

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.

Dear Sir/Madam,

You are summoned to attend the meeting of the Borough Council of Newcastle-under-Lyme to be held in the **Queen Elizabeth II & Astley Rooms - Castle House, Barracks Road, Newcastle, Staffs. ST5 1BL** on **Wednesday, 5th April, 2023** at **7.00 pm**.

B U S I N E S S

1 APOLOGIES

2 DECLARATIONS OF INTEREST

To receive declarations of interest from Members on items contained within this agenda.

3 MINUTES OF A PREVIOUS MEETING (Pages 5 - 12)

To consider the Minutes of the previous meeting(s)

4 MAYOR'S ANNOUNCEMENTS

5 WALLEYS QUARRY UPDATE (Pages 13 - 30)

6 STATEMENT OF THE LEADER OF THE COUNCIL (To Follow)

To receive a statement by the Leader of the Council on the activities and decisions of Cabinet and items included on the Forward Plan.

7 REPORTS OF THE CHAIRS OF THE SCRUTINY COMMITTEES (Pages 31 - 32)

A verbal update will be given for the Finance, Assets and Performance Scrutiny Committee.

8 REPORTS OF THE CHAIRS OF THE REGULATORY COMMITTEES (To Follow)

9 QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS (To Follow)

10 RECEIPT OF PETITIONS

To receive from Members any petitions which they wish to present to the Council.

11 URGENT BUSINESS

To consider any communications which pursuant to Appendix 7, Procedure Rule 8 of the constitution are, in the opinion of the Mayor, of an urgent nature and to pass thereon such resolutions as may be deemed necessary.

12 DISCLOSURE OF EXEMPT INFORMATION

To resolve that the public be excluded from the meeting during consideration of the following report(s) as it is likely that there will be disclosure of exempt information as defined in paragraphs contained within Part 1 of Schedule 12A (as amended) of the Local Government Act 1972.

Yours faithfully

A handwritten signature in black ink, appearing to read "Martin T. Hamilton". The signature is written in a cursive style with some capital letters.

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 B5, Rule 4 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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COUNCIL

Wednesday, 15th February, 2023
Time of Commencement: 7.00 pm

[View the agenda here](#)

[Watch the meeting here](#)

Present: Mayor - Councillor Gillian Burnett (Chair)

Councillors:	Adcock	Holland	Sweeney
	Allport	Fox-Hewitt	J Tagg
	Barker MBE	Hutchison	S Tagg
	Bettley-Smith	Johnson	Talbot
	Brockie	D Jones	J Waring
	Brown	Lawley	P Waring
	Bryan	Moffat	Whieldon
	Crisp	Northcott	G White
	Dymond	Panter	S White
	Edginton-Plunkett	Parker	Wilkes
	Fear	Reece	G Williams
	Gorton	Richards	J Williams
	Grocott	Skelding	Wright
	Heesom	Stubbs	

Apologies: Councillor(s) Beeston and S Jones

Officers:	David Adams	Executive Director - Sustainable Environment
	Geoff Durham	Mayor's Secretary / Member Support Officer
	Martin Hamilton	Chief Executive
	Simon McEneny	Executive Director - Growth and Development
	Daniel Dickinson	Head of Legal & Governance /Monitoring Officer
	Sarah Wilkes	Head of Finance / S151 Officer

1. **DECLARATIONS OF INTEREST**

The Mayor accepted a declaration of interests on behalf of the Officers present in respect of Item 6 (pay policy statement) and a dispensation to remain was granted lest Members required any advice during the debate on that item.

2. **MINUTES OF A PREVIOUS MEETING**

Resolved: That the minutes of the meeting held on the 23rd November be agreed as a correct record.

3. **MAYOR'S ANNOUNCEMENTS**

The Mayor made two announcements:

- Tickets were now available for the Mayor’s Charity Event to be held on 31st March 2023. It would be a Roaring Twenties Casino Night and also include the Newcastle Borough Heroes Awards for a cost of £55 each. The funds collected will be going to the Veterans and Home Start.
- A further Scrutiny Training session had been arranged for the 2nd March 2023, commencing at 6pm for Members who had not been able to attend the previous session.

[Watch the debate here](#)

4. REVENUE & CAPITAL BUDGETS & STRATEGIES 2023/24

The Leader of the Council, Cllr Simon Tagg, introduced the report and moved the recommendations which set out the recommendations of Cabinet for Revenue and Capital Budgets for 2023/24.

The Medium Term Financial Strategy 2023/24 to 2027/28, the Flexible Use of Capital Receipts Strategy, Capital Strategy for 2023/33, Treasury Management Strategy for 2023/24 and Investment Strategy 2023/24 were also recommended for approval.

An amendment to the budget was tabled and debated before a named vote was taken.

ADCOCK	N	GROCOTT	Y	STUBBS	Y
ALLPORT	Y	HEESOM	N	SWEENEY	N
BARKER	N	HOLLAND	N	J TAGG	N
BEESTON	ABSENT	HUTCHISON	N	S TAGG	N
BETTLEY-SMITH	N	JOHNSON	N	TALBOT	Y
BROCKIE	Y	D JONES	Y	J WARING	N
BROWN	Y	S JONES	ABSENT	P WARING	N
BRYAN	N	LAWLEY	Y	WHIELDON	N
BURNETT	N	MOFFATT	Y	G WHITE	N
CRISP	N	NORTHCOTT	N	S WHITE	N
DYMOND	Y	PANTER	N	WILKES	N
EDGINGTON-PLUNKETT	Y	PARKER	N	G WILLIAMS	Y
FEAR	N	REECE	Y	J WILLIAMS	Y
FOX-HEWITT	Y	RICHARDS	Y	WRIGHT	Y

GORTON	Y	SKELDING	N		
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In Favour (Y) – 18

Against (N) – 24

Abstain – 0

The amendment failed.

Following a debate on the substantive motion, a named vote was taken in respect of the proposed budget:

ADCOCK	Y	GROCOTT	N	STUBBS	N
ALLPORT	N	HEESOM	Y	SWEENEY	Y
BARKER	Y	HOLLAND	Y	J TAGG	Y
BEESTON	ABSENT	HUTCHISON	Y	S TAGG	Y
BETTLEY-SMITH	Y	JOHNSON	Y	TALBOT	N
BROCKIE	N	D JONES	N	J WARING	Y
BROWN	N	S JONES	ABSENT	P WARING	Y
BRYAN	Y	LAWLEY	N	WHIELDON	Y
BURNETT	Y	MOFFATT	N	G WHITE	Y
CRISP	Y	NORTHCOTT	Y	S WHITE	Y
DYMOND	N	PANTER	Y	WILKES	Y
EDGINGTON-PLUNKETT	N	PARKER	Y	G WILLIAMS	N
FEAR	Y	REECE	N	J WILLIAMS	N
FOX-HEWITT	N	RICHARDS	N	WRIGHT	N
GORTON	N	SKELDING	Y		

In Favour (Y) – 24

Against (N) – 18

Abstain – 0

Resolved: That recommendations (a) to (o), as set out in Appendix '1' of the agenda report be approved.

[Watch the debate here](#)

5. PAY POLICY STATEMENT

The Leader introduced a report seeking Council's approval of the Pay Policy Statement for 2023/24.

This was an annual requirement of the Localism Act, 2011 setting out the remuneration of chief officers and the lowest paid employees and the changes in roles and titles of senior officers.

The Statement had changed slightly from last year to reflect the development of the Council's leadership structure.

Resolved: That the Pay Policy Statement, as attached at Appendix A to the report, be approved.

[Watch the debate here](#)

6. STATEMENT OF THE LEADER OF THE COUNCIL

The Leader presented the statement that had been circulated and provided an update on the activities and decisions made by himself and the Cabinet to allow questions and comments.

The Walleys Quarry's report referred to would be shared with the Economic Development Scrutiny Committee as well as the Health and Partnership Scrutiny Committee. About Newcastle-under-Lyme 850 Celebrations, Staffordshire County Council and the Synectics Solutions would be respectively sponsoring the Community Champions Awards and the Young Heroes Awards.

Questions were raised by members as follows.

On Paragraph 2 – Walleys Quarry:

- Cllr Brown expressed her disagreement with the use of the word 'consistent' in a recent press release issued by the company to refer to records of improvement in light of the spikes of odour still felt by residents. As there is now only £100,000 reserve in case further legal action is required against £1 million previously set aside Cllr Brown asked officers to confirm there was enough to take any necessary action to hold Walleys Quarry accountable and take them to Court in the event of a breach of the abatement notice.
- Cllr Whieldon wished the leader to confirm that the enhanced communication taking place with the company was working efficiently to reassure the population that everything was being done to solve the problem.

The Leader confirmed that the company would be held to account and that an officer report was awaited at the end of the standstill period in March.

On paragraph 3 – the 850 celebrations:

- Cllr Gorton asked that the relaunch of Newcastle Civic Society that was disbanded in 2020 be considered as part of the borough important legacy,

and for a meeting to be organised on that topic. Cllr Gorton also wished that Josiah Wedgwood be incorporated in history talks scheduled as part of the celebrations for his work as MP and notably leading the opposition to the bill designed to absorb Newcastle into Stoke.

- Cllr G. Williams expressed her concern over the County Council plans to build 100 houses on Wallfields Avenue which forms part of the borough Green Heritage Network and wished the leader to use his influence to make sure all sites on the list are protected.
- Cllr J. Williams asked the Leader to comment on the alteration of the borough's crest in the celebrations' logo.

The Leader welcomed the idea of supporting the relaunch of the Civic Society as well as including Josiah Wedgwood in the celebrations, to be passed on to the Museum staff and discussed with heritage champion Simon White.

About the planning application the Leader shared his opinion that the planning committee should fight the appeal and reminded the Council of the cross party heritage panel that met 18 months ago allowing members to share their view.

Finally the Leader confirmed that the logo created for the celebrations was indeed just for the latter and that the borough's crest would remain in use for all other Council business.

Cllr Jones shared his initial scepticism followed by genuine enthusiasm over a 850 years' celebration and wished to draw the Council's attention to the work of veterinary surgeon Thomas Mayer as well as the Harper & Keele veterinary school – declaring a late interest, being an employee of the latter.

The Leader welcomed the comment and any other suggestion in relation with the celebrations.

On paragraph 4 – Urban Trees Planting Programme:

- Cllr Stubbs wished to know if the programme would cover the replacement of trees damaged by antisocial behaviours.
- Cllr Adcock shared his satisfaction and optimism over the programme which he qualified as a very positive step.
- Cllr Hutchison asked the Leader to confirm the new programme would make a positive difference for the Sandy Lane site compared to the previous one.

The Leader responded to Cllr Stubbs that the tree management plan would need to be consulted as trees are not always replaced, weather conditions being one of the factors to be considered. The Leader thanked Cllrs Adcock and Hutchison for their comments and confirmed that fundings had been put aside for the Sandy Lane site.

On paragraph 5 – Future High Street Fund Update:

- Cllr Brockie wished the Leader to confirm that what was undertaken for Ryecroft and York Place was under continuous review and would remain affordable and responsive to residents and businesses' needs.

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- Cllr J. Williams asked if the Council would have a say on ownership issues.
- Cllr Gorton commented on the inclusion of a multi storey car park and a hotel as part of the regeneration of the town centre and wished the leader to confirm that a report accompanied by business cases and comprehensive data would be submitted to the Economy & Place Scrutiny Committee so that the latter can assess the actual contribution these would bring to the town centre.

The Leader confirmed that the projects were indeed all subject to review by the Economy & Place Scrutiny Committee.

On paragraph 6 - Electric Vehicle Charging Strategy:

- Cllr Crisp referred to an Ordnance Survey research showing that 24% of households don't have access to off street parking, making the charging of electric vehicles difficult; Cllr Crisp wished to know if there was any plans to address the issue.
- Cllr Adcock asked if the Leader agreed that the Midway car park would be untenable as it would not be able to meet the increasing demand for electrical vehicles charging points.

The Leader responded that the two points raised would indeed be addressed as part of the strategy and that government support should be sought as well.

On paragraph 7 - Staffordshire Wide Climate Change Communication Plan:

- Cllr Panter wished to know what measures were taken to ensure that small businesses were engaged in the outlined efforts to promote sustainability and reduce carbon emissions.

The Leader responded that a Net Zero Carbon reduction plan would soon be made a requirement by the government and the Staffordshire Business Environment Network was there to help businesses achieve that. A database of useful contacts was also made available for businesses and the Council tax builder would include tips on how to reduce carbons emissions and increase energy efficiency.

On paragraph 8 – Police, Fire & Crime Commissioner – Safer Streets Round:

- Cllr Parker wished to know if the Council was planning to involve the Street Pastor Scheme and St John's Ambulance to triage people and ease the pressure on Accidents & Emergencies.

The Leader handed over the response to the Portfolio Holder who confirmed the Council would be looking into involving other organisations and took the opportunity to invite members to volunteer for Safer Spaces for women.

* * *

There were no comments or questions on paragraph 9 – the Forward Plan.

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

[Watch the debate here](#)

7. **REPORTS OF THE CHAIRS OF THE SCRUTINY COMMITTEES**

The report for the Health, Wellbeing and Environment Scrutiny Committee had been circulated with the supplementary agenda.

Verbal updates were given for the Economy & Place Scrutiny Committee and Finance Asset and Performance Scrutiny Committee detailing the items discussed at previous meetings.

Resolved: That the reports be received.

[Watch the debate here](#)

8. **REPORTS OF THE CHAIRS OF THE REGULATORY COMMITTEES**

Reports for the Audit and Standards Committee and Licensing and Public Protection Committee were attached to the agenda as supplementary items.

A verbal update was provided for the Planning Committee.

Resolved: That the reports be received.

[Watch the meeting here](#)

9. **QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS**

Two questions were received.

Question from Cllr Reece to the Leader of the Council:

“Several Wolstanton residents have raised concerns about the lack of any maintenance programme for trees that line roads and streets in the ward. Many trees are excessively tall or have branches that overhang drives and gardens. Residents are anxious about the potential dangers of falling heavy branches, or even the trees, particularly with the increase in storm and wind surges that have become part of our weather pattern. In view of these concerns is the Leader of the Council content with the current maintenance arrangements? If he shares the concern expressed by residents, will he take up this matter with the County Council with a view to getting a more effective maintenance programme in place?”

The Leader responded that a system is required for tree issues to be reported to the County Council to be taken into account in the tree management work programme and County Councillors may be in the best position to help. Residents are also welcome to outsource tree works themselves subject to these being authorised by the County Council.

Question from Cllr Parker to the Finance, Town Centre and Growth Portfolio Holder, also Deputy Leader of the Council:

“I read with interest the recent article in the Sentinel relating to the closure of Kirkham Jewellers and the redevelopment of York Place. Would the Deputy Leader like to give the Council’s side of the story to set the record straight?”

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The Deputy Leader responded that the article indeed gave a misrepresentation of what happened and that alternative options had been given to the jewellery shop which they decide not to take. Discussions had taken place and a six month notice extended to ten months had been given for the company to relocate.

Cllr Parker asked as a supplementary question how the Council was getting on with the relocation of other businesses.

The Deputy Leader gave examples of local businesses having moved and where they can now be found and others that unfortunately had to close.

[Watch the debate here](#)

10. RECEIPT OF PETITIONS

No petitions were received.

11. URGENT BUSINESS

Members were informed that Dave Adams, Executive Director for Sustainable Environment was retiring after 35 years' service.

The Leader and Councillor John Williams paid tribute to Dave who then responded with thanks.

[Watch the tributes here](#)

12. DISCLOSURE OF EXEMPT INFORMATION

There were no confidential items.

**Mayor - Councillor Gillian Burnett
Chair**

Meeting concluded at 9.31 pm

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO

Council
05 April 2023

Report Title: Walleys Quarry Update

Submitted by: Chief Executive

Portfolios: Environment & Recycling; One Council, People & Partnerships

Ward(s) affected: All

Purpose of the Report

To provide an update on Statutory Odour Nuisance assessments in relation to Walleys Quarry Landfill.

Recommendation

That Council note the contents of this report.

Reasons

It has been 5 months since the Council's odour abatement notice was upheld. The notice provided 5 months for Walleys Quarry Limited to 'abate the nuisance'. This report assesses the evidence collated during that period in order to consider compliance with the notice.

1. **Background**

- 1.1 For a number of years, parts of the borough have suffered from foul odours from the Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd, part of the RED Industries group of companies. The Environment Agency (EA) is the lead regulator for such sites, testing and enforcing compliance with the permit under which the site operates. The Council also has a role in influencing the operation and performance of such sites, where an operator fails to comply with actions required under any abatement notice issued by the Council in relation to a 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 Council has received update reports in July 2021 and July 2022 and regular updates in statements from the Leader of the Council.
- 1.4 Cabinet has received monthly updates on the issues relating to the odours, and Health, Wellbeing & Environment Scrutiny have also received updates at each meeting.

2. Issues

Statutory Nuisance Abatement Notice:

- 2.1 Following extensive work, officers determined that the odours from the Walleys Quarry site amounted to a Statutory Nuisance and, on 13 August 2021, served an Abatement Notice on Walleys Quarry Ltd (WQL).
- 2.2 The Abatement Notice afforded WQL 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 and odour experts.
- 2.3 On 2 September 2021, WQL 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.
- 2.4 At the Cabinet meeting on 18 October 2022, Members received a report detailing the outcome of a mediation process that had been undertaken. The mediation process was guided by the former Supreme Court Judge and environmental law specialist the Right Honourable Lord Carnwath of Notting Hill. As a result of that process, the Council and WQL were able to agree terms for a settlement which enabled WQL to withdraw their appeal against the notice.
- 2.5 On 6 October 2022, His Honour District Judge Grego approved the settlement that the parties had reached, and issued a court order upholding the Abatement Notice and dismissing WQL’s appeal.
- 2.6 The 5 month compliance period ended at midnight on 5 March 2023 meaning that the notice can now be enforced, should there be evidence to substantiate a breach and evidence that WQL are not following best practice in operating the landfill site.
- 2.7 The Council will continue to assess the prevalence of odours off site. In the event that there are further instances of statutory nuisance identified which amount to a breach of the Abatement Notice, the Council’s Enforcement Policy will guide the process to be followed.¹
- 2.8 This would determine what action the Council would take, and whether that would be formal or informal. Enforcement is usually considered sequentially but should the circumstances or nature of the breach be such, escalation direct to prosecution is possible. The Council would need to obtain the consent of the Secretary of State before it is able to prosecute an offence of breaching an abatement notice, as the site is permitted by the Environment Agency.

Progress with Abating the Nuisance

2.9 It is helpful to consider the data available for some key indicators since 2019, which was prior to when odour issues relating to the landfill site escalated in December 2020. There are a number of indicators which have been consistently used to monitor odour pollution from the site. These are:

- Complaints – both the Council and the Environment Agency have systems in place to collect and analyse complaints made by members of the public.

¹ [Environmental Health enforcement policy – Newcastle-under-Lyme Borough Council \(newcastle-staffs.gov.uk\)](https://www.newcastle-staffs.gov.uk)

- Data from static monitoring stations – 4 air quality monitoring stations (MMFs) are located around the site, which produce data which is regularly published. These data include:
 - % time H₂S emissions exceed the World Health Organisation (WHO) Annoyance Threshold (7µg/m³);
 - 5 minute peak level of H₂S recorded.
- Concentration of H₂S recorded at the Gas Utilisation Plant (GUP).
- Volume of gas collected and destroyed at the Gas Utilisation Plant.

2.10 These measures, together with the percentage of the site which is capped, provide a good assessment of site conditions and operational performance, and closely reflect the CONTAIN, CAPTURE, DESTROY strategy deployed to control fugitive gas emissions from the site.

2.11 Since 2020, there has been considerable improvement across a number of elements as shown within table 1 below:

Table 1: Annual Walleys Quarry Data.

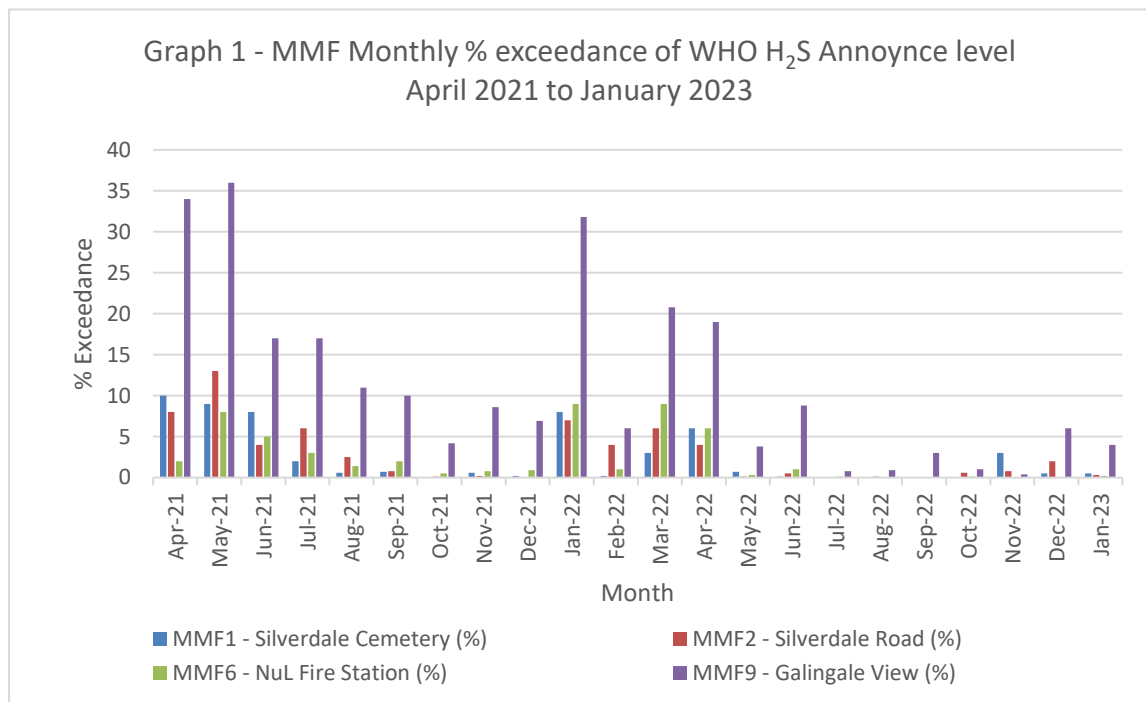
	2019	2020	2021	2022	2023 (to end Feb)
Number of Odour complaints to NULBC	156	918	22239	2968	183
Number of Odour complaints to Environment Agency	1151	2106	43262	13687	598
MMF9 H₂S (5 min peak) µg/m³	n/a	n/a	1350.87 (March)	1197.47 (March)	33.29 (Jan)
MMF9^A H₂S Highest weekly % Exceedance WHO annoyance level	n/a	n/a	53% ^B (May)	53 % (Jan)	11.1% (Jan)
MMF9^A H₂S average weekly % Exceedance WHO annoyance level	n/a	n/a	14.5% ^B	7.71%	2.43%
GUP gas flow (m³/Hr)	2104	2113	2749	2801	3010
Annual H₂S concentration in gas (ppm) at GUP	733	4610	7520	2029	1552 (Average)
Site capped temporary or permanent (%)	24%	24%	40.8% (Mid 2021)	53% (January 2022)	73.6% (January 2023)

Notes

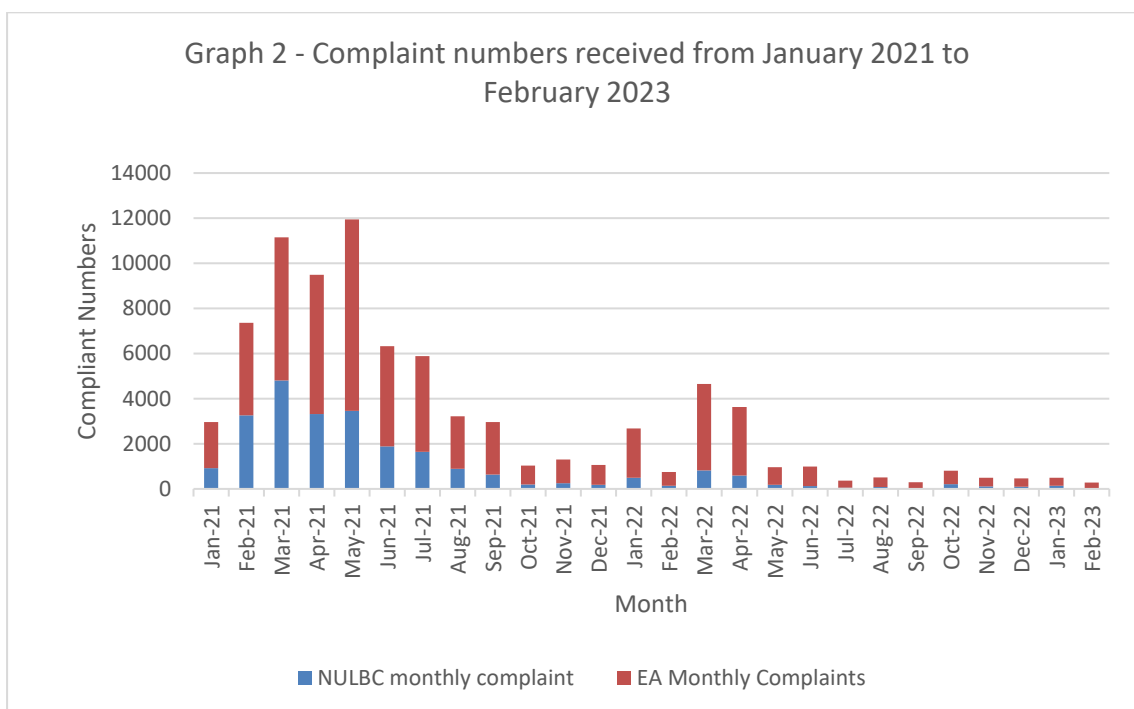
^A MMF9 data used as this is the highest recorded out of all MMFs

^B Monitoring commenced April 2021

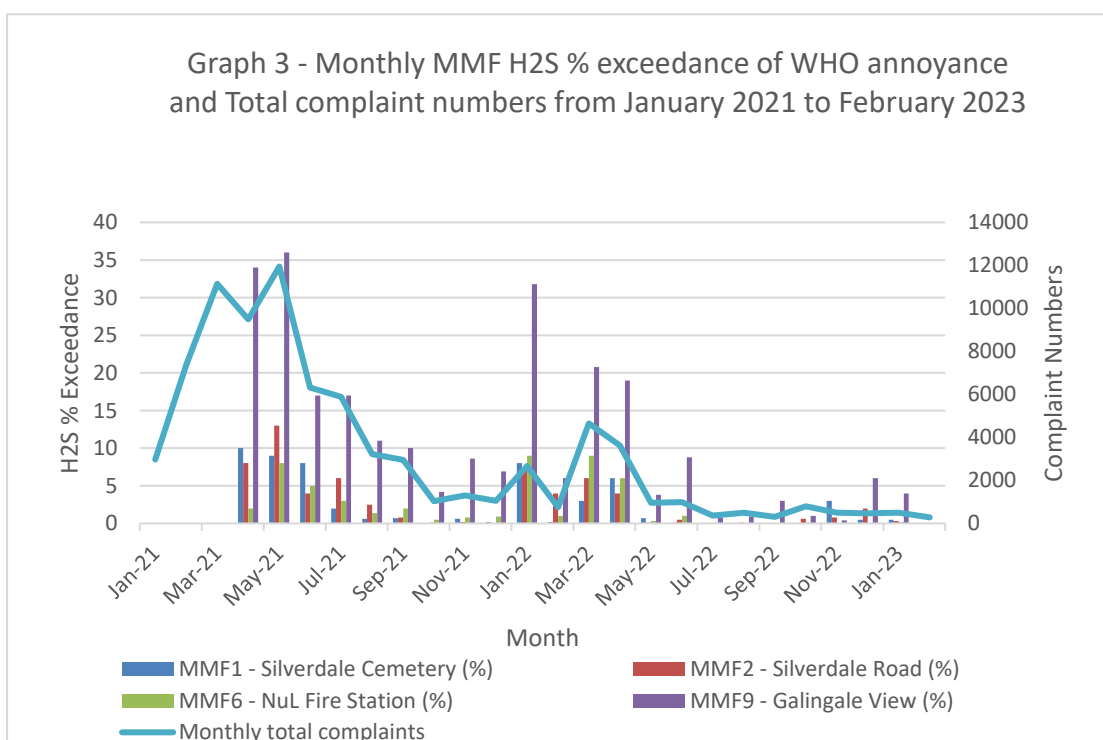
2.12 In order to show the trends in further detail, monthly data for the % exceedance of the WHO H₂S annoyance level, is shown in Graph 1 below:



2.13 Similarly, monthly odour complaint data in relation to Walleys Quarry has been collated in graph 2, this is for both the EA complaints and those received by the Council. EA data is based on weekly reported figures.



2.14 Throughout this investigation, there has always been good correlation between complaint numbers and the levels of H₂S monitored at the MMFs. This relationship between the two is shown in graph 3. Complaint numbers shown are EA and Council complaint totals.



2.15 The following conclusions are drawn from the annual and monthly data:

- Complaint numbers received have reduced considerably from a peak in spring 2021;
- MMF9 monitors the highest H₂S levels of the four monitoring stations, the peak H₂S levels have reduced each year since the peak in 2021;

- The % weekly exceedance of the WHO annoyance level for H₂S is reducing each year of monitoring;
- The gas capture rate at the Gas Utilisation plant is increasing;
- The H₂S concentration in the landfill gas is reducing from a peak in 2021;
- Capping of the site has increased considerably and now 75% of the site is temporarily or permanently capped.
- Peaks have been shown in the highest H₂S levels and H₂S % exceedance during each winter/spring period, the magnitude of the peak has reduced each year.
- Peaks have been shown in complaint numbers during each winter/spring period, the magnitude of the peak has reduced each year.
- Annual figures for complaints and H₂S concentrations (at GUP) are reducing but are not yet at levels equivalent to 2019 data.

Odour Expert Data Review:

2.16 Given the community significance of the issue of odours from the quarry, the Council has commissioned an industry expert, who acted as the Council's Odour Expert through the appeal, to review data relating to odour between November 2022 to January 2023. This review was to provide an independent assessment of progress, and of the resulting position which has been arrived at vis-à-vis odours.

2.17 The review considered:

- Surface emission monitoring reports;
- The effect of meteorological factors on complaints numbers;
- Air quality monitoring data;
- Compliance Assessment Reports (CAR) issued by the EA;
- Sniff test results for observations carried out by NULBC staff;
- Sniff tests results from the EA.

2.18 The conclusion states (**emphasis added**):

"This preliminary review shows that:

- *There have been improvements to the scale of hydrogen sulphide and landfill gas releases, this is evidenced by the EA monitoring, the surface emission survey and hydrogen sulphide content of the gas entering the GUP.*
- *Odour emissions continue to occur, this is evidenced by the EA monitoring, the surface emission survey and NULBC sniff testing.*

The evidence set out in this review still shows:

- *That there is a reduction in the frequency of episodes of hydrogen sulphide being present at noticeable level,*
- *That the intensity of pollution had reduced but on occasions remains at noticeable levels, the peak concentrations are lower than the peak levels which occurred when the Abatement Notice was issued.*

It is Ricardo opinion that, in order for there to be a statutory nuisance, some of the FIDOL factors, namely Frequency, Intensity and Duration would need to be at an increased frequency, increased intensity and a longer duration."

FIDOL:

2.19 The assessment of odour is broken down into a number of factors, this is often referred to as 'FIDOL' the individual elements are defined in table 2 below. In the determination of nuisance all elements have to be established.

Table 2 – FIDOL

Frequency	How often an individual is exposed to odour
Intensity	The individual's perception of the strength of the odour
Duration	The overall duration that individuals are exposed to an odour over time.
Odour unpleasantness	Odour unpleasantness describes the character of an odour as it relates to the 'hedonic tone' (which maybe pleasant, neutral or unpleasant) at a given odour concentration/ intensity.
Location	The type of land use and nature of human activities in the vicinity of an odour source. Tolerance and expectation of the receptor. The 'Location' factor can be considered to encompass the receptor characteristics, receptor sensitivity, and socio-economic factors.

Dialogue with WQL:

2.20 As part of the Agreement, Council officers, including the Chief Executive, are meeting regularly with senior representatives of Walleys Quarry Limited (WQL) to ensure that all aspects of the agreement are implemented. This active engagement has resulted in a number of outcomes including:

- a) WQL have published a comprehensive set of its operational plans on its website in a publicly accessible format.
- b) WQL notifies the Council of any written amendments to the listed Operational Plans/Procedures within 48 hours of such notification by the Environment Agency, and this has occurred in line with the agreement.
- c) WQL notify any operational changes that may impact on odour emissions from the site. Notifications are published on the WQL 'Latest Information' webpage. In February, advance notice was given by WQL of the installation of new vertical wells that had the potential to create short-lived odour emissions.
- d) A set of standard key performance indicators in a score card format monitor the performance of the operator, these are reported to Cabinet each month.
- e) Liaison Committee meetings are recorded in a publically viewable format, increasing community visibility of the work of this body which includes input from Walleys Quarry Limited, Environment Agency, Staffordshire County Council, Borough Council, Silverdale Parish Council and resident representatives.

Enforcing the Abatement Notice:

2.21 As outlined above, if necessary the Council now has the power to take enforcement action in relation to future odours from Walleys Quarry, subject to establishing a breach of the notice and obtaining Secretary of State's permission.

2.22 In order to consider any breaches of the abatement notice, it is useful to revisit the relevant requirements of the abatement notice, a copy of which is shown in Appendix 1. The reasoning

for the requirements are detailed below, with the italic bold text reflects the requirements or text used within the abatement notice:

- 2.23 ***Satisfied of the existence*** – The Council would need to be satisfied of the existence of an odour related Statutory Nuisance. This would entail the odour being considered against the issues of frequency, intensity, duration and offensiveness and location (the FIDOL factors). Such factors would have to be established in determining a breach of the notice.
- 2.24 ***of smell amounting to a statutory nuisance under section 79(1)(d)*** – The smell contains many and varying chemicals and concentrations of such; it's the amalgamation of these which create the smell nuisance. Although much of the monitoring relates to hydrogen sulphide, this is not the only odorous compound and any in relation to any future breaches, all smells could be considered.
- 2.25 ***Premises (including land) falling wholly or partially within the area encompassed by the boundary line identified on the attached plan reference NULBC02-*** An area of land where the nuisance exists was defined in order ensure that the notice was clear and specific in nature and to enable the Council and Walleys Quarry Ltd to be able to assess compliance. Through the settlement agreement, there was an inner boundary added to exclude the landfill site. Any breach would have to be substantiated off site and within this area.
- 2.26 ***to abate the nuisance*** - There are numerous different options abate the nuisance. In these circumstances, it would have been overly prescriptive for the Council to specify exact works and in what way these should be completed. Instead, we simply required the abatement of the nuisance. In any enforcement action there would be a requirement to show that the nuisance had not been abated.
- 2.27 ***AND ALSO HEREBY PROHIBIT YOU from causing, permitting or otherwise allowing the recurrence of the nuisance thereafter*** – This provision creates an ongoing responsibility for Walleys Quarry Ltd to comply with the terms of the abatement notice and not create or allow a further statutory odour nuisance.

Best Practicable Means [BPM]

- 2.28 The Environmental Protection Act 1990 states under section 79(9) that in the 'best practicable means' test the following provisions apply:
- a) "**practicable**" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
 - b) the **means** to be employed include the design, installation maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
 - c) the **test** is to apply only so far as compatible with any duty imposed by law;
 - d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.
- 2.29 Best Practicable Means reflect:
- **local conditions and circumstances** i.e. has the operator of the site taken into account the close proximity of residential and commercial properties, the topographical features of the site, and the impact of weather conditions;

- **the current state of technical knowledge** which would include current guidance/ industry standard(s), conditions of the environmental permit, industry standard operational plans e.g. Odour Management Plan, Landfill Gas Management Plan, Landfill Gas Risk Assessment, Leachate Management Plan, Capping and Phasing Plan;
- **the financial implications**
- **design of the site** including predictive software modelling, installation of the infrastructure of gas wells, gas pipelines, knock out pots, Gas Utilisation Plant, leachate wells and pipework, storage and balancing tanks, leachate treatment plant, temporary and permanent capping;
- **maintenance of plant and machinery** i.e. planned maintenance and reactive work;
- **manner and periods of operation of plant and machinery** including filling the site in a systematic manner to minimise the area of the working face (Phasing Plan) and management of surface water to minimise penetration and leachate production, and
- **design construction and maintenance of buildings and structures.**

2.30 It should be noted that the BPM **test** only applies to normal operation and not in response to an emergency or unforeseen event.

2.31 At the time the Abatement Notice was confirmed, the Council accepted that the plans in place at that time for the management of odour at Walleys Quarry amounted to Best Practical Means. It was also agreed that these would evolve with the site's development. It is evident that ongoing, consistent, good management at the landfill site is key to controlling off-site odour.

2.32 If the Council was to instigate a prosecution for failure to comply with the Abatement Notice, it would be imprudent to do so unless the Council was clear from information available to it that the landfill operator was no longer using best practicable means were used to prevent, or to counteract the effects of, the smell nuisance.

2.33 The Council would take into account whether WQL were lawfully operating under the terms of an environmental permit and whether WQL were complying with those requirements (and all other relevant requirements). The permit contains an odour condition:

'emissions from activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including but not limited to, those specified in any approved odour management plan, to prevent or where that is not practicable to minimise the odour'.

3. **Proposal**

3.1 That Council note the content of this report.

4. **Reasons for Proposed Solution**

4.1 To ensure Council is updated with regard to the requirements of the abatement notice and informed of the current position and work in relation to the odours from Walleys Quarry landfill.

5. **Options Considered**

- 5.1 From the point at which the abatement notice became enforceable at midnight on 5 March 2023, the council has powers (not duties) available with regard to future action. It is only breaches post this date, which could be considered for enforcement action. Options considered include:
- 5.2 Do nothing until post 5 March 2023 where there is an enforceable position. This is not considered to be in the interest of the Council or the community.
- 5.3 Review and present the data available since October 2023. This option provides information to Council and the community but falls short of providing a current conclusion.
- 5.4 Review the data available since October 2023 and provide a position in respect of Statutory Nuisance, as per this report. This option is considered to provide information to Council and the Community of the information available and the council's current assessment of statutory nuisance.

6. **Legal and Statutory Implications**

- 6.1 A comprehensive review of the legal position is contained within section 2 of the report. In addition, it should be noted that if the council were to prosecute WQL for a breach of the Abatement Notice, in addition to securing the consent of the Secretary of State, it would need to be able to prove its case "beyond all reasonable doubt". This is a much higher burden of proof than the "balance of probabilities" burden of proof that applies when seeking to secure an Abatement Notice.

7. **Equality Impact Assessment**

- 7.1 The work of the Council in this regard recognises that the problematic odours in the area may impact on some groups more than others. The work is focussed on minimising this impact as soon as possible.

8. **Financial and Resource Implications**

- 8.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 8.2 From April 2023 there is £100k reserved for legal action associated with Walley Quarry landfill site. In the event that formal action is required, a separate report will be brought to full Council to approve additional funds.

9. **Major Risks**

- 9.1 A GRACE risk assessment has been completed identifying the following main risks:

- Failure to achieve a reduction in odour levels;
- Community dissatisfaction at odour levels;
- The ability to take enforcement action against abatement notice;
- Failure to evidence a breach of the abatement notice;
- Secretary of State refuses permission to undertake prosecution proceedings.

- 9.2 Controls have been identified and implemented in order to control these risks, the main controls include:

- Provisions in settlement agreement ensures greater transparency for public;
- Provisions in settlement agreement ensures regular meetings with Walleys Quarry which enable issues to be discussed;
- Dedicated officer resource for Walleys Quarry work has been secured;
- Continued air quality monitoring provision;
- Robust procedure for investigating complaints with experienced officers;
- Specialist expert advice maintained;
- Multi-Agency partnership working continues.

10. UN Sustainable Development Goals (UNSDG)

10.1 The Council Plan 2022 to 2026 is relevant to this report. Priority two: a successful and sustainable growing borough, where a priority is to 'secure a successful resolution to the Walleys Quarry odour problem'.

10.2 It also contributes towards Priority 1 – One Council delivering for Local People & Priority 3 – Healthy, Active and Safe Communities²

10.3 The monitoring and assessment of Odour from Walleys Quarry contributes towards the following UN Sustainable Development Goals³



11. Key Decision Information

11.1 As an update report, this is not a key decision.

12. Earlier Cabinet/Committee Resolutions

12.1 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, 23rd February 2022, 23rd March 2022, 20th April 2022, 7th June 2022, 19th July 2022, 6th September 2022, 18th October 2022, 8th November 2022, 6th December 2022, 10th January 2023, 7th February 2023 and 14th March 2023.

13. List of Appendices

13.1 Appendix 1 – Walleys Quarry Ltd Abatement Notice

² <https://www.newcastle-staffs.gov.uk/downloads/download/506/council-plan-2022-26>

³ <https://sdgs.un.org/goals>

14. **Background Papers**

14.1 Ricardo - Review of data

Appendix 1 – Abatement Notice



**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 NULBC02 but, for the avoidance of doubt, excluding the area of the landfill shown hatched red.

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 13th 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 unreasonable 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(3A) 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 80 or 85 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 81 or 85 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 87 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.

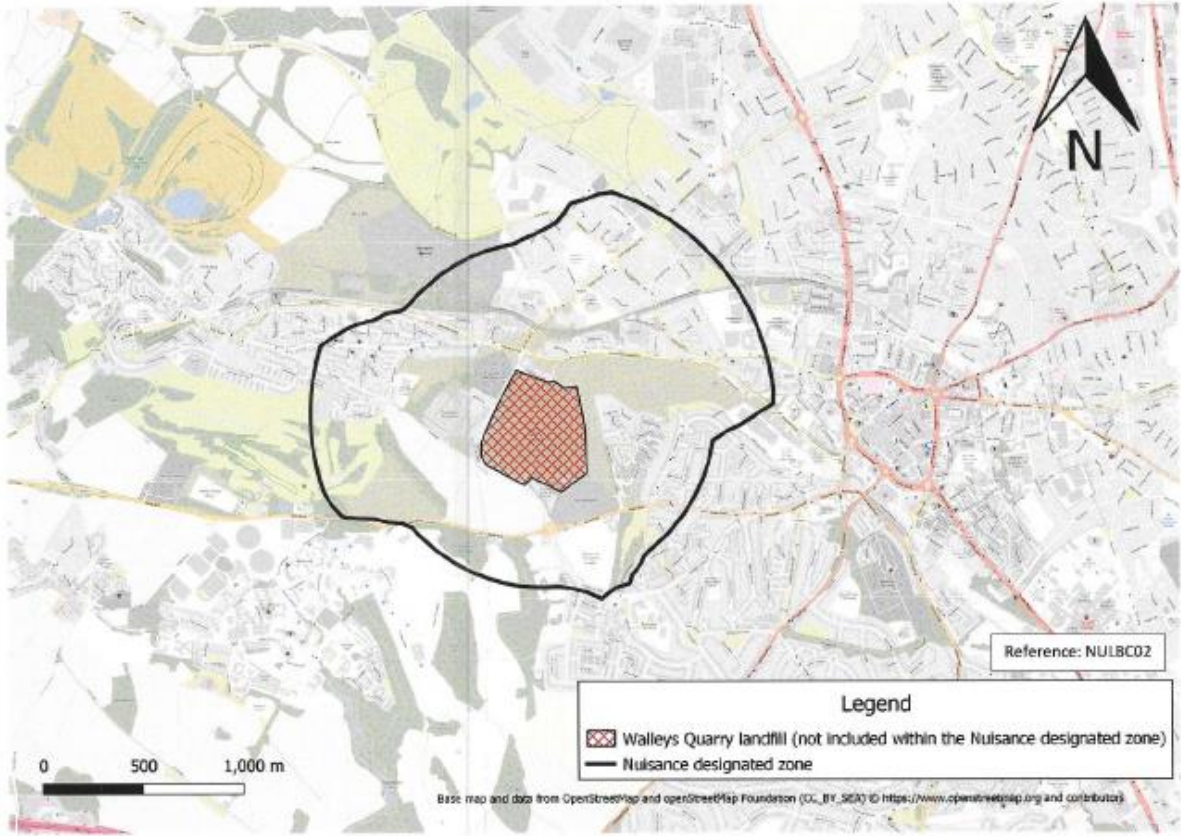
(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -

- (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.

SUSPENSION OF NOTICE

3. Where:-

- (1) (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 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



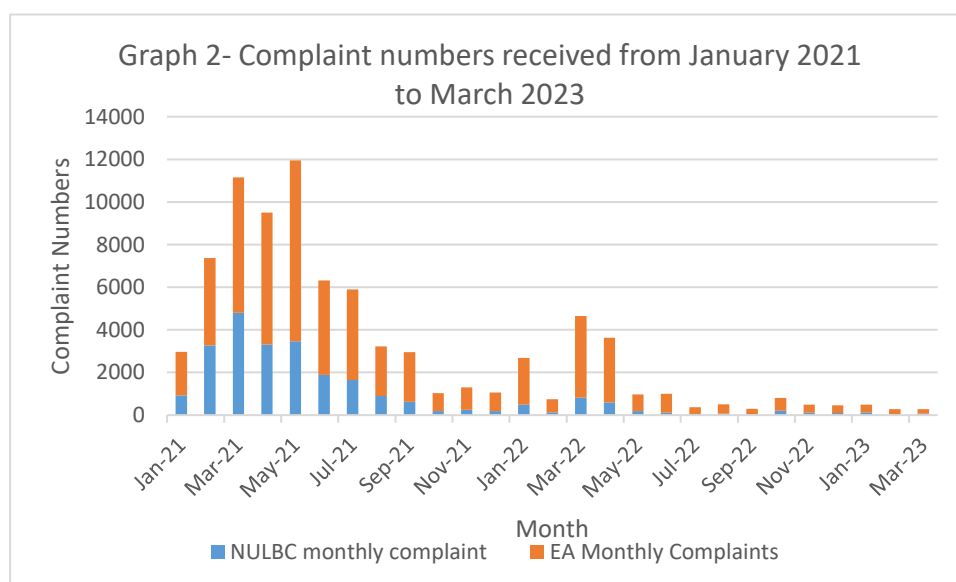
Addendum to Item 5 – Walleys Quarry Update

This briefing note is to provide an update on odour complaints reported to the Council during the period March 2023 to date. This brings the Council report up to date.

Odour Complaints reported to NULBC [March 2023]

- **108** odour complaints received in March 2023, in comparison to **4801** in March 2021 and **921** in March 2022
- **14** odour complaints received in April to date
- 31 odour complaints related to the 24 hour period - 27 March (Monday)
- Weather conditions on the day indicated a drop in temperature overnight from 6C at midnight to 1-2C in the early hours and low wind speeds of 1-3 m/s.
- Officers continue to undertake odour assessments and their findings are consistent with the conclusions of the RICARDO report

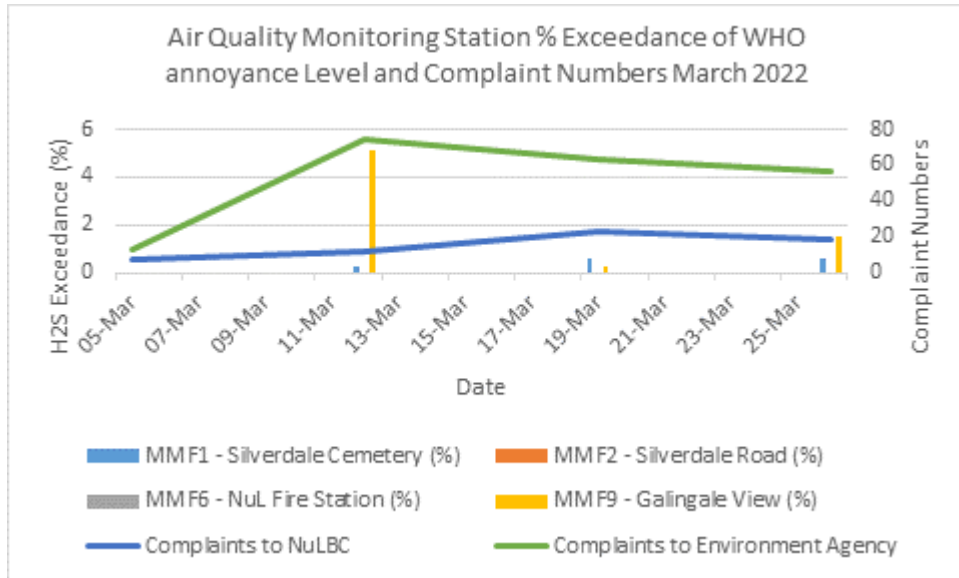
Summary table – extending Graph 2, (Page 17 of Council agenda) to include March & April odour complaints reported to NULBC



MMF data for March 2023 [data up to 26 March 2023]

The graph below shows for March and April the relationship between exceedances of the WHO Odour Annoyance threshold and complaints received. The complete set of data for percentage exceedance above the WHO odour annoyance guideline for March will be reported to the next Cabinet on 18 April.

Briefing Note: Walleys Quarry



Martin Hamilton
Chief Executive
Newcastle under Lyme Borough Council

SCRUTINY COMMITTEES CHAIR'S REPORTS

Health, Wellbeing and Environment Scrutiny Committee

The Committee met on 6 March, 2023 and the following matters were considered:

- The Committee considered a report on the Urban Tree Planting Strategy including consultation responses and the 850 Lyme Forest proposal on the former Keele Golf Course site.
- The Committee considered the latest report to Cabinet on odour issues at Walleys Quarry.
- Members received a presentation regarding the conversion of the disused bowling green at Clough Hall Park into allotments.
- The committee considered the regular reports from the County Health and Care Overview and Scrutiny Committee and the Police, Fire and Crime Panel and notes of a meeting with the Integrated Care Board.
- The Work Programme was discussed and Members suggested topics including looking at the Charter for Safer Places for Women and Girls; leisure centre programmes to reduce obesity in children; projects around homelessness, mental health and wellbeing.

Cllr Ian Wilkes

Chair

Economy and Place Scrutiny Committee

Since the last Full Council meeting, the committee has met once on Thursday, 16th March.

At this meeting there was an update from Cabinet, an ongoing update on the Future High Street and Town Deal's Fund projects and an overview of progress on the Borough Local Plan.

An update was given on the Housing Provision Working Group, which has met once and set an agenda for its first full meeting this month.

There was also supposed to be a strategic management of the town centre update from the BID. However, for the second time there was no representative and therefore no update given. The Chair will now take this up directly with the manager of the BID as this is unacceptable.

Cllr Gary White

Chair

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