

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Cabinet
21 April 2021

Report Title: Update on On-going Odour Problem affecting the Borough

Submitted by: Chief Executive

Portfolios: Corporate & Service Improvement, People & Partnerships/Environment & Recycling

Ward(s) affected: All

Purpose of the Report

To provide Cabinet with an update regarding ongoing work to address problem odours in the Borough.

Recommendation

Cabinet is recommended to:

- 1. Note the latest position regarding problem odours in the borough;**
- 2. Note the progress made on the actions arising from the extraordinary meeting of full Council on 18th March 2021;**
- 3. Endorse the programme of work set out in this report.**

Reasons

To ensure that Cabinet are aware of the latest position regarding this high priority area of work and have an opportunity to discuss progress with officers.

1. Background

- 1.1** For a number of years, parts of the borough have suffered from problematic foul odours, widely believed to come from the Walley's Quarry Landfill Site in Silverdale operated by RED Industries. Addressing this issue has been a priority for the current administration, with a budget specific budget of £50,000 agreed in February to enabled specialist advice to be secured and targeted work to be undertaken. During 2020 the Economy Environment and Place Scrutiny Committee undertook a detailed investigation of the issue which made recommendations to a range of stakeholders. Over the weekend of the 26–28 February 2021 the Council received over 2000 complaints from residents and organisations in the borough and further afield about the foul odours present in the area. Consequently, an extraordinary meeting of the full council was convened on 18th March to discuss the findings of the scrutiny review, a report on the incident of 26-28 February, and a Notice of Motion on next steps.
- 1.2** Problems with odours have continued since the February incident, and, as the bar chart of reports to the Council shows, a further spike in odours was experienced in early March. Appendix 2 shows the reports of odour complaints received by the Council since the start of March, and Appendix 3 shows the geographical distribution of these.

1.3 This report summarises both the latest position regarding the odours, and progress with the actions taken following the Council meeting.

2. Issues

- 2.1 The Walley's Quarry Landfill Site, which is the focus of concern regarding the foul odours, is regulated by the Environment Agency who undertake regular monitoring activity to ensure that the site is operating in compliance with its Environment Agency Permit. The Borough Council does not regulate the site, but does monitor odours in the area and is required to take enforcement action if a Statutory Nuisance is identified.
- 2.2 Since the incident on the 26-28 February, and the subsequent Council debate, there has been a step change in multi-agency liaison regarding the landfill operation, associated odours, and in particular the potential impact on health. Agencies involved in overseeing aspects of the local impact of the landfill have been in regular meetings, as well as senior level meetings between the Council and the Environment Agency. A concerted focus on the issue has enabled progress to be made against both the recommendations of the Scrutiny Committee and the actions agreed by Full Council, as summarised below:

Actions Arising from Council Meeting – 18th March

2.3 Arising for the Council meeting a series of letters have been sent:

- Environment Agency, requesting immediate suspension of the licence for waste operations at Walley's Quarry, including import of waste material at the site, until the cause of the "foul odours" has been identified and resolved;
- Secretary of State for Environment, Food & Rural Affairs, to request an independent investigation into the regulatory performance of the Environment Agency in their handling of the permit;
- Public Health England and the North Staffordshire Clinical Commissioning Group, requesting regular health screening for residents who are concerned of potential health impacts as a consequence of the regular presence of "foul odours";
- Staffordshire County Council and Stoke-on-Trent City Council, seeking their support in making similar requests to both the Environment Agency and DEFRA.

Actions Arising from the Scrutiny Review

- 2.4 The Scrutiny Committee made a number of recommendations for a range of organisations, and these have been forwarded to those organisations for consideration and response. Within the report were 9 recommendations for the Council itself to address. These provide a useful framework for reporting activity generally, with six having action already being taken:
- 2.5 **Recommendation 1:** Undertake a review and appraisal of EA monitoring data and work with the EA for any future monitoring;

The Council commissioned air quality consultancy Ricardo to undertake a review of the first two EA monitoring campaigns. Ricardo concluded that the EA monitoring campaigns focussed on assessing the landfill's potential impact on public health through its influence on local H₂S concentrations, and were useful in showing that the H₂S concentrations measured

did not pose a direct health issue to local residents. However the monitoring did not provide a comprehensive view on the presence/absence of offensive odours, nor the potential psychosomatic effects of such odours.

The Ricardo report recommended that future monitoring should robustly address whether there was significant pollution which may:

- Be harmful to human health or the quality of the environment
- Cause offence to a human sense
- Result in damage to a material property
- Impair do interfere with amenities or other legitimate uses of the environment.

This would entail a wider scope than the initial EA monitoring activity. Ricardo, in recognising that investigating the impact of emissions is difficult, recommend that future monitoring should be supplemented by more detailed investigation of what is happening within the landfill site itself.

The Ricardo report, the recommendations from which are appended to this report, has been shared with the Environment Agency to inform their further monitoring of the site.

2.6 Recommendation 2 - Prepare and undertake air pollution monitoring, the results of which shall be made available on the Councils website;

The Council has secured a Jerome hand held air quality monitoring device which is being used by experienced Environmental Health Officers to measure the concentrations of H₂S to augment the human observation and assessment of odours.

In addition, the council has researched the deployment of air monitoring stations akin to those used by the Environment Agency to collect data for analysis. Through the multi-agency working to address the odour problem, agreement has been reached to jointly fund the deployment of two additional monitors, above the two existing stations installed by the EA, thereby avoiding the risk of wasteful duplication and ensure that all agencies are working to a consistent data set. The parameters monitored include Hydrogen sulphide (H₂S), Methane (CH₄), Oxides of nitrogen (NO_x, NO, NO₂), Particulate Matter (TSP, PM₁₀ and PM_{2.5}), Volatile Organic Compounds (VOCs) including Benzene, Toluene, Xylene and Ethylbenzene. In addition meteorological data will be collected.

2.7 Recommendation 3 - Request confirmation from the EA as to the odour source(s) and to specify appropriate method of control;

As yet, the EA has not found itself in a position to categorically state that the odours come from Walley's Quarry, and Walley's Quarry alone. However, since the weekend of the 26-28th February, the EA have confirmed that there have been 4 recent breaches of the operating permit, including one significant breach and, as summarised below, have recognised that odours from the landfill are experienced off site.

- A significant breach classified as CCS2 in accordance with EA compliance guidance. This relates to gas wells being disconnected while waste was raised to the levels required by the site's planning permission.
- A minor breach classified as CCS3 in accordance with EA compliance guidance. This relates to the failure to notify the Environment Agency that infrastructure to manage

landfill gas had been compromised by flooding from surface water and failure to take actions to resolve this in the shortest time possible.

- A minor breach, classified as CCS3 in accordance with EA compliance guidance. Waste odours were perceived to be at levels likely to cause pollution outside the site. With Red Industries not taking all appropriate measures to prevent this.
- A minor breach classified as CCS3 in accordance with EA compliance guidance. The company's management system and operating procedures have resulted in the main cause of odour leaving the site. Odour appeared to be emanating from the waste area due for permanent capping.

The EA have identified specific actions to be taken by RED Industries in relation to gas management and capping to alleviate odours.

During March 2021 RED Industries advised the Council and the EA that they had identified an alternative source of the problem odours, asserting that their own investigations had linked the odour to H₂S in groundwater pumped from a depth of 100m onto the site. The Council has requested sight of the reports prepared by RED's advisors regarding this issue but as yet have not received any detailed technical reports and as such this indication of an alternative odour source cannot currently be substantiated.

- 2.8 **Recommendation 4** - Undertake odour nuisance investigations to establish whether a statutory odour nuisance exists under the provisions of section 79 of the Environmental Protection Act 1990 and to comply with the legal duties under that Act;

Officers have conducted regular odour tours, both within the normal working day and out of hours, to monitor and witness odours. These tours have been completed most days, between 22nd February and 4th April over 20,000 unique odour assessments have been completed by the Environmental Health Service.

In addition, officers have sought to respond to public reports of odours in real time, prioritising response to those areas where there have been multiple complaints received, identifying the odour as beings present and correlating these to current weather conditions. Officers have identified odours but have also found that the odour plumes tend to move quite swiftly, resulting in a mismatch between reports received and reports witnessed. To address this issue, and improve the effectiveness of resource deployment, the Council has identified a number of "specimen properties" where the occupiers have agreed to keep accurate diaries of odours. These properties will provide the focus for officer visits in order to witness and assess odours in a way which will be admissible as evidence. The Assessment methodology is constantly evolving in order to meet residents' concerns and comply with Covid-19 restrictions.

- 2.9 **Recommendation 5** - Seek legal advice regarding any other legal routes to remedy odour and other issues identified to support the local community, business and residents;

Where a Statutory Nuisance is identified the Environmental Protection Act requires the Council to serve an abatement notice requiring the abatement of the nuisance, or prohibiting or restricting its occurrence or recurrence, and requiring steps be taken to achieve these outcomes. Advice has been sought from a QC who has confirmed that the focus of the Council's efforts should be on establishing a case for statutory nuisance and pursuing this route if possible and indicating a process through which this would then be progressed.

- 2.10 **Recommendation 6** - Seek further PHE opinion following any further pollution monitoring in the vicinity of the site. Any further updates or advice received is to be published on the Council's website;

Following the incident of the 26-28 February, multi-agency working on this issue has accelerated, including valuable input from Public Health England (PHE); Through PHE evaluation of monitoring EA monitoring data it was found that World Health Organisation thresholds for H₂S had been exceeded on a number of occasions over the weekend of 6-7 March. This fact, along with the health implications, were made public, along with reassurance as to the likely short lived nature of health impacts. PHE will now be routinely reviewing monitoring data and making public the results.

Public health advice has also been received from Staffordshire County Council, who have provided information to advise and inform the community on health matters.

2.11 Further Recommendations for future action

- Future planning applications must take into account this report as material consideration of evidence of amenity issues surrounding the site, when determining any future applications within the vicinity of the landfill site;
- Lobby government and boroughs MPs regarding national planning policy in relation to the siting of landfills and/or sensitive developments in close proximity to each other;
- Provide an annual report for the council's Economy, Environment & Place Scrutiny to review for life of landfill.

3. **Proposal**

3.1 The Council's current work programme regarding this issue entails:

- Focussed work to witness and assess odour issues experienced at a number of specimen properties for the purpose of establishing the case for statutory nuisance;
- Working with partners to extend monitoring of air quality in the vicinity of the quarry;
- Working with partners to investigate the ground water issues alleged by RED Industries and ensure adequate and timely remedial works from the polluter by the principal regulator;
- Secure expert legal and technical advice necessary to provide effective challenge on the issues of odour.

3.2 This work is funded from the budget allocation for odour issues approved as part of the 2021-22 budget round. Cabinet is recommended to:

- Note the latest position regarding problem odours in the borough;
- Note the progress made on the actions arising from the extraordinary meeting of full Council on 18th March 2021;
- Endorse the programme of work set out in this report.

4. **Reasons for Proposed Solution**

4.1 To ensure that Cabinet are aware of the latest position regarding this high priority area of work.

5. **Options Considered**

- 5.1 Consideration has been given to a variety of forms of monitoring and enforcement activity, however the expert advice secured has informed the direction selected.

6. Legal and Statutory Implications

- 6.1 The Environmental Protection Act 1990, section 79 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.

- 6.2 Section 79 defines the following as statutory nuisances

'(1) Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) **any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;**
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road
- (h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.'

- 6.3 Where a statutory nuisance is identified or considered likely to arise or recur, section 80 of the Act requires that an abatement notice is served on those responsible for the nuisance. The abatement notice can either prohibit or restrict the nuisance and may require works to be undertaken by a specified date(s). There is a right of appeal against any notice on prescribed grounds.

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 removing this impact.

8. Financial and Resource Implications

- 8.1 None directly arising from this report.

9. Major Risks

- 9.1 While the complaints from the public remain at their current level, the Council faces a reputational risk in terms of the public perception of the action it takes to reduce the harm

experienced by the public. The Council is working across agencies to shape action taken and to encourage all partners to play active roles in addressing this issue.

10. **UN Sustainable Development Goals (UNSDG)**



11. **Key Decision Information**

11.1 This is not a Key Decision

12. **Earlier Cabinet/Committee Resolutions**

12.1 This matter has been variously considered previously by Cabinet, Economy, Environment & Place Scrutiny Committee and, most recently, by Council on 18th March 2021.

13. **List of Appendices**

13.1 Appendix 1 – Recommendations from the Ricardo evaluation of the EA air monitoring campaigns;

13.2 Appendix 2 – Graph indicating odour complaints received by the Council;

13.3 Appendix 3 – Graph indicating geographical distribution of complaints received.

14. **Background Papers**

14.1 None

Recommendations for future monitoring activity and Investigations

In setting out recommendations to accompany this review we must remember that the operator of a prescribed process is required to ensure that there is 'no significant' pollution, where "pollution" in the Environmental Permitting Regulation (2016) means any emission as a result of human activity which may:

- Be harmful to human health or the quality of the environment.
- Cause offence to a human sense.
- Result in damage to material property.
- Impair or interfere with amenities or other legitimate uses of the environment.

As regulator of the prescribed process the EA approach to monitoring must cover each of these issues in a scientifically robust manner that stands up to scrutiny. Any future monitoring should take into account all these issues when monitoring results are analysed. In reviewing any future data, the EA should recognise that exposure to odour at levels below a health threshold can still give rise to 'psychosomatic' effects (e.g. of headaches, nausea, dizziness).

This review has shown that investigating the impact contributions of emissions from the Walley Quarry Landfill site is fraught with difficulty, nevertheless instances of offensive odour being detected beyond the site boundary appear to be ongoing. In such situations future monitoring should be supplemented by more detailed investigation of what is happening within the landfill site itself. Such monitoring could:

- Advise on likelihood of adverse environmental impacts from the landfilling of waste in this area.
- Advise on whether environmental control measures are operating as designed.
- Advise on compliance with the permit conditions – especially the odour boundary condition;
- Inform the public.
- Provide data for any improvement/remediation programmes.
- Set trigger levels or emission limit values that the operator must adhere to avoid breaching the odour boundary condition.

Any internal investigations should focus on those area where emissions are most likely to occur, namely around leachate and gas wells that penetrate into the landfill mass and could present a escape pathway if seals are poor or through poorly capped areas of the landfill where internal pressure within the landfill may cause an emission pathway through the surface. At these locations monitoring could take the form of point measurement of CH₄/H₂S above the surface, this can be especially useful for detecting fissures through which emissions occur. Such measurement could be supplemented by collecting gas samples for GCMS analysis against a suite of common landfill gas components.

Any such monitoring needs to be repeated so that emissions arising from a range of conditions (e.g. atmospheric pressure and pressure generated within the landfill gas extract system) are considered. The ultimate aim of such monitoring will be to ensure that conditions likely to lead to an emission spikes are identified so they can be managed appropriately.

Separately the EA should review the adequacy of the current gas management system to ensure that a negative pressure can be maintained at all times. Having a highly effective gas management system must be considered as an appropriate measure for a landfill in close proximity to local residents as is the case with the Walley Quarry site. A similar review should be carried out on the quality of cover material being used on site.