



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.

SPECIAL MEETING

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, 14th February, 2024** 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 UPDATE ON THE ONGOING WORK ON ODOURS FROM WALLEYS QUARRY (Pages 3 - 24)

4 MOTIONS OF MEMBERS (Pages 25 - 30)

To consider a Motion on the suspension of the Operating License at Walleys Quarry

Yours faithfully

Chief Executive

NOTICE FOR COUNCILLORS

1. Fire/Bomb Alerts

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

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

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

2. Mobile Phones

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

3. Notice of Motion

A Notice of Motion other than those listed in Procedure Rule 14 must reach the Chief Executive ten clear days before the relevant Meeting of the Council. Further information on Notices of Motion can be found in Section B5, Rule 4 of the Constitution of the Council.

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

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO COUNCIL

14 February 2024

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<p><u>Purpose of the Report</u></p> <p>To update Council on the latest position regarding the foul odours in the Borough associated with Walleys Quarry and provide background information for discussion.</p>
<p><u>Recommendation</u></p> <p>Council is recommended to:</p> <p>1. Note the contents of this update report.</p>
<p><u>Reasons</u></p> <p>To ensure Council is kept updated on the ongoing work regarding the odours associated with Walleys Quarry landfill.</p>

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 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. 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). Following an appeal by Walleys Quarry Ltd, and a successful mediation process, His Honour District Judge Grego

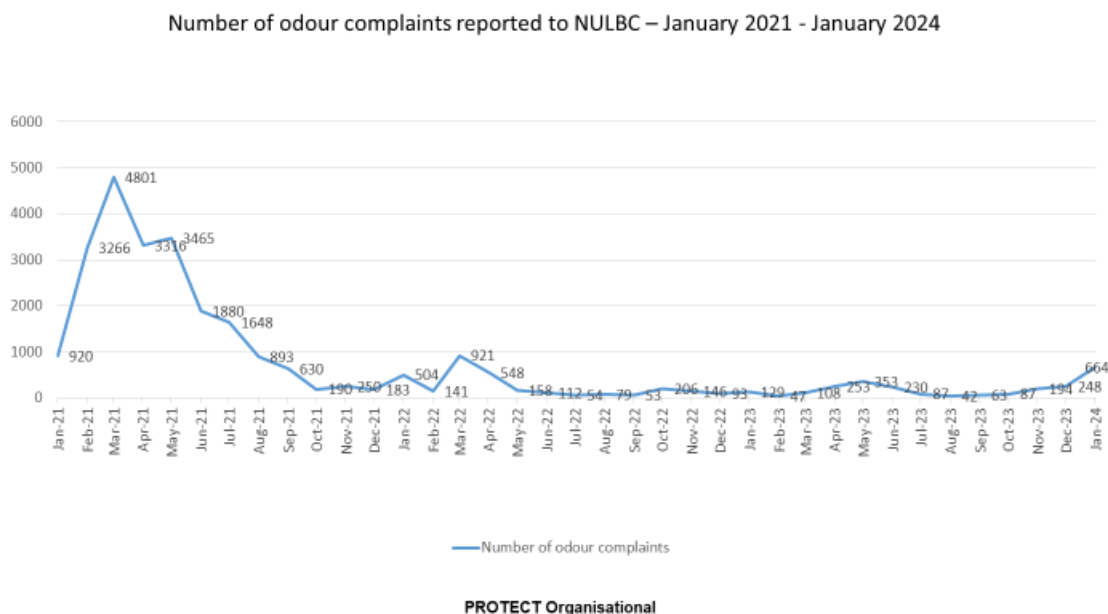
approved the settlement that the parties had reached and issued a court order upholding the Abatement Notice and dismissing WQL's appeal on 6 October 2022.

- 1.4. Since the Council meeting in March 2021 Cabinet has received a report on Walleys Quarry odour issues at each meeting, typically detailing the number of complaints to the Council and to the Environment Agency in the preceding month, together with the air quality data from each of the Mobile Monitoring Facilities (MMF) (most recent 6/2/24). Council has been kept informed of the Walleys Quarry issues, with opportunity to comment or raise questions, at each meeting through the Leader Statement (most recent 24/1/24). At its meeting in April 2023, Council received a report regarding the situation at the end of the five-month period allowed under the Abatement Notice for compliance to be secured.
- 1.5. The Council's activity regarding Walleys Quarry falls broadly into three realms:
 - Championing community concerns and using the Council's limited enforcement powers to secure an Abatement Notice against Walleys Quarry Ltd to prevent a recurrence of the nuisance which led to the serving of that notice. This has also involved maintaining an ongoing dialogue with Walleys Quarry Ltd and the conduct of odour assessments responding to clusters of complaints to both provide visible support to residents and to build a body of evidence should a prosecution under the Abatement Notice become necessary. Issues relating to the Abatement Notice are addressed in Section 6 below.
 - Senior officer engagement with a multi-agency Strategic Coordinating Group (SCG) which has been meeting regularly to co-ordinate activity regarding the issue. At regular intervals during the operation of the SCG senior political leaders across agencies have met with members of the SCG to discuss and challenge their approach and progress.
 - Politically challenging the lead regulator and the government to use all available powers to address the issues. Issues relating to political challenge are addressed in Section 7 below.

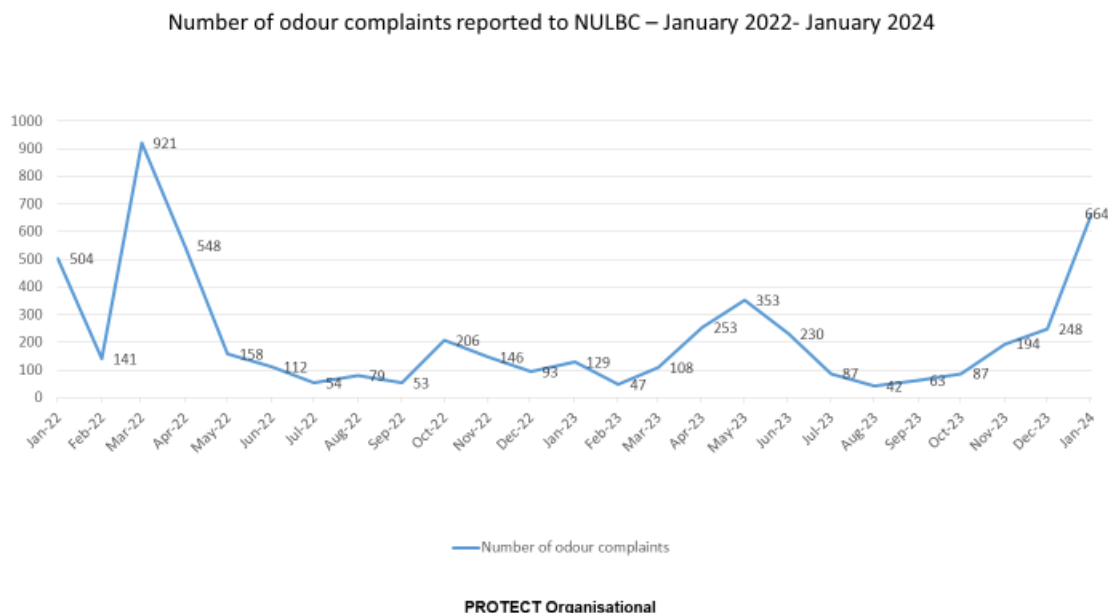
2. Complaint Data

- 2.1. The Council encourages residents to report to them when they experience the Walleys Quarry odours. Appendix 1 to this report provides complaint numbers to the Council since January 2021. Members should be aware that some residents will report to one or other of the agencies, and some will report simultaneously to both agencies. Over time, the complaint numbers correlate fairly strongly with the data from the MMFs, with complaints rising as Hydrogen Sulphide (H₂S) increases.
- 2.2. Graph 1 below presents the profile of complaints since January 2022 and shows a significant reduction in complaints over time, with complaints beginning to rise again in the winter of 2023/24. Graph 2 below presents the complaint data since January 2022, and shows more clearly the peaks and troughs of complaints.

Graph 1 - NuLBC Complaints Jan 2021- Jan 2024



Graph 2 – NuLBC Complaints Jan 2022-Jan 2024

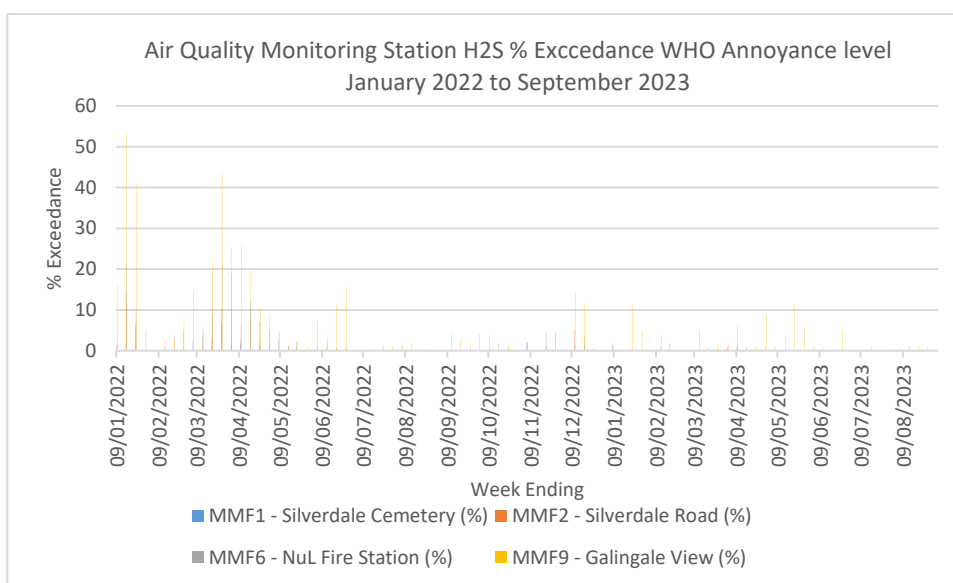


3. Air Quality

3.1. The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring

stations. Data from these stations has been routinely published weekly by the Environment Agency.

- 3.2.** Hydrogen sulphide levels have previously been reported and reviewed as part of the regular reports to Cabinet. On 5 October, the Environment Agency provided an update, alerting the community to a problem with the reliability of the Hydrogen Sulphide (H₂S) monitoring data collected at the monitoring stations. This update is available at the following link [Latest News | Engage Environment Agency \(engagementhq.com\)](https://www.engagementhq.com)
- 3.3.** The error with data collection has been rectified, however one impact of the error is that there is no longer a reliable data set over the whole monitoring period. Work is ongoing within the Environment Agency to establish whether the old data set can be corrected to provide comparability. The data is presented in Graph 3 below as, while the data itself may be under stated, the trend remains instructive.



- 3.4.** The data routinely reported has been the proportion of the time periods where H₂S levels were above the World health Organisation (WHO) Odour Annoyance guideline level of 7ug/m³.
- 3.5.** The table below is comprised of data collected since the error was rectified, and shows, on a weekly basis, the proportion of the time periods where H₂S levels were above the WHO Odour Annoyance guideline of 7ug/m³.

Time Period	Percentage of time the location recorded hydrogen sulphide concentrations above the WHO annoyance guideline level		
	MMF1 (%)	MMF 2 (%)	MMF 9 (%)
1 September – 17 September 2023			9.3
18 September – 24 September 2023			0.6
25 September – 01 October 2023			0.3
02 October – 08 October 2023			0
09 October – 15 October 2023			9.4
16 October – 22 October 2023	0.9	0	7.8
23 October – 29 October 2023	13.7	3.0	10.4

30 October – 5 November 2023	7.8	0.6	NR
6 November – 12 November 2023	8.9	1.5	5.6
13 November – 19 November 2023	6.9	0.6	3
20 November – 26 November 2023	3.3	2.9	14.33
27 November – 3 December 2023	14.9	7.4	26.2
4 December – 10 December 2023	21.4	3.0	10.2
11 December – 17 December 2023	13.4	2.68	8.33
18 December – 24 December 2023	0	0	0.6
25 December- 31 December 2023	23.21	0.3	1.9
01 January – 07 January 2024	16.9	8.7	17.7
08 January – 14 January 2024	0		5.0
15 January – 21 January 2024	17.4		18.4
22 January – 28 January 2024	37.8		11.6

- 3.6. As can be seen, there have been weeks where the annoyance threshold has been exceeded for up to a third of the week.

4. Health Risk Assessment

- 4.1. The UK Health Security Agency (UKHSA) has worked closely with colleagues on the SCG. They review data collected from the MMF equipment and use this to create a regularly updated Health Risk Assessment.
- 4.2. One issue emerging from the error in data collection has been that the UKHSA Health Risk Assessments prior to September 2023 can no longer be relied upon as they are based on erroneous data. However, their most recent Risk Assessment, based on accurate data, and dated December 2023 states:
- i. *Any new hydrogen sulphide certified data (collected by the EA from September 2023 onwards) cannot currently be connected or compared to historic hydrogen sulphide data in UKHSA's future risk assessments to assess long-term exposure. Furthermore, as the situation currently stands, UKHSA will only be able to consider current exposures with this new rectified dataset from September 2023 onwards. As such, human health risk assessments for hydrogen sulphide data collected from September 2023 onwards will be regarded as entirely new risk assessments.*
 - ii. *This issue does not affect other ambient air quality pollutants measured at Walleys Quarry Limited and UKHSA will continue to assess these pollutants.*
 - iii. *Hydrogen sulphide is an odorous chemical; the human nose is very sensitive to odours. The concentrations of hydrogen sulphide in December 2023 were above the World Health Organization (WHO) odour annoyance guideline value for a significant percentage of the time at one of the monitoring sites (MMF1) and a considerable percentage of the time at the other two sites (MMF2 and MMF9). Exceedances of the odour annoyance guideline value may result in headache, nausea, dizziness, watery eyes, stuffy nose, irritated throat, cough or wheeze, sleep problems and stress. At hydrogen sulphide concentrations below the WHO odour annoyance guideline value, odour may still be present, however as concentrations fall to lower levels it is anticipated that the strength of any odour should also reduce. The more time spent above the guideline, the greater the likelihood of symptoms being experienced and impacting on people's health and wellbeing.*

- iv. ***The hydrogen sulphide data for December 2023 shows continuing low-level exposure to the population around the landfill site. Two MMF sites (MMF1 and MMF9) show a monthly average concentration in December above the long-term (lifetime) health based guidance value. The other site (MMF2) shows a monthly average concentration below this guidance value.***
- v. *UKHSA recommends that all appropriate measures continue to be taken to reduce the off site odours from the landfill site, to reduce the health impacts experienced in the local community.*

4.3. Members will be aware that odours off site increased since this risk assessment was completed. However, one consistency in UKHSA advice has been ‘*The risk of long-term health problems is likely to be small but cannot be excluded at this stage. UKHSA is aware that some people continue to experience short-term health effects.*’
‘*UKHSA recommends that all appropriate measures continue to be taken to reduce the off-site odours from the landfill site, to reduce the health impacts experienced in the local community.*’

5. Enforcement Action

- 5.1. The Environment Agency, as the lead regulator for the Walleys Quarry site has an intensive regulatory programme in place, with frequent visits (planned and unannounced) through which they assess compliance with the Environmental Permit under which the site operates.
- 5.2. The EA convert permit breaches into a points system and then add the points from each breach to calculate an annual total of non-compliance points. Based on the cumulative score over a calendar year, the EA place a site into one of six compliance bands A to F.
- 5.3. The site was assessed to be in Compliance Band F in 2021 and 2022. The total CCS points and the compliance band for 2023 also puts the site into Band F, but there are still outstanding appeal processes which may alter the final score or band.

Year	CCS Points	Compliance band
2017	28	C
2018	16	C
2019	36.2	D
2020	56	D
2021	166.5	F
2022	176.2	F
2023	156.7	F

- 5.4. Compliance Band F is a compliance rating calculated by the Environment Agency. The compliance rating for an operator is based on their compliance record from January to December the previous year. An operator's compliance record affect whether they pay a subsistence charge that is higher or lower than the base charge.
- 5.5. Band F (150+ non-compliance points) means a 300% increase on the subsistence charge. Sites in compliance bands 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.
- 5.6. Where there is a failure to comply with or contravene a permit condition the Environment Agency can consider enforcement options that may include issuing enforcement notice(s), a warning, a formal caution or instigate a prosecution.
- 5.7. The EA has the power to issue a closure notice if they are satisfied that there is a risk of serious long-term pollution or persistent non-compliance with permit conditions that suggest that an operator is not competent to manage the activity. The Environment Agency has stated that this would only be issued as a last resort having exhausted all other enforcement options.
- 5.8. In a recent public statement the Environment Agency has indicated that this has not been ruled out (<https://engageenvironmentagency.uk.engagementhq.com/latest-news-1/widgets/74343/videos/4478>). This represents an apparent shift in the Environment Agency narrative regarding the site as previously their position had been that the operator was "working towards compliance".

6. Enforcement Action by the Council

- 6.1. As outlined above, the Council has in place an Abatement Notice in relation to Walleys Quarry. The Abatement Notice was secured by the Council following a successful mediation process involving the Council and Walleys Quarry Ltd. The notice requires:

Walleys Quarry Ltd to:
 - Abate the nuisance;
 - Prohibits Walleys Quarry Ltd from causing, permitting or otherwise allowing the recurrence of the nuisance.
- 6.2. The Council continues to monitor odour occurrences in the local community, drawing on complaint data and weather forecasts to target officer odour tours and assessments, which are then compared to data from the MMF equipment and the Council's own handheld Jerome air quality monitors.
- 6.3. Any action by the Council to enforce the Abatement Notice would be taken in line with the Council's Enforcement Policy. 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. Critically, 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.
- 6.4. Any successful prosecution to enforce the Abatement Notice would need to satisfy a court, **beyond all reasonable doubt** on two issues:

- That a Statutory Nuisance existed due to activities at Walleys Quarry;
 - That at the time of the statutory nuisance, Walleys Quarry Ltd. was NOT utilising Best Practical Means in the management of its operations.
- 6.5. The ongoing dialogue with Walleys Quarry Ltd is important in the context of potential enforcement action in that it affords opportunity to challenge, explore and understand activity by the operator to seek to address the issue. The arrangement also affords a structure within which the sequential approach can be progressed. For example, following the increase in odours during the spring of 2023, officers met with Walleys Quarry Ltd to explore their understanding of any likely drivers for this incident.
- 6.6. Following the increase in odours in November and December, officers wrote to Walleys Quarry Ltd providing an analysis of complaints, odour assessments and underlying data, with a request for a formal response by 31st January. A response was received on 31st January detailing actions being taken on site to address the issues. This comprises the following areas:
- Internal waste flanks and surfaces which is actioned through ongoing temporary capping and specifically following engineering works to the facility to install 5 new, full-depth leachate wells and permanent capping of an area to the southeast of the facility, which although not at height could be completed ahead of schedule.
 - Operational area which is actioned through landfill gas extraction from operational areas through installation of vertical, temporary horizontal and pin wells.
 - Gas collection which is actioned through completion of sector review relating to gas balancing, with a change agreed with EA of up to 25% balance gas. The aim of increasing the percentage balance gas concentration is to potential increase gas flow.
 - Expert review which has been agreed and commission by WQL and NuLBC to review all aspects of gas capture, collection and treatment at the facility, along with review of critical policies and procedures. The objective is to identify any areas which may positively impact gas control and advise upon their practical application.
 - Landfill Gas Management which is actioned through the implementation of the Landfill Gas Management Plan and review of the Gas Utilisation Plant and associated infrastructure.

Best Practicable Means (BPM)

- 6.7. Critical to any enforcement action is the issue of BPM. The Environmental Protection Act 1990 states under section 79(9) that in the 'best practicable means' test the following provisions apply:
- **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;
 - 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;
 - the BPM test is to apply only so far as compatible with any duty imposed by law and only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.

- **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** - which would consider the potential financial impact of the works to eliminate or reduce the odour abatement works, and whether the best practical solution was undertaken to resolve the nuisance or if better options could have been explored. BPM does not anticipate actions regardless of the cost, rather that the cost must be proportionate.
- **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.**

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

- 6.8.** 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. This involves not only having appropriate plans and methods of work, but also ensuring that these are fully applied.
- 6.9.** If the Council were 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 to prevent, or to counteract the effects of, the smell nuisance.
- 6.10.** The sanction which would flow from a successful enforcement prosecution for failure to comply with an abatement notice would include:
- A lump sum fine (amount set by the court);
 - Further fines for each day of non-compliance (also set by the court);
- 6.11.** Councils can also take action to stop or restrict the nuisance by:
- Carrying out works and making the business given the notice pay for them (this can include seizure and confiscation of equipment);
 - Applying to the High Court for an injunction (if a prosecution is not adequate).

- 6.12. The implications of an unsuccessful prosecution would include:
- Establishing that the odour evidence available does not amount to a statutory nuisance;
 - Establishing a BPM defence and therefore the acceptance that the off- site odour is adequately controlled from the landfill site;
 - Financial implications resulting from an award of costs (own and other parties);
 - Precedence established for any future proceedings in relation to odour nuisance;
 - Community disquiet.

7. Pressure from NuLBC

- 7.1. The Borough Council has actively engaged politically in challenging the lead regulator and the government to use all available powers to address the issues. These engagements are summarised below:

March 2021:

- Letter from the leader of the Council to the then Prime Minister, Rt Hon Boris Johnston MP, seeking an independent investigation into the regulatory performance of the Environment Agency in their handling of the permit for Walleys Quarry Landfill site.
- Letter from Chief Executive to the Environment Agency seeking, inter alia, suspension of the permit;
- Letter from Chief Executive to the then Secretary of State for Environment, Food and Rural Affairs, Rt Hon George Eustice MP, seeking an independent investigation into the regulatory performance of the Environment Agency in their handling of the permit.

April 2021:

- Letters from the Chief Executive to Environment Agency, Staffordshire County Council, Public Health England (now UK-Health Security Agency) and Red Industries Ltd advising of the Council's Scrutiny recommendations and requesting their progress.

May 2021:

- Letter from the Chief Executive to the then Parliamentary Under Secretary of State at the Department for Environment, Food & Rural Affairs, Rebecca Pow MP, again requesting a full review of the regulatory performance of the Environment Agency regarding Walleys Quarry.

February 2022:

- Letter from the Chief Executive to the then Chief Executive of the Environment Agency, Sir James Bevan, formalising a complaint that the Environment Agency's regulatory approach to the Walleys Quarry site has been ineffective and woefully slow to deliver for the residents of the Borough and seeking the delivery of a clear, time-bound, and effective plan to bring the odour pollution from the site to an end.

March 2022:

- Letter from the Leader of the Council to Aaron Bell MP seeking support in escalating the complaint against the Environment Agency to the Parliamentary and Health Service Ombudsman.

October 2023:

- Joint Letter from the leader of the Council and the Leader of Staffordshire County Council to the then Secretary of State for Environment, Food and Rural Affairs, Rt Hon Therese Coffey MP, seeking a full, independent public inquiry into the effectiveness of the Environment Agency.

December 2023:

- Letter from the Leader of the Council to the Prime Minister, the Right Honourable Rishi Sunak MP and the Secretary of State for Environment, Food and Rural Affairs, Steven Barclay MP, reiterating the request for a Public Inquiry into the Walleys Quarry issue.

7.2. Copies of the latest two letters are appended to this report.

8. Judicial Review (JR) Process

- 8.1. JR is a challenge to the *way in which a decision has been made*. It is not really concerned with the conclusions of that process and whether those were 'right', as long as the law has been correctly applied and the right procedures have been followed.
- 8.2. The EA and the Secretary of State (HM Govt.) both qualify as bodies, the decisions of which may be subject to Judicial Review.
- 8.3. If a JR is successful, the court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way. Appeal, complaint, or ombudsman processes may, in certain circumstances provide alternative routes to remedy.
- 8.4. The court's view is that litigation should be a last resort. If alternative procedures are available, offer more or less the same solution and have not been used, a judge can refuse to hear a judicial review or refuse to grant a remedy. In the circumstances of Walleys Quarry redress via complaint, and ombudsman have both been sought by the Council without success. Judicial Reviews raised by members of the community have also been unsuccessful.

The Application Procedure

- 8.5. A JR claim form must be filed promptly and in any event not later than three months after the grounds upon which the claim is based first arose (CPR 54.1 (1)). The process around progressing a JR involves three stages:
- **Step 1 - The letter before claim** – This is an opportunity to persuade the public body, at a no-cost-risk stage, to consider the grievance and put the matter right rather than face having its decision or action judicially reviewed.
 - **Step 2 – The permission stage** - This allows the court to filter cases by deciding which should be allowed to go to a full hearing. The permission stage is decided on the basis of a written claim and will involve a fairly brief look at the case to decide whether there is an arguable case; and the case has been brought promptly or if any delay can be justified.
 - **Step 3 - The full judicial review hearing.** If permission to proceed is granted, when all parties are ready, and when the court has time available, the case is listed for a full hearing at which argument by both sides is heard by the court.

Cost of Judicial Review

8.6. Officers have sought advice on the potential costs associated with Judicial Review in order to assist member deliberation. This will be provided at the Council meeting if required, but initial estimate is that a reserve of at least £1M in relation to JR would be prudent, to account for potential cost awards in the event that either were unsuccessful. If a decision is taken to pursue JR then there is likely to be a requirement for the recruitment of additional resources in the legal team e.g. a legal project officer and external solicitors to ensure all legal documentation is in order.

9. **Proposal**

9.1. **Council is recommended to note the contents of this update report.**

10. **Reasons for Proposed Solution**

10.1. To ensure Council is kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry landfill.

11. **Options Considered**

11.1. n/a

12. **Legal and Statutory Implications**

12.1. 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 or a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether a statutory nuisance exists.

13. **Equality Impact Assessment**

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

14. Financial and Resource Implications

14.1. There are no resource implications arising directly from this report, however it should be noted that as part of the 2024/25 budget setting process, a further £200k has been added to the Walley's Quarry Reserve. This results in the Walley's Quarry Reserve balance being £300k as at 1 April 2024.

15. Major Risks

15.1. A GRACE risk assessment has been completed including 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.

15.2. 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.

16. UN Sustainable Development Goals (UNSDG)



17. Key Decision Information

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

18. Earlier Cabinet/Committee Resolutions

13.1 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, 13th March 2023, 5th April 2023, 6th June 2023, 18th July 2023, 19th September 2023, 17th October 2023, 7th November 2023, 5th December 2023, 16th January 2024, 6th February 2024.

19. List of Appendices

Appendix 1. Historical Complaint data

Appendix 2. Recent Letters regarding Public Inquiry

Appendix 1 – Historic Complaint Numbers

Week Ending	Complaints to NuLBC	Complaints to Environment Agency	Week Ending	Complaints to NuLBC	Complaints to Environment Agency
2022			25-Sep	14	79
09-Jan	73	352	02-Oct	13	58
16-Jan	258	1045	09-Oct	42	102
23-Jan	134	651	16-Oct	52	165
30-Jan	25	139	23-Oct	73	186
06-Feb	16	64	30-Oct	30	82
13-Feb	31	120	06-Nov	27	116
20-Feb	49	166	13-Nov	23	86
27-Feb	40	264	20-Nov	60	113
06-Mar	118	571	27-Nov	2	70
13-Mar	72	285	04-Dec	19	47
20-Mar	224	1126	11-Dec	43	163
27-Mar	412	1848	18-Dec	22	114
03-Apr	243	1072	25-Dec	12	45
10-Apr	132	895	2023		
17-Apr	156	752	01-Jan	11	39
24-Apr	65	310	08-Jan	12	32
01-May	49	213	15-Jan	13	25
08-May	39	193	22-Jan	47	118
15-May	35	160	29-Jan	51	149
21-May	43	134	05-Feb	13	66
29-May	20	81	12-Feb	26	115
05-Jun	27	169	19-Feb	7	39
12-Jun	42	234	26-Feb	3	15
19-Jun	25	263	05-Mar	7	13
26-Jun	28	208	12-Mar	12	74
02-Jul	9	54	19-Mar	23	63
09-Jul	4	34	26-Mar	19	56
16-Jul	14	72	02-Apr	51	103
23-Jul	21	52	09-Apr	45	152
30-Jul	12	93	16-Apr	11	64
06-Aug	22	124	23-Apr	48	101
13-Aug	32	133	30-Apr	148	278
21-Aug	11	79	07-May	50	150
28-Aug	12	89	14-May	53	164
04-Sep	10	30	21-May	147	320
11-Sep	9	64	28-May	90	210
18-Sep	13	83	04-Jun	24	43

Week Ending	Complaints to NuLBC	Complaints to Environment Agency
11-Jun	19	75
18-Jun	76	154
25-Jun	80	170
02-Jul	40	99
09-Jul	18	46
16-Jul	20	54
23-Jul	15	73
30-Jul	28	97
06-Aug	21	67
13-Aug	7	30
20-Aug	10	44
27-Aug	8	38
03-Sep	11	59
10-Sept	26	71
17-Sept	12	72
24-Sept	8	31
01-Oct	8	26
08-Oct	8	37
15-Oct	29	64
22-Oct	22	81
29-Oct	26	115
05-Nov	5	15
12-Nov	40	123
19-Nov	35	119
26-Nov	36	135
3-Dec	115	265
10-Dec	83	151
17-Dec	48	180
24-Dec	28	79
31-Dec	44	129
2024		
07-Jan	236	627
14-Jan	76	268
21-Jan	270	824
28-Jan	86	261

Rt Hon Therese Coffey MP
Secretary of State for Environment, Food
and Rural Affairs
2 Marsham Street
London
SW1P 4DF

My Ref: AW / TK 105

Your Ref:

Date: 10 October 2023

Dear Secretary of State

Call for Public Inquiry – Environment Agency Monitoring and Regulation of Walleys Quarry Landfill Site, Newcastle-under-Lyme

As you know from your visit earlier this year, Walleys Quarry Landfill site in Newcastle-under-Lyme has caused severe distress to nearby residents for many years. People have reported acute physical symptoms from the noxious odours and emissions of hydrogen sulphide and methane. They have also repeatedly complained to the Environment Agency (EA), and both Staffordshire County Council and Newcastle-under-Lyme Borough Council about the impact on their mental health and wellbeing.

Public concern about the site has been expressed by various protests, local campaigns, questions in the House of Commons by local MPs, legal actions and more recently BBC investigations. We have also hosted visits by numerous Government ministers to the area so that the impact of the odours on local people could be experienced first-hand.

Therefore, the announcement last week by the Environment Agency that the air quality monitoring equipment around Walleys Quarry had not been calibrated correctly, and that the data collected since 2017 is both incorrect and unable to be rectified, is both shocking and appalling. This flawed data was consistently used to reassure the community and partner agencies that there was nothing to see here, despite what local people were telling us.

For several years, the local community and partners, including our two councils, have expressed deep misgivings about the regulatory performance of the EA. Prior to learning of this failing, both the community's and our faith in the Agency was low. It is now at rock bottom. We have repeatedly raised our concerns with the EA themselves, with Defra, and with the Prime Minister's Office about the

effectiveness of both the EA and the regulatory framework they are operating within. Time and time again, these concerns have been rebuffed, often with reliance on that incorrect data as evidence of progress.

We therefore simply cannot fathom how this issue was not uncovered sooner, and how hydrogen sulphide emissions have been underreported, at times in the region of 70%. Consequently, around six years of data, and all the public health advice issued using that data is now either incorrect or highly questionable.

People in Newcastle-under-Lyme have already suffered enough; these data failures add insult to injury. We believe that the only way to answer these pressing questions is the establishment of a full, independent public inquiry into the effectiveness of the Environment Agency. The remit of the inquiry must be broad enough to investigate not just the collection of data and its validation, audit, and reporting, but also the way in which landfill sites are managed, regulated and how redress for breaches is made. We know that Aaron Bell MP is also urging for a public inquiry. Until there is proper transparency and accountability, the Walleys Quarry issue will never be truly resolved.

We look forward to hearing from you at the earliest opportunity.

Yours sincerely



Alan White
Leader
Staffordshire County Council

Simon Tagg
Leader
Newcastle under Lyme Borough Council

Councillor Simon Tagg, Leader

Our ref:

Your ref:

Date: 21 December 2023



The Right Honourable Rishi Sunak MP, Prime Minister
CC: Steven Barclay MP, Secretary of State for
Environment, Food & Rural Affairs &
Aaron Bell MP

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

By e-mail only:

rishi.sunak.mp@parliament.uk

stephen.barclay.mp@parliament.uk & aaron.bell.mp@parliament.uk

Dear Prime Minister

Environment Agency Regulation of Walleys Quarry, Newcastle under Lyme

I refer to the letter received from Rt Hon Rebecca Pow MP dated 6th November, copy attached.

I appreciate that neither you nor the new Secretary of State have been previously involved in this matter, which relates to noxious odours caused by Hydrogen Sulphide (H₂S) emanating from an Environment Agency regulated landfill site (Walleys Quarry). The local community have suffered from appalling conditions for many years, with a marked upturn in problems since February 2021. By way of context, in 2021 this site generated more complaints to the Environment Agency than all other Agency regulated sites in England combined and has been the subject of Judicial Review. In the face of the Environment Agency's failure to use its regulatory powers to address the issue, it fell to my Council to use its limited powers to secure an Abatement Notice against the site operator in 2022 – something which should not have been necessary had the primary regulator been acting effectively.

In October 2023 Cllr Alan White, Leader of Staffordshire County Council, and I wrote to Ms Pow when it became known that the air quality data which the Environment Agency had been collecting and publishing for a number of years was flawed and could not be relied upon. Our Councils had long expressed concern about the effectiveness of the Agency's regulation of this site and this debacle was the final straw, leading us to call for a public inquiry.

With respect, the response received is wholly inadequate and misrepresents the reality of the situation. Ms. Pow maintains that she has confidence in the Environment Agency and in its regulation of the site, "the fact that the situation there has improved significantly" and that our request for a public inquiry is not "necessary".

Unfortunately, these statements are erroneous and refuted by this Council.

Cont'd

The noxious odour emanating from this site remains the single most complained about issue by residents of this Borough. The lived experience as evidenced by many of our residents clearly shows that the noxious odour is still a very real problem and far from being resolved. The Agency's own air quality data shows that this winter the community have continued to be exposed to H₂S levels which are routinely above the recognised "annoyance threshold". Given that this reflects the product of almost three full years of regulation EA, it cannot reflect performance in which any of us should consider acceptable for our communities.

Our local MP Aaron Bell has also been tirelessly raising the issues of Walleys Quarry with the Environment Agency and Government Ministers over a long period.

At a recent meeting of this Council, our elected members unanimously disagreed with the conclusions of Ms. Pow. In fact, a motion to admonish the Minister and Environment Agency for failing to support this Council's request for a public inquiry was resolved. Subsequently Cabinet agreed to escalate the matter to the Prime Minister.

Ms Pow says she knows how important it is to have confidence in the measurements of hydrogen sulphide at Walleys Quarry taken by the EA, but such confidence is clearly misplaced. Furthermore, her claimed confidence in the EA appears to be contradicted by DEFRA's decision that its officials need to provide "expert technical assistance" to the EA on this matter.

I am therefore writing on behalf of my Council to request you to reconsider your decision and commence a public inquiry into this matter. For the avoidance of doubt, our elected members have no confidence in the Environment Agency and consider that a public inquiry is not just necessary, but essential. We are confident that if so minded, such an inquiry could be managed in such a way which to as avoid any conflict with any other legal processes initiated by the Environment Agency in relation to the site.

Finally, I would invite you to meet with representatives of this Council and myself as a matter of urgency to discuss our ongoing concerns and those of our residents regarding this matter.

Yours sincerely

Councillor Simon Tagg
Leader

simon.tagg@newcastle-staffs.gov.uk

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Motion on Suspension of the Operating License at Walley's Quarry

Council notes that:

Pervasive fetid odours emanating from Walley's Quarry have blighted the landscape of Newcastle-under-Lyme and caused material distress for residents, businesses, and organisations across the borough, for more than a decade.

Council has undertaken extensive work to support residents impacted by these odours. Including, but limited to, undertaking detailed scrutiny of the regulation of the site and impact of odours, securing an abatement notice on the operator, and calling on government to undertake a public enquiry into the failure of the Environment Agency (EA) to appropriately regulate the permit granted to the operator.

Historically, health regulatory bodies have noted the measured levels of hydrogen sulphide (H₂S) by the EA monitoring stations would not impact human health.

Following a review of processes, the EA has notified stakeholders and the public that mobile air quality monitoring stations have been operating with erroneous calibration levels, resulting in incorrect data recorded for levels of hydrogen sulphide (H₂S).

Over the last few months, the volume of residents complaints regarding the impact of odours emanating from the site has increased significantly.

The World Health Organisation (WHO) guideline as a 30-minute average is 5PPB (7µg/m³). This sets a level which hydrogen sulphide concentration should not be allowed to exceed.

This level is also described in the fourth Public Health England (PHE) Risk Assessment, as starting to affect health.

That in latest report from the Environment Agency monitoring station 'MMF1' (Cemetery Road) was recorded that hydrogen sulphide concentrations were above those World Health Organisation levels for 23.21% for the period 25th-31st December 2023.

That local health regulatory bodies have revised their statement on the potential health impacts of H₂S levels to conclude that the levels measured could have impact on human health.

Council further notes that:

The EA has just rated Walleys Quarry as compliance band F – for the third consecutive year.

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.

The Scottish Environment Protection Agency (SEPA) suspended the license of Paterson's of Greenoakhill Ltd, following 8 days of "offensive odours" which had been emitted by the landfill site between 8 June and 15 June 2021 which resulted in 138 complaints about smells from nearby residents.

Natural Resources Wales (NRW) suspended the license of Bryn Posteg landfill in 2018, following non-compliance with permit regulations.

Despite numerous breaches of the permit, high recorded levels of H₂S, significant complaints from residents, and motions resolved by Council; the EA have refused to suspend the operator's license.

Council resolved call on the Prime Minister and Secretary of State for Environment, Food and Rural Affairs to initiate a public enquiry into the failings of the EA to regulate the permit and protect the local environment and health of residents.

In response Rt Hon Rebecca Pow MP Parliamentary Under Secretary of State (Minister for Nature) maintains that she has confidence in the Environment Agency and in its regulation of the site, "the fact that the situation there has improved significantly" and that our request for a public inquiry is not "necessary".

Council believes that:

The residents of Newcastle-under-Lyme have suffered too long from the odours emanating from Walley's Quarry.

That public bodies, including the EA and Government Ministers have failed the residents of Newcastle-under-Lyme through a record of substantial failings in regulation of the permit, measurement of malodorous compounds with potential significant impact on human health.

Council resolves that:

1. The odours emanating from Walley's Quarry represents a significant public health emergency for the residents of the borough.
2. That full council undertakes a public hearing, to receive impact statements from residents, stakeholders, including businesses, the operator, and associated

regulated bodies, including the environment agency, Staffordshire County council, and local health bodies.

3. That council formally resolves that EA suspends the license at Walley's Quarry, until such time that this council is assured of ongoing compliance with permit conditions by the operator.
4. That the Environment Agency be requested immediately publishes a full 365 days air monitoring data set to examine impact against the chronic-term health guidelines where 1.4 ppb and 2µg/m³ are applicable.
5. That council undertakes two judicial reviews regarding the lack of action by the environment agency and government in protecting residents of Newcastle-under-Lyme against excessive fetid odours, with potential for impact on human health and wellbeing.
6. **Judicial review 1:** That council commissions appropriate legal support to review the lack of operating permit suspension by the Environment Agency in response to adverse odours and numerous non-compliance notices served on the operator.
7. **Judicial review 2:** That council commissions appropriate legal support to review the decision by Rt Hon Rebecca Pow MP Parliamentary Under Secretary of State (Minister for Nature), refusing to under-take a public enquiry into the failure of the EA to regulate the site and protect surrounding environment.
8. That council resolves to restore the Walley's Quarry legal fund budget to £1 million, to provide suitable financial support for the above judicial reviews.
9. That the Portfolio Holder - Finance, Town Centres and Growth bring forward proposals to the next meeting of the finance, assets and performance scrutiny committee for an amended budget and MTFs to account for this £1 million pound allocation.

Proposed by: Cllr Dave Jones

Seconded by: Cllr Andrew Fox-Hewitt

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Conservative Group amendment to the Motion submitted to the 14th February 2024
Special Council Meeting

After Council further notes that:

The Environment Agency (EA) has just rated Walleys Quarry as compliance band F – for the third consecutive year.

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.

The Scottish Environment Protection Agency (SEPA) suspended the license of Paterson's of Greenoakhill Ltd, following 8 days of “offensive odours” which had been emitted by the landfill site between 8 June and 15 June 2021 which resulted in 138 complaints about smells from nearby residents.

Natural Resources Wales (NRW) suspended the license of Bryn Posteg landfill in 2018, following non-compliance with permit regulations.

In relation to Walleys Quarry, despite numerous breaches of the permit, high recorded levels of H₂S, significant complaints from residents, and motions resolved by Full Council, the EA has refused to suspend the operator's license.

This Council resolved to call on the Prime Minister and Secretary of State for Environment, Food and Rural Affairs to initiate a public enquiry into the failings of the EA to regulate the permit and protect the local environment and health of residents.

In response Rt Hon Rebecca Pow MP Parliamentary Under Secretary of State (Minister for Nature) maintains that she has confidence in the EA and in its regulation of the site, “the fact that the situation there has improved significantly” and that our request for a public inquiry is not “necessary”.

As reported by the BBC on 1st February 2024, the Shadow Environment Secretary, Steve Reed, does not support a Public Inquiry “No public inquiry: Mr Reed ruled out a public inquiry into the site if Labour was in government”.

Council believes that:

The residents of Newcastle-under-Lyme have suffered from odours emanating from Walley's Quarry Landfill for far too long and that public bodies, including the Environment Agency and Government Ministers, have failed the residents of Newcastle-under-Lyme through a record of substantial failings in regulation of the permit, measurement of malodourous compounds with potential significant impact on human health.

And notes the Council's Cabinet decision of 16th January 2024 which called for the EA to consider a Closure Notice.

Council resolves that:

- 1. The odours emanating from Walley's Quarry Landfill represents a significant public health emergency for the residents of the borough.**
2. That Full Council ask the relevant Scrutiny Committees to hold a public hearing, to receive impact statements from residents, stakeholders, including businesses, the operator, Staffordshire County Council, and local health bodies.
- 3. That Council endorses the decision made by the Cabinet on 16th January to encourage the Environment Agency (EA) to consider a Closure Notice and formally resolves to call on the EA to go further than 'suspending the operator's licence' and issue a Closure Notice.**
4. That the Environment Agency be requested to publish immediately a full 365 days' air monitoring data set to examine impact against the chronic-term health guidelines where 1.4 ppb and 2µg/m³ are applicable.
- 5. That Council continues to focus its energies on resolving foul odour from Walleys Quarry Landfill within its Abatement Notice powers as a priority and asks the Monitoring Officer, with appropriate legal support, to assess the most effective route, including Judicial Review, to securing an end to the community's suffering.**
6. That the Monitoring Officer's advice is referred to the relevant Scrutiny Committees for consideration prior to consideration by Cabinet and Full Council.
- 7. That Council endorses the Cabinet budget proposal to increase the Walleys Quarry Legal Action Reserve to £300,000, with any further expenditure being a Full Council decision at the appropriate time.**

Proposed: Simon Tagg

Seconded: Mark Holland