

Public Document Pack



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, 17th November, 2021 at 7.00 pm.**

B U S I N E S S

- 5 WALLEYS QUARRY UPDATE (Pages 5 - 10)**
- 10 STATEMENT OF THE LEADER OF THE COUNCIL (Pages 11 - 14)**
To receive a statement by the Leader of the Council on the activities and decisions of Cabinet and items included on the Forward Plan.
- 12 REPORTS OF THE CHAIRS OF THE REGULATORY COMMITTEES (Pages 15 - 16)**
Written reports have been received for the following Committees:

Audit and Standards Committee.
- 14 QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS (Pages 17 - 18)**

Yours faithfully

Matthew T. Hamilton

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..

On exiting the building Members, Officers and the Public must assemble at the School Street Car Park. 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.

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO COUNCIL

17 November 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 update Council on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Council is recommended to endorse the contents of this report.

Reasons

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

1. Background

- 1.1 For a number of years, parts of the borough have suffered from problematic 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 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 In July 2021 Council received a report by the Chief Executive updating on the issues pertaining to the question of Statutory Nuisance and discussing funding requirements moving forwards.

2. Statutory Nuisance

- 2.1 Following extensive work, officers determined that the odours from the Walleys Quarry site amount to a Statutory Nuisance and, on 13th August 2021, serviced an Abatement Notice on Walleys Quarry Ltd.
- 2.2 The Abatement Notice afforded Walleys Quarry Ltd a period of 5 months to abate the nuisance, with this timeframe being informed by discussion on the nature and extent of

potential works required at the site with colleagues from the Environment Agency and with our own landfill expert. Once abated, the Notice requires Walleys Quarry to take steps to prevent the nuisance from reoccurring.

- 2.3 On 2nd September 2021, Walleys Quarry Ltd lodged an appeal against the Abatement Notice with the Magistrates Court. This has the effect of “stopping the clock” on the 5 month timeframe to abate the nuisance. The timeframe for abating the nuisance will now be set by the Court, assuming that the appeal is not upheld.
- 2.4 On 3rd November, representatives for the Council and Walleys Quarry Ltd attended a case management hearing at Newcastle Magistrates Court. This hearing dealt with the administration of the appeal, setting out a timetable leading up to a trial of the issues in June 2022. The timetable, which allows for assembly and exchange of key documents and consideration of key documents by each party’s expert advisors, is as follows:
- 12 January 2022 – Exchange of Documents
 - 9 February 2022 – Exchange witness statements of all witnesses of fact
 - 9 March 2022 - The parties mutually serve reports setting out the substance of any expert evidence
 - 30 March 2022 - The parties shall, if so advised, file expert reports by way of rebuttal
 - 20 April 2022 – Following discussion between experts, submit to court joint Statement of Issues identifying those on which they agree and disagree, together with a summary of their reasons.
 - 27 April 2022 - The parties to serve upon each other and the Court a letter indicating which witness statements (if any) are agreed
 - 13 May 2022 - Pre-Trial Review, to take stock and make final arrangements for trial
 - 6 June 2022 – 4-week Trial begins

Mediation

- 2.5 Alongside the legal process, in an attempt to secure speedy resolution of disputes at reduced cost, the court system encourages and expects parties to engage in mediation which, if successful, should result in an enforceable agreement that will resolve the issues much sooner than if the matter were to proceed to Trial, at a lower cost to the Council Tax payer. It would enable the authority and experts to sit down with Walleys Quarry Limited and work through a range of issues and options in detail to arrive at a very specific set of measures, outcomes and sanctions. The Council has written to Walleys Quarry Limited to confirm whether they are willing to enter into a mediation process
- 2.6 If a mediated settlement cannot be secured, the Council would then continue to pursue the Abatement Notice route. If Walleys Quarry then breach the Abatement Notice, the council would need both evidence of the breach and permission from the Secretary of State to bring a prosecution, which can be a long and difficult process.

3. Complaint Data

In the first 9 months of 2021, the Council has received a total of 20,756 complaints:

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Year to date
Council	921	3263	4799	3316	3466	1880	1648	833	630	190	20,946
EA	2050	4098	6347	6181	8482	4444	4245	2329	2328	842	41,346

- 3.1 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 2022 utilising four static air monitoring stations. Data from these stations is reviewed to provide information in relation to two standards relating to Hydrogen Sulphide (H₂S) – 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/m³ , 30-minute average) over the last 18 weeks for the following percentages of each week:

Location	MMF1 - Silverdale Cemetery (%)	MMF2 - Silverdale Road (%)	MMF6 - NuL Fire Station (%)	MMF9 - Galingale View (%)
19/4 – 25/4	18	8	4	21
26/4 – 2/5	4	10	13	35
3/5 – 9/5	6	21	6	48
10/5 – 16/5	15	20	1	10
17/5 – 23/5	1	9	10	53
24/5 – 30/5	7	15	16	47
31/5 – 6/6	30	1	6	18
7/6 – 13/6	1	10	10	19
14/6 – 20/6	11	7	9	13
21/6 – 27/6	2	1	4	12
28/6 – 4/7	1	8	8	10
5/7 – 11/7	5	18	3	17
12/7 – 18/7	0.4	2.4	2.1	23
19/7 – 26/7	3.6	0	3.6	16
27/7 – 1/8	1.8	1.5	11	26
2/8 – 8/8	1	4	5	10
9/8 – 15/8	0.3	7	3	6
16/8 – 22/8	1	1	4	6
23/8 – 29/8	0	0	1.5	17
30/8-5/9	0	0	0.3	2.1
6/9 -12/9	0	1	13	18
13/9 – 19/9	0	0.6	7.3	11.7
20/9- 26/9	3	2	6	11
27/9-3/10	0	0	0	0.3
4/10 – 10/10	0	0	0.3	5
11/10 – 17/10	0	0.5	1.5	9
18/10-24/10	0	0	0	1.5

25/10 – 31/10	0	0	0	0
1/11 – 7/11	2.9	0	3.3	13.5

- 4.3 From this data it appears that 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.

Environment Agency Enforcement

- 4.4 The Environment Agency continue to work with the operator to improve the infrastructure on site with a view to reducing gas emissions and as a consequence, odours off site. The application of Posi-shell has now been completed and as a consequence approximately 70% of the surface area has been either temporarily or permanently capped. This should reduce fugitive emissions.
- 4.5 In the Environment Agency update of 4th November, the EA responded to concerns raised locally about damage to the temporary Posi-shell capping which had been damaged by vehicles being driven over the capped area. The operator informed the EA that this was necessary to access part of the site for leachate monitoring purposes and that the area has been repaired.
- 4.5 Additionally, the work to increase the number of gas wells on the site, in order to collect for destruction more of the gas generated within the site is now complete. During October, new wells were created at a rate of roughly 1 per day with an additional 28 new or replacement wells and associated infrastructure provided on site.
- 4.6 The volume of hydrogen sulphide gas captured has recently increased to double the amount collected in December 2020 and CLP, the gas management contractor, has reported that this is at a record high value for the site where they are now running both gas engines on full power at 2000KW 24/7 with two flares also in operation.

5. Jerome (Hydrogen Sulphide (H₂S) monitoring equipment)

- 5.1 In order to ensure that the Council and its partners have current information about the incidence of H₂S related odours inside their properties, the Council has procured two Jerome hand held monitoring devices. These are 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.
- 5.2 To date the Jerome's have been typically installed for a week at each property, and have been deployed to date at 8 discrete locations downwind from the landfill site.

6. Proposal

- 6.1 Council is recommended to endorse the contents of this report.

7. Reasons for Proposed Solution

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

8. Options Considered

- 8.1 To provide regular updates to Council

9. Legal and Statutory Implications

- 9.1 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 Environmental 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.

10. Equality Impact Assessment

- 10.1 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.

11. Financial and Resource Implications

11.1 At the Cabinet meeting on 21st July 2021, and following a review of the Financial Risk Assessment, Cabinet identified a need to make available up to £1m from the General Fund Reserve to meet the costs associated with taking formal Statutory Nuisance action at Walleys Quarry landfill site. That was reported to and noted by Council on 21st July 2021.

11.2 Following the case management hearing at Newcastle Magistrates Court on 3rd November it is now expected that costs will be incurred over the coming months in relation to legal and expert advice required in order to comply with the case timetable outlined in paragraph 2.4, and to fully engage in the mediation process. The spend against both of these work streams is anticipated to be a sum not exceeding £250,000 up to 31 March 2022.

11.3 To date, and spent from funds in existing identified budgets, expenditure has been incurred totalling £130,000. This expenditure includes the following;- £49,000 staff costs, £33,000 legal advice, £48,000 external expert advice including equipment hire and support.

12. Major Risks

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

13. Unsustainable Development Goals (UNSDG)



14. Key Decision Information

14.1 This is not a Key Decision.

15. Earlier Cabinet/Committee Resolutions

15.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021, 7th July 2021, 21st July 2021, 8th September 2021, 13th October 2021 and 3rd November 2021..

16. List of Appendices

16.1 None

STATEMENT OF THE LEADER OF THE COUNCIL TO FULL COUNCIL – 17 NOVEMBER 2021

Submitted by: Councillor Simon Tagg

Portfolio: All

Wards affected: All

Purpose of the Report

To provide an update to Members on the activities and decisions of Cabinet together with the Forward Plan.

Recommendation

That the statement of the Leader of the Council be received and noted.

Reasons

To update Council Members on the activities and decisions of the Leader and Cabinet and to allow questions and comments to be made on the Statement.

1. **Cabinet Meetings**

A selection of items and decisions of Cabinet since the last Leader's Statement are detailed below.

2. **Review of COVID Impact**

Cabinet received a report detailing the overall impact of the Covid-19 pandemic and lockdowns on the Council and the borough as a whole. This included the impact on the economy and community, Council services, the town centre and the finances of the Council. It also outlined how the Council is playing a leading role in supporting economic recovery in the borough

The many innovations made during the pandemic have been incorporated into the One Council Programme. I would again like to thank all staff and Members for their continued hard work and dedication for borough residents.

3. **Local Plan Issues and Strategic Options**

The Council has launched a Strategic Options consultation as part of the new Borough Local Plan, this runs until 13th December and considers the need for housing, employment and other development as well as options for growth.

It is important to remember at this stage that individual sites for any future housing and employment are not being designated. Before any decisions are made about what land is required for the future, it is vital that the Council hears residents' views on the issues and options. Follow this link to the consultation portal: -

<https://consult.newcastle-staffs.gov.uk/>

4. **Town Centre Car Parking Strategy 2019–2029 Update**

Cabinet agreed as part of the update to the Car Parking Strategy free parking on the Midway car park from 9am-1pm which commenced on 1st October and running throughout Christmas and the New Year period. This runs alongside and compliments the £1 after 1pm incentive scheme in operation across all town centre car parks.

These measures are aimed to support the Covid recovery plans for town centre businesses, including the historic market and means that Newcastle town centre now has some of the most competitive parking charges in the area.

5. **Medium Term Financial Strategy 2022/23 to 2026/27**

Cabinet endorsed the draft MTFs report which set out the Council's four year spending and funding plans and is a framework for the development of the detailed budget for 2022/23 which will be agreed at the February Full Council meeting.

6. **Jubilee 2 Structural Survey and refurbish of the Health and Fitness Offer**

Cabinet has continued its focus on Jubilee 2 to address the building faults which have hampered operation of building for several years. Morgan Sindall, the contractor who built J2, has worked positively with the Council to resolve these issues, although works to the roof and gutters remain ongoing.

The Council and Morgan Sindall have jointly commissioned a survey of the building to identify any further defects, and this has identified a number of further minor issues. Officers will now work with Morgan Sindall to get these matters resolved.

Alongside this remedial work, Cabinet have approved the refurbishment of the gym and provision of new gym equipment, ensuring that the facility is able to provide an excellent offer to J2 members restarting their gym membership following the Covid lockdowns.

7. **Energy Efficiency Programmes for Newcastle-under-Lyme**

As part of the Council's commitment to supporting vulnerable households to help deliver energy efficient improvements to their homes, Cabinet agreed an energy company obligation, a commitment to Staffordshire Warmer Homes and further funding for the Beat the Cold initiative.

Given the recent significant rise in energy costs this is more important than ever that we work with partners to help alleviate fuel poverty, improve energy efficiency and tackle the financial burden of energy bills, particularly for those on low income.

8. **Air Quality Update**

An update was provided to Cabinet relating to the North Staffordshire Local Air Quality Plan (NSLAQP) and in particular the requirement for a bus gate on the A53 Etruria Road. Cabinet supports the exemption of ultra-low emission vehicles and emergency services vehicles from the proposed bus gate and also requested modelling for the exemption of low emission vehicles and additional modelling of current/future post Covid traffic patterns.

I have written to the Government requesting that the bus gate be removed as soon as natural compliance can be proven to have been achieved and is maintainable, without the bus gate.

The Council is taking this approach in an attempt to minimise the potential disruption the bus gate will cause to borough residents and businesses. The Cabinet is lobbying local MPs in this respect.

9. **One Council Programme**

Cabinet received an update on One Council Programme following the launch at the end of October of the “One Front Door” model based around a new website and streamlined customer service offer for our residents and local businesses, which will see more queries successfully resolved at the first point of contact.

Kidsgrove Customer Service Centre has reopened to the public on Thursdays from 9am to 1pm mirroring the opening hours of Kidsgrove Town Council following easing of the Covid restrictions. A booking system is in place for face-to-face meeting, if appropriate, on other days.

10. **Finance and Performance Review Report – First & Second Quarter 2021-22**

Cabinet reviewed the performance data for Quarters one and two and noted that performance across the Council remains strong, with the majority of targets being met or within tolerance.

Memberships of J2 continue to grow steadily after the significant disruption of periods of full and partial closure during the lockdowns. Participation in food waste collection is also increasing, reducing the proportion of residual waste. The town centre market continues to grow with a series of successful specialist events providing attractions for shoppers to visit the town and support local businesses.

11. **Forward Plan**

The Forward Plan can be found at:-

<https://modern.gov.newcastle-staffs.gov.uk/mgListPlans.aspx?RPIId=118&RD=0>

Councillor Simon Tagg
Leader of the Council

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Audit and Standards Committee

The committee met on 8th November 2021.

Members reviewed the Audited Statement of Account 2020-21 and noted a minor change from the draft circulated at the previous meeting. It was agreed that the accounts and the Audit Findings report be received and approved. Power to sign off the final accounts, on completion of the audit, was granted to the S51 Officer in consultation with the Chair.

The half-yearly Treasury Management report and the Internal Audit update report were presented to and received by the Committee.

The Q2 Corporate Risk Management report was presented and Members noted that during the quarter, there were 3 overdue risks, 1 risk level increase and 6 new risks identified.

Due to the delay in completion of the Audit, the review of the Value for Money Audit was added into the February 2022 meeting.

Due to the confidential nature of the item, members of the public were excluded from discussions surrounding the risk profile of Walley's quarry.

Paul Waring

Chair of Audit and Standards Committee.

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QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS

To the Portfolio Holder for Community Safety and Wellbeing:

1. Can the Portfolio Holder for Community Safety and Wellbeing update the Council on the impact of the new Town Centre Marshalls on reducing anti-social behaviour?

Cllr Andrew Parker

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To the Portfolio Holder for Community Safety and Wellbeing:

2. Can the Portfolio Holder for Community Safety and Wellbeing outline the number of complaints received about anti-social behaviour in the town and how many individuals have been excluded from the town centre by the use of Community Space Protection Orders?

Cllr Barry Panter

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To the Portfolio Holder for Finance, Town Centres and Growth:

3. Following on from the positive External Audit Report to the Audit and Standards Committee earlier this month, can the Deputy Leader update the Council on the latest position regarding the signing off of the 2020/21 Statement of Accounts.

Cllr Paul Waring

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