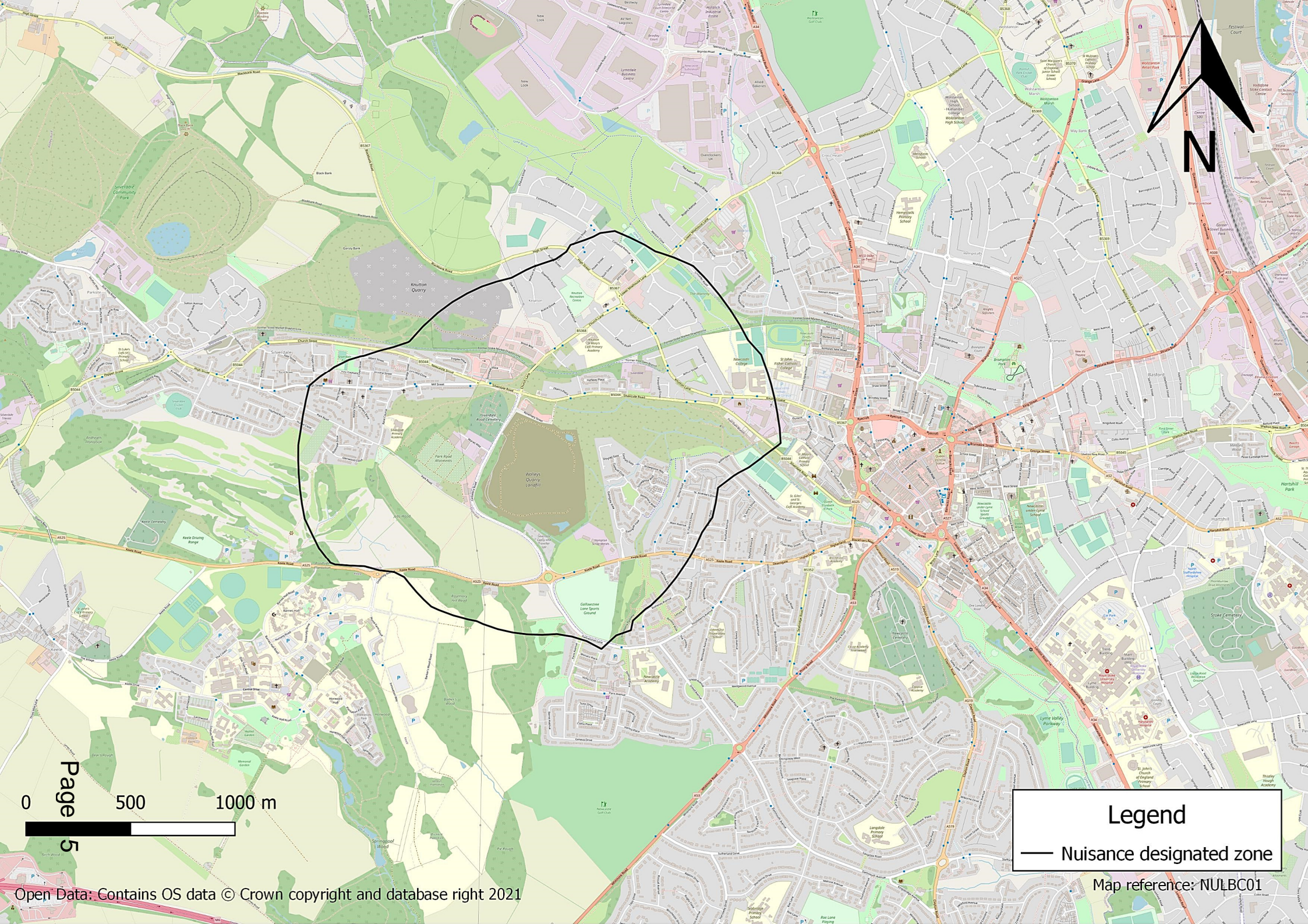
- (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case-
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
  - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
  - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonably in character or extent, or are unnecessary;
  - (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
  - (e) where the nuisance to which the notice relates -
    - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
    - (ii) is a nuisance falling within section 79(1)(b), of the 1990 Act and the smoke is emitted from a chimney, or
    - (iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, or
    - (iv) is a nuisance falling within section 79(1)(fb) of the 1990 Act and -
      - (aa) the artificial light is emitted from industrial, trade or business premises, or
      - (bb) the artificial light (not being light to which sub-paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 80(8A) of the 1990 Act), that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
  - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
    - (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or
    - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
    - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
  - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
  - (h) that the abatement notice should have been served on some person instead of the appellant, being -
    - (i) the person responsible for the nuisance, or
    - (ii) the person responsible for the vehicle, machinery or equipment, or
    - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
    - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
  - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being -
    - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
    - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
  - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
    - (i) a person also responsible for the nuisance, or
    - (ii) a person who is also owner of the premises, or
    - (iii) a person who is also an occupier of the premises, or
    - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,
- and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may:-
- (a) quash the abatement notice to which the appeal relates, or
  - (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
  - (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
  - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person(7) In exercising its powers under paragraph (6) above, the court -
    - (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
    - (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

### 3. SUSPENSION OF NOTICE

- (1) Where:-
- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and -
  - (b) either - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal, or (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
  - (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where -
- (a) the nuisance to which the abatement notice relates -
    - (i) is injurious to health, or
    - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
  - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
  - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply



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Page 5

**Legend**  
— Nuisance designated zone

Map reference: NULBC01

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