

Public Document Pack

Date of meeting Wednesday, 20th April, 2022
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

Extraordinary Meeting of the Cabinet

AGENDA

PART 1 – OPEN AGENDA

- 1 APOLOGIES**
- 2 DECLARATIONS OF INTEREST**
To receive declarations of interest from Members on items included in the agenda.
- 3 MINUTES OF PREVIOUS MEETINGS** (Pages 3 - 8)
To consider the Minutes of the previous meeting.
- 4 WALLEYS QUARRY UPDATE** (Pages 9 - 24)
- 5 URGENT BUSINESS**
To consider any business which is urgent within the meaning of Section 100B(4) of the Local Government Act 1972.
- 6 DISCLOSURE OF EXEMPT INFORMATION**
To resolve that the public be excluded from the meeting during consideration of the following reports, because it is likely that there will be disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A (as amended) of the Local Government Act 1972.

ATTENDANCE AT CABINET MEETINGS

Councillor attendance at Cabinet meetings:

- (1) The Chair or spokesperson of the Council's scrutiny committees and the mover of any motion referred to Cabinet shall be entitled to attend any formal public meeting of Cabinet to speak.
- (2) Other persons including non-executive members of the Council may speak at such meetings with the permission of the Chair of the Cabinet.

Public attendance at Cabinet meetings:

- (1) If a member of the public wishes to ask a question(s) at a meeting of Cabinet, they should serve two clear days' notice in writing of any such question(s) to the appropriate committee officer.
- (2) The Council Leader as Chair of Cabinet is given the discretion to waive the above deadline and assess the permissibility if the question(s). The Chair's decision will be final.
- (3) The maximum limit is three public questions at any one Cabinet meeting.
- (4) A maximum limit of three minutes is provided for each person to ask an initial question or make an initial statement to the Cabinet.
- (5) Any questions deemed to be repetitious or vexatious will be disallowed at the discretion of the Chair.

Members: Councillors

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.

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.

CABINET

Wednesday, 23rd March, 2022
Time of Commencement: 2.00 pm

[View the agenda here](#)

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Present: Councillor Simon Tagg (Chair)

Councillors: Stephen Sweeney Paul Northcott
Gill Heesom Jill Waring

Apologies: Councillor(s) Trevor Johnson

Officers:

David Adams	Executive Director of Sustainable Development and Operations
Martin Hamilton	Chief Executive
Simon McEneny	Executive Director of Growth and Development
Daniel Dickinson	Head of Legal & Governance /Monitoring Officer
Denise French	Democratic Services Team Leader
Sarah Wilkes	Head of Finance / S151 Officer

1. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

2. **MINUTES OF PREVIOUS MEETINGS**

Resolved: That the minutes of the meeting held on 2 February 2022 be approved as a correct record.

3. **WALLEY'S QUARRY UPDATE**

Cabinet considered a report updating on the current position with odour issues at Walley's Quarry.

Following the last meeting, the Chief Executive had written a formal letter of complaint to the Chief Executive of the Environment Agency (EA) regarding the effectiveness of their regulatory response to the problems at Walley's Quarry; the EA Chief Executive had rejected the council's complaint. The council had then sought the support of the Newcastle-under-Lyme MP, Aaron Bell, in raising a complaint with the Parliamentary and Health Service Ombudsman.

Aaron Bell MP addressed the meeting regarding his support for making a complaint to the Ombudsman.

The appeal against the Abatement Notice served by the council on the operators was now likely to go to trial in autumn rather than summer; this was due to each party seeking additional documents.

Resolved that:

- (a) The update report be noted; and
- (b) Cabinet notes that the council's complaint about the effectiveness of the regulatory response to Walleys Quarry is being escalated to the Parliamentary and Health Service Ombudsman.

4. RYECROFT NEXT STEPS

Cabinet considered a report on progress with the development of the Ryecroft site. The report sought authority to negotiate the sale of two acres of land to Aspire Housing to construct a new headquarters, which would house around 200 employees; there would also be a new multi storey car park on the site and a 90 unit residential block for the Over 55s. The council was also exploring the feasibility of developing a mid-range hotel next to the car park.

Resolved: that

1. The progress made on the development of the Ryecroft site be noted and the Blueprint attached at Appendix 1 be endorsed.
2. The Executive Director – Commercial Development and Economic Growth be authorised to negotiate (subject to contract) the sale of approximately two acres of the site to Aspire Housing for its new Head Quarters Building and a 90 unit over 55s residential block; and
3. In the event of a successful negotiation, Cabinet will receive a further report seeking authorisation to enter into a contract for sale with Aspire.

5. FUTURE HIGH STREETS FUND - PURCHASE OF YORK PLACE - APPOINTMENT OF A CONTRACTOR

Cabinet considered a report on progressing the York Place project following the council's acquisition of York Place.

Resolved: that:

1. The progress made on the York Place project, through the Future High Street Fund grant monies be noted.
2. The Executive Director – Commercial Development and Economic Growth, be authorised in consultation with the Portfolio Holder, Finance, Town Centres and Growth to take such actions and enter such agreements with the successful bidder for support to review redevelopment options, submit any necessary statutory planning applications and work with the Council on the future of a redeveloped York Place.
3. The Executive Director – Commercial Development and Economic Growth, be authorised in consultation with the Portfolio Holder, Finance, Town Centres and Growth to take such actions and enter such agreements for the appointment of consultants to assist in the development of the final designs and business cases for the development.

6. NEWCASTLE UNDER LYME SUSTAINABLE ENVIRONMENT STRATEGY - ANNUAL REPORT

Cabinet considered the Annual Report of the Sustainable Environment Strategy. The Strategy contained 4 Priority Outcomes:

- Reduce the reliance on the use of fossil fuels.
- Reduce carbon and other damaging emissions.
- Minimise waste and increase recycling.
- Offset residual carbon emissions.

The Strategy was delivered through an Action Plan.

Resolved: that:

1. The progress made in the various facets of the Council's Sustainable Environmental Strategy and other linked initiatives be noted; and
2. The progress update and 2022/2023 Action Plan be noted and referred to the Economy, Environment and Place Scrutiny Committee for scrutiny and comments.

7. **COVID 19 ADDITIONAL RELIEF FUND DISCRETIONARY NON-DOMESTIC RATE RELIEF POLICY**

Cabinet considered a report proposing a policy to determine the level of discretionary relief payable under the council's COVID-19 Additional Relief Fund (CARF) scheme.

Resolved: that the COVID-19 Additional Relief Fund Discretionary Non-Domestic Rate Relief Policy be approved.

8. **SUPPORT FOR ENERGY BILLS - THE COUNCIL TAX REBATE AND DISCRETIONARY FUND 2022 - 23 POLICY**

Cabinet considered a report on a policy to provide support to households who were in need of support towards the rising cost of household bills in 2022/23 but were not eligible for the Council Tax Rebate, this support was known as the Discretionary Fund.

Resolved: that

1. The Support for Energy Bills Council Tax Rebate Discretionary Fund 2022-23 Policy be approved.
2. The Head of Finance (Section 151 Officer) be authorised, in consultation with the Portfolio Holder, Finance, Town Centres and Growth, to update the Energy Bills Council Tax Rebate Discretionary Fund 2022-23 Policy should further guidance be received.

9. **ROUGH SLEEPING INITIATIVE FUNDING 2022 - 25**

Cabinet considered a report on a funding bid that had been submitted for Government funding towards support for Rough Sleepers. The outcome would be known in April and if successful, approval was sought to accept the funding.

Resolved: that the Council accepts the funding awarded by the Government as part of the Rough Sleeper Initiative Funding 2022-25 for the projects outlined in the report.

10. **FINANCIAL AND PERFORMANCE REVIEW REPORT - THIRD QUARTER (OCTOBER TO DECEMBER) 2021 - 2022**

Cabinet considered the regular performance review report for Quarter 3, October – December 2021.

Resolved: that the contents of the report and Appendices A and B be noted and Cabinet will continue to monitor and challenge the Council's performance alongside its financial performance for the same period.

11. IRRECOVERABLE ITEMS

Cabinet considered a report on irrecoverable items.

Resolved: that the items detailed at confidential appendix 1 be considered irrecoverable for the reasons stated and be written off.

12. FORWARD PLAN

Consideration was given to the Forward Plan listing upcoming key decisions to be made by Cabinet.

Resolved: that the Forward Plan be received.

13. URGENT BUSINESS

There was no Urgent Business.

14. DISCLOSURE OF EXEMPT INFORMATION

Resolved:- That the public be excluded from the meeting during consideration if the following matter because it is likely that there will be disclosure of exempt information as defined in paragraphs 1, 2 and 7 of Part 1 of Schedule 12A of the Local Government Act, 1972.

15. RYECROFT NEXT STEPS - CONFIDENTIAL APPENDIX

Cabinet considered a report on the next steps for the Ryecroft project.

Resolved: that the report be noted.

16. FUTURE HIGH STREETS FUND - PURCHASE OF YORK PLACE - APPOINTMENT OF CONTRACTOR - CONFIDENTIAL APPENDIX

Cabinet considered a report on the purchase of York Place.

Resolved: that

1. Progress made on the York Place project, made through the Future High Street Fund grant monies be noted.
2. The Executive Director – Commercial Development and Economic Growth, in consultation with the Portfolio Holder, Finance, Town Centres and Growth be authorised to take such actions and enter such agreements with Willmott Dixon for support to review redevelopment options, submit to any necessary statutory planning applications and work with the Council on the future of a redeveloped York Place.
3. The Executive Director – Commercial Development and Economic Growth in consultation with the Portfolio Holder, Finance, Town Centres and Growth be authorised to take such actions and enter such agreements for the appointment of consultants to assist in the development of the final designs and business cases for the development, up to a limit of £500,000.

17. IRRECOVERABLE ITEMS - CONFIDENTIAL APPENDIX

Cabinet considered the confidential appendix listing details of irrecoverable items

Resolved: that the information within the confidential appendix be received.

**Councillor Simon Tagg
Chair**

Meeting concluded at 3.13 pm

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

20 April 2022

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 Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Cabinet is recommended to:

- 1. Note the contents of this update report.**

Reasons

To ensure Cabinet is 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 Cabinet has received monthly updates on the issues relating to the odours, and Council has also been regularly updated.

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, served 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.
- 2.3 On 2 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.
- 2.5 A key element of the legal process is the disclosure process, through which each party provide the other with documents upon which they intend to rely during the legal proceedings. In early February the first part of this process was completed but each party required further documents and at a hearing on 25 March, the court dealt with this issue and set out a revised estimated timeline.
- 2.6 Disclosure of documents should be completed by the end of May and this process will be used to finalise the expert evidence which both parties are due to exchange in September. A pre-trial review will take place on 30 September with the final hearing currently scheduled for 24 October - this is expected to take up to four weeks.
- 2.7 No agreement has been reached with Walleys Quarry Ltd to seek to resolve this matter through mediation.

3. Complaint Data

- 3.1 In 2021, the Council received a total of **22,239** complaints. This figure represents two thirds of the overall complaints for all the various environmental services contacts for that year. i.e in 2021, there were 33,245 contacts in total, of which Walleys Quarry complaints were 22,239 and all other environmental contacts put together were 10,803. In the same period, the Environment Agency received **43,262** complaints about Walleys Quarry
- 3.2 Complaints 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. Complaints rise and fall broadly in line with the H2S levels recorded at the four monitoring stations around the site, with higher levels of H2S generally causing more annoyance in the community. Complaints for the year to date are set out below:

	Complaints to NuLBC	Complaints to Environment Agency
January 2022		
3/1/22- 9/1/22	73	352
10/1/22 -16/1/22	258	1045
17/1/22 -23/1/22	134	651

24/1/22 – 30/1/22	25	139
February 2022 31/1/2 – 6/2/22	16	64
7/2/22 – 13/2/22	31	120
14/2/22 – 20/2/22	49	166
21/2/22 – 27/2/22	40	264
March 2022 28/2/22 – 6/3/22	118	571
7/3/22 – 13/3/22	72	285
14/3/22 – 20/3/22	224	1126
21/3/22 – 27/3/22	412	1848
28/3/22 – 3/4/22	243	1072
April 2022 4/4/22 -10/4/22	132	895

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) 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
8/11 – 14/11	0	0	1	10
15/11 – 21/11	0	0	0	1.2
22/11-28/11	0	0	0	11
29/11-5/12	0.6	0.9	0	9
6/12 – 12/12	0.6	0	0.9	2.4
13/12-19/12	0.9	0	3	18.5
20/12-26/12	0	0	0	3
27/12-2/1/22	0	0	0	2.4
3/1-9/1	1.2	0	2.1	16.2
10/1-16/1	14.9	11.9	21.4	53.3
17/1-23/1	6	7	10	41
24/1 – 30/1	0	0	0	5.1
31/1-6/2	0	0	0	0
7/2 – 13/2	0	0	0.9	2.4
14/2 – 20/2	0	3.6	0.3	2.4
21/2 – 27/2	0	4.8	0.6	8.0
28/2 – 6/3	2.4	0	0.3	15
7/3 – 13/3	0.3	3.3	4.2	6.0
14/3-20/3	3.3	8.1	10.8	21.2
21/3-27/3	6.8	10.1	21.1	43.2
28/3 – 3/4	1.9	9.3	18.8	25.2
4/4-10/4	1.8	2.5	6.1	26.0

- 4.3 The data shows that whilst the frequency of incidences when the WHO annoyance threshold was exceeded reduced through the autumn of 2021, the data for 2022 to date shows a less positive picture, with the WHO annoyance threshold exceedances being broadly comparable to the data this time last year. This indicates that the issue is by no means abated, and odours will recently have given rise to annoyance to residents – as reflected in the complaints data.

Jerome Data

- 4.4 The Council has procured two handheld air quality monitors (Jeromes) which have been deployed in homes and premises in areas impacted by the odours. This deployment is designed to assess the extent to which the H₂S prevalent in the community is entering homes. Attached at Appendix 1 is a report of the Jerome findings from January – March 2022.
- 4.5 The analysis shows that whilst there have been no instances recorded where H₂S in homes has exceeded the World Health Organisation threshold for health impact, there have been a number of instances where the World Health Organisation Annoyance Threshold has been exceeded inside homes.
- 4.6 The Council has been working with the UK Health Security Agency (UKHSA) to review Jerome data. The work undertaken by the UKHSA has shown that the fluctuations in Jerome readings broadly mirror the fluctuations in readings at the four static monitoring stations.

Environment Agency Enforcement Action

- 4.7 During January 2022 there were two weeks when the H₂S concentrations recorded at the 4 monitoring stations were significantly elevated – with odours exceeding the WHO annoyance threshold for over half of the week at the Galingale site from 10th to 16th January. This was the highest recorded H₂S concentration since May 2021.
- 4.8 In light of the elevated H₂S levels and associated complaints, Environment Agency officers inspected Walleys Quarry landfill site on 14 January 2022. Officers detected an odour of landfill gas at a level likely to cause pollution outside the site boundary. Officers also carried out a review of landfill gas management data. They identified that gas collection infrastructure was repeatedly blocked between 7 January and 13 January due to poor drainage and surface water flooding. This led to a significant loss of gas capture, which in turn was likely to have resulted in increased risk of gas emissions and nuisance odours. Remedial works connected to drainage completed by Walleys Quarry Ltd by 20 January 2022.
- 4.9 In relation to the issues identified above, the Environment Agency issued a CAR form which detailed three “Category 1” breaches of the permit under which the site operates. The CAR form also notes that the resulting total Compliance Classification Scheme score places Walley Quarry in Band F. Sites in compliance bands E and F must significantly improve in order to achieve permit compliance. These sites are more likely to have their permit revoked unless there is substantial evidence that they are working towards achieving compliance in a timely manner.
- 4.10 Subsequent to the issues outlines above, the Environment Agency have confirmed that Walleys Quarry Ltd have begun installing a 300mm thick clay formation layer to phase 1 of the landfill as part of permanent capping works. The capping process will also involve the installation of up to 18 additional gas wells. This will require boreholes to be drilled into the waste. Environment Agency have advised that, whilst unlikely, the drilling may cause a temporary increase in the escape of gas from the site. Walleys Quarry Ltd have informed the EA that the drilling rig to be used has local exhaust ventilation which should help to reduce excessive escape of landfill gas during the drilling operations. Drilling work is expected to begin from 11 April 2022.

- 4.11 In May it is planned that a geotextile membrane is to be installed on top of the clay formation layer. This membrane will have the effect of sealing the waste mass from the atmosphere. This step is expected to improve the containment and capture of odorous emissions, reduce the negative impact on neighbouring properties, and allow the capture of greater quantities of gas for destruction.
- 4.12 These works are taking place on the largest open phase of the landfill. Once completed, the largest mass of waste at the site will be permanently capped. Subsequent planned phases are much smaller in size. The Environment Agency expect these to be completed more quickly, reducing the potential for odour nuisance.

Health Risk Assessment

- 4.13 Cabinet will receive a briefing on the latest health risk assessment at the meeting.

Council Complaint regarding Regulation

- 4.14 Coming as it did almost one year since the exceptionally bad weekend for odour pollution in February 2021, the spike in H₂S in January 2022 was particularly concerning. The approach of managing landfill gas through a strategy of “contain, capture, destroy” remains in place, but the iterative, operator led, approach being followed to deliver this leaves the community with no visibility on a credible plan to direct remediation of the problem. This in turn leaves no clarity on the issue of when the odours will cease to be a problem for local residents.
- 4.15 Following discussion at its February meeting Cabinet tasked the Chief Executive with writing a formal letter of complaint to the Chief Executive of the Environment Agency regarding the effectiveness of their regulatory response to the problems at Walleys Quarry. Upon receipt of the response the Council secured the support of the Newcastle under Lyme MP, Mr Arron Bell, to raise a complaint with the Parliamentary and Health Service Ombudsman, in line with the process commended to us by the DEFRA Minister, Rebecca Pow MP in her letter of April 2021
- 4.16 Regrettably, the Council received a response from the Parliamentary and Health Service Ombudsman advising that they could only consider complaints from individuals, not from publicly funded organisations such as the Council. This response has been referred to Mr Aaron Bell MP who sponsored the Council’s complaint to the Ombudsman.
- 4.17 Staffordshire County Council has sought a meeting with the relevant government minister on behalf of the County and Borough Councils and this is scheduled for May.

5. Proposal

- 5.1 Cabinet is recommended to note the contents of this update report.

6. Reasons for Proposed Solution

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

7. Options Considered

- 7.1 To provide regular updates to Council

8. Legal and Statutory Implications

8.1 Part III of the Environmental Protection Act 1990 is the legislation concerned with statutory nuisances in law. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance:-

- The Environmental Protection Act 1990, section 79 sets out the law in relation to statutory nuisance. This is the principal piece of legislation covering the Council's duties and responsibilities in respect of issues relating to odour nuisance.
- The relevant part of Section 79 defines a statutory nuisance as any smell or other effluvia arising on industrial, trade or business premises which is prejudicial to health 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.

9. **Equality Impact Assessment**

9.1 The work of the Council in this regard recognises that the problematic odours in the area may impact on some groups more than others. The work is focussed on removing this impact.

10. **Financial and Resource Implications**

10.1 There are none directly arising from this report.

11. **Major Risks**

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

12. **Unsustainable Development Goals (UNSDG)**



13. Key Decision Information

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

14. Earlier Cabinet/Committee Resolutions

14.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021, 7th July 2021, 21st July 2021, 8th September 2021, 13th October 2021, 3rd November 2021, 17th November, 1st December 2021, 12th January 2022, 2nd February 2022 and 23rd February

15. List of Appendices

15.1 Jerome Data Summary

Graphical Summary of Jerome Measurements For the First Quarter 2022.

Introduction.

This report provides a graphical summary of the findings of deployments of the Council's Jerome hydrogen sulphide monitoring instruments for the first quarter of 2022. Each graph shows concentration (ppb) plotted against time.

The Jeromes were deployed at selected properties, where they were left to continuously monitor ambient concentrations of hydrogen sulphide, taking a measurement every 10 minutes. The aim was to deploy the instruments at properties which would be downwind of Walleys Quarry, or at least in close proximity of the site, during the deployment period.

The findings of previous deployments are given within a previous report 'Graphical Summary of Jerome Measurements From August 2021 Onwards'.

The assessment criteria provided by the World Health Organisation, relating to annoyance and health impacts, and the relationship between hydrogen sulphide concentration and odour intensity are described below.

Assessment Criteria

With regards to health impacts, there is no statutory limit which relates to environmental exposure to hydrogen sulphide. However, the World Health Organisation has produced an air quality guideline for the avoidance of annoyance at $7 \mu\text{g}/\text{m}^3$ averaged over 30mins, which approximates to 5 parts per billion (ppb) averaged over 30 minutes. This equates to a distinct odour (perceived intensity score of 3) and is the threshold of recognition of hydrogen sulphide (i.e. the concentration at which 50% of the population would recognise the odour as H₂S).

The World Health Organisation has also produced an air quality guideline for the protection of health - $150 \mu\text{g}/\text{m}^3$ averaged over 24 hours, which equates to 100ppb averaged over 24 hours. This is 100th of the concentration identified as resulting in the onset of health impacts, namely eye irritation, which begin to occur at 10 parts per million (i.e. 10 000 ppb).

As described within the DEFRA publication 'Odour Guidance for Local Authorities March 2010', the characteristics of an odour affects the impact. Fairly regular exposure to some strong odours, even for short periods, can be both objectionable and offensive, such as in the case of hydrogen sulphide. Also, the concentration at which these odours become a statutory nuisance could be relatively low if they are persistent and frequent.

With regards to odour, by applying the Weber-Fechner Law, the perceived odour intensity (scored from 0 to 6) for hydrogen sulphide can be estimated from the measured concentration as described within the table below:

Odour Strength	Perceived Intensity	Approximate Concentration ($\mu\text{g}/\text{m}^3$)	Approximate Concentration (ppb)
Extremely strong	6	148	99
Very strong	5	57	38
Strong	4	22	14

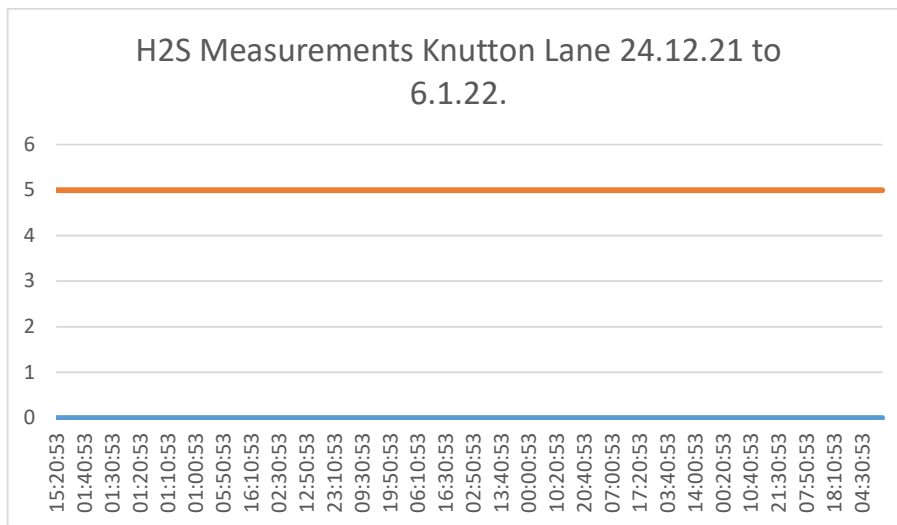
Distinct	3	7	5
Weak/faint	2	3	2
Very weak/very faint	1	0.7	0.5
Not perceptible/no odour	0	0	0

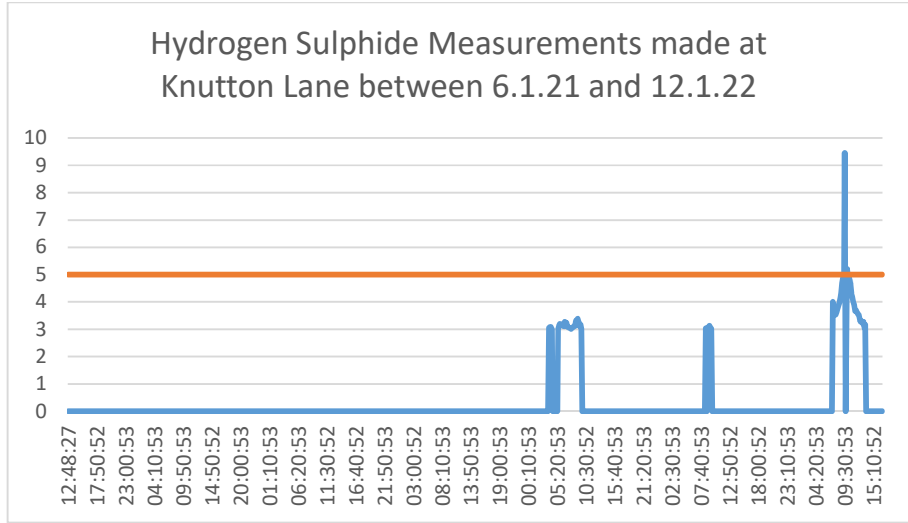
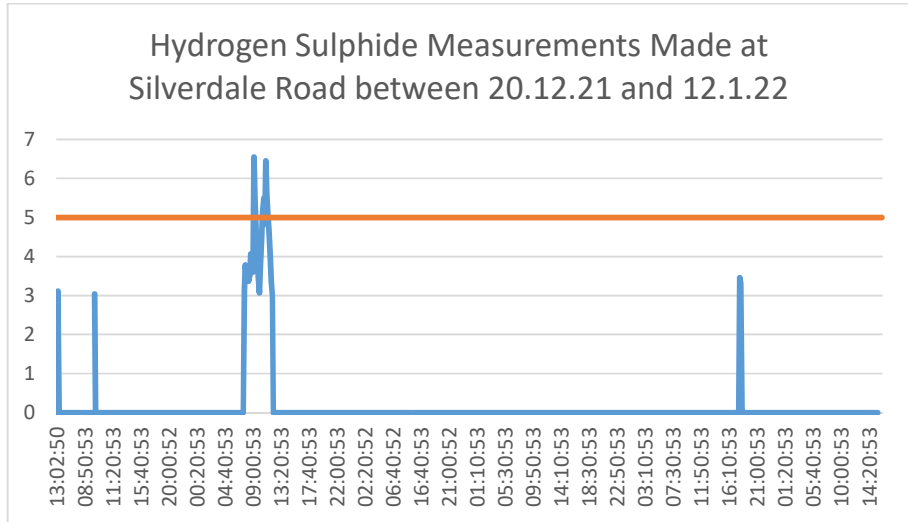
Note: The exact conversion between ppm and $\mu\text{g}/\text{m}^3$ is proportional to temperature and atmospheric pressure.

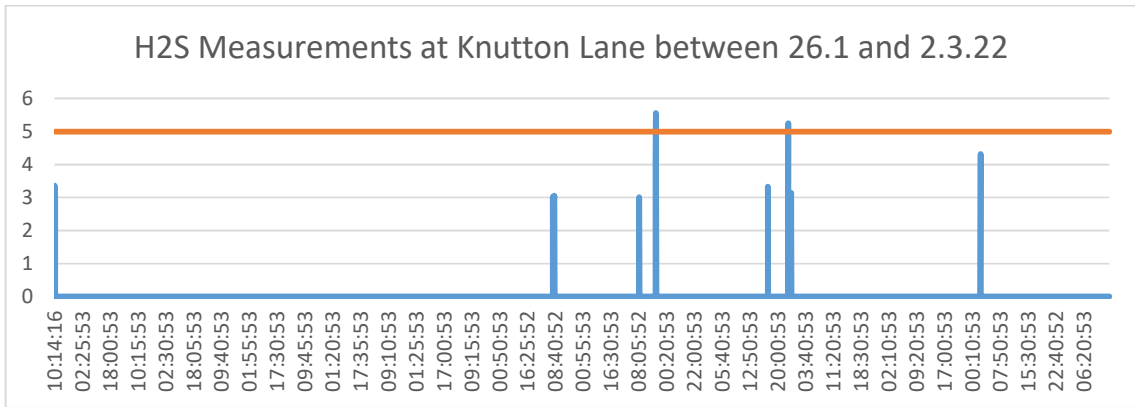
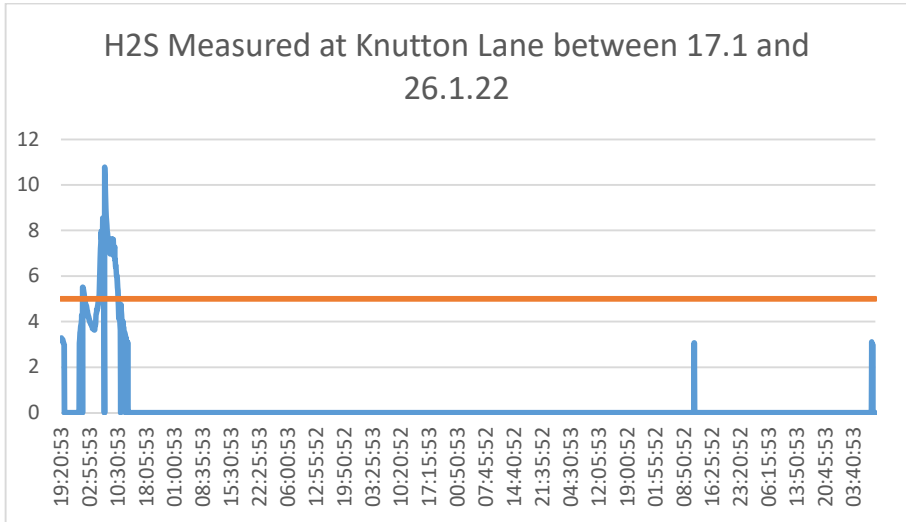
The limit of detection of the Jerome J605 is 3ppb. Any measurement below this value would be reported as 0. This does not necessarily mean that odour or gases associated with the landfill were absent, it can only be said that hydrogen sulphide concentration was below 3ppb at the time of measurement.

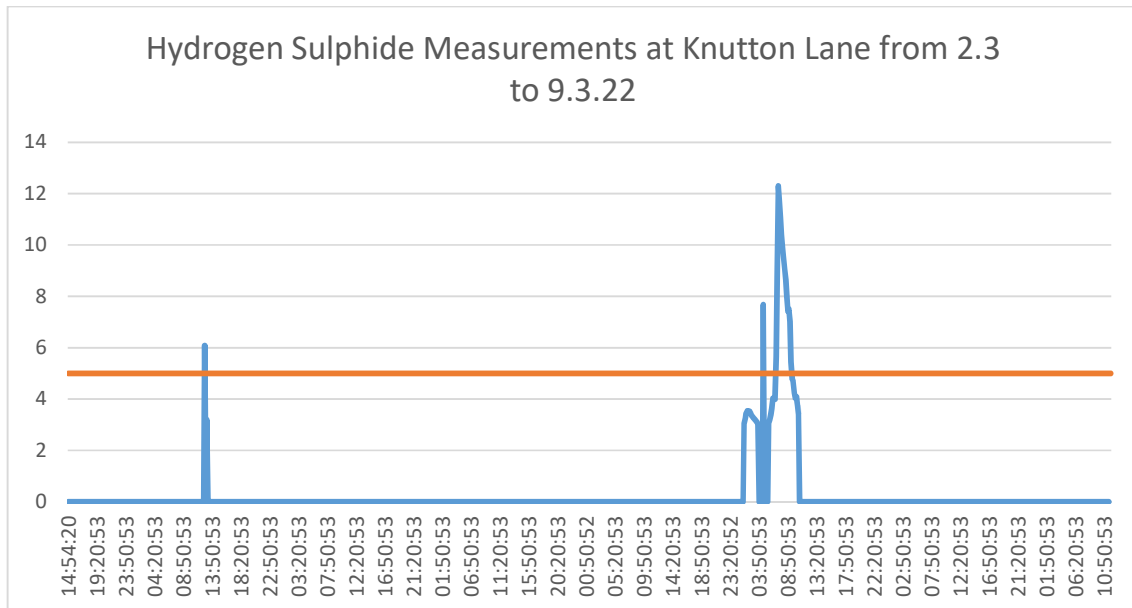
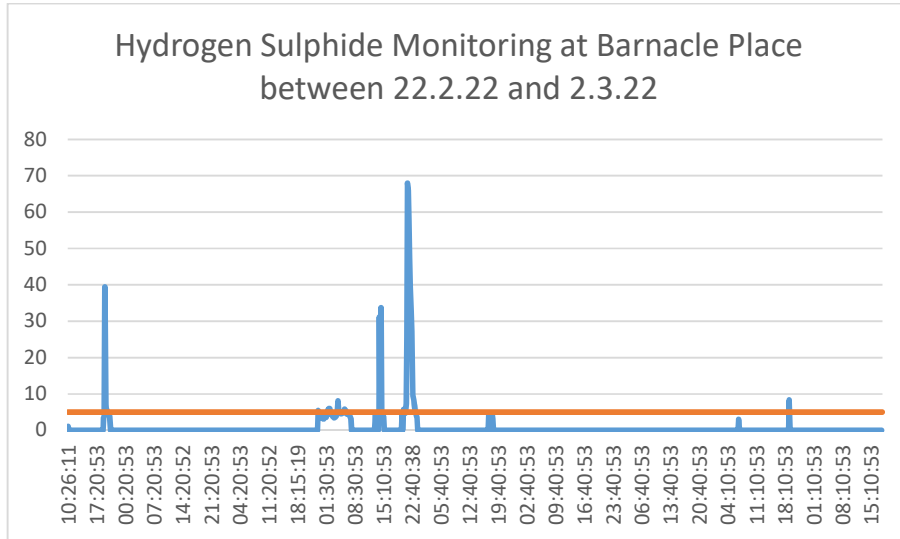
Deployments to Properties.

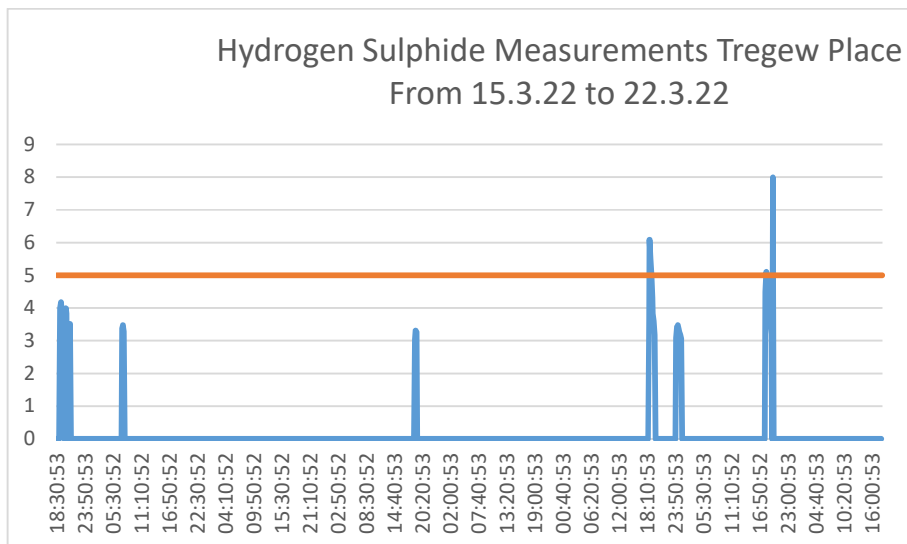
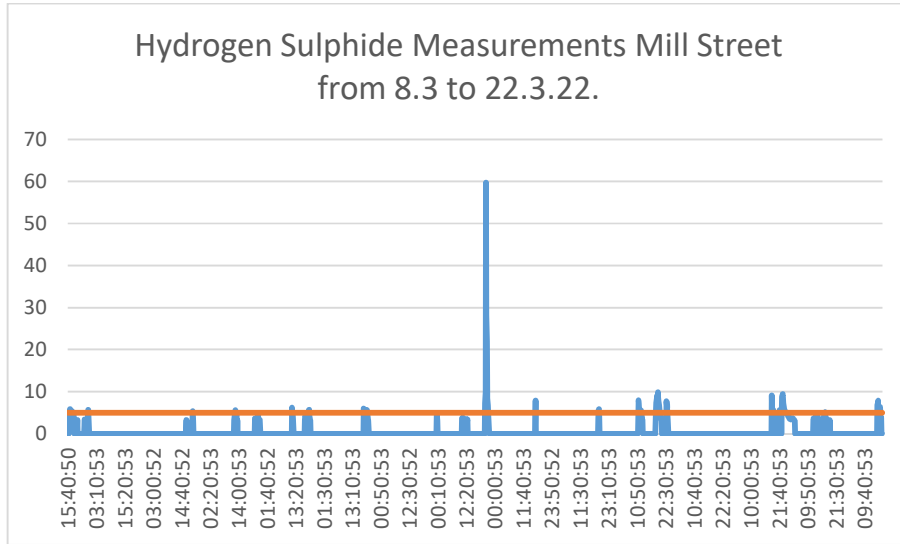
A graphical representation of each deployment of the instruments is given below.

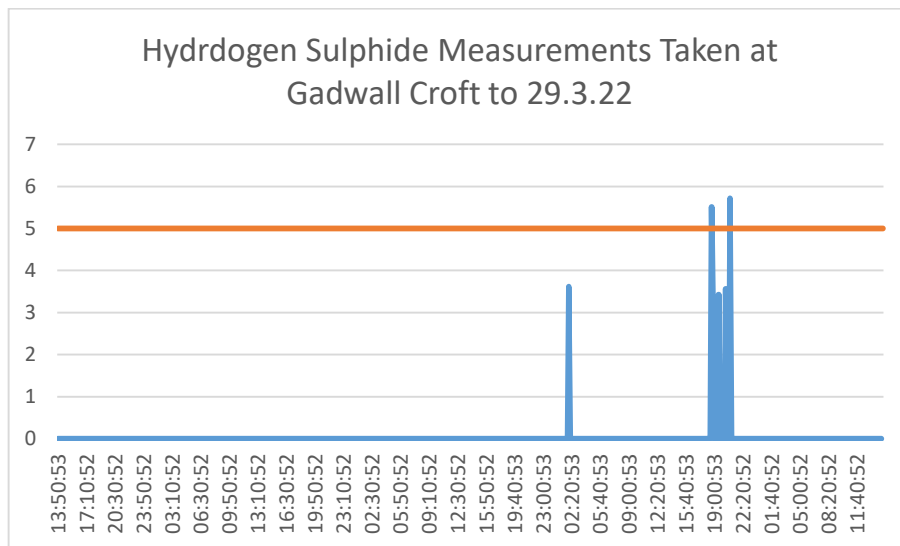
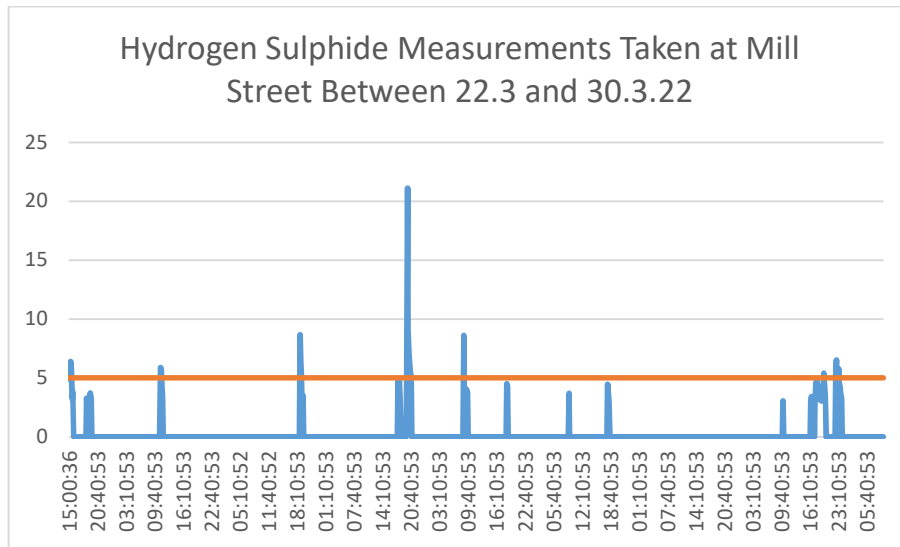












Summary of Deployments.

No measurements exceeded the World Health Organisation air quality guideline for the protection of health - 150 µg/m³ (100ppb) averaged over 24 hours.

Ten of the measurement series reported concentrations above 0ppb and exceedances of the World Health Organisation air quality guideline for the avoidance of annoyance at 7 µg/m³ (5ppb) averaged over 30mins were indicated within 9 of these. One, of the eleven sets of measurements, reported no measurements above 0ppb (although it should be noted that any measurement below 3ppb would be reported as 0).

Summary of Indoor and Outdoor Monitoring at Wain Avenue.

An exercise to compare internal and external measurements was carried out at a property upon Wain Avenue on the 17th January, 2022. Instruments were deployed to the living room and just outside the front façade at a time when previous monitoring at the site had indicated that high concentrations would be found internally and measurements were taken upon both instruments for a period of 30 minutes, as summarised below. No conclusions were drawn from the exercise as the high concentrations reported previously were not observed.

