

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Council
21 July 2021

Report Title: Walleys Quarry - Update on Problem Odours in the Borough

Submitted by: Chief Executive

Portfolios: One Council, People & Partnerships

Ward(s) affected: All

Purpose of the Report

To provide Council with an update regarding ongoing work to address problem odours in the Borough and to report back on actions agreed at the special Council meeting on 18th March 2021.

Recommendation

Council is recommended to note the current position regarding the persistent foul odours from Walleys Quarry, and the work being taken to address this issue;

Reasons

To ensure that Council is aware of the latest position regarding this high priority area of work.

1. **Background**

- 1.1 For a number of years, parts of the borough have suffered from problematic foul odours from the Walley's Quarry Landfill Site in Silverdale. Until recently the site was operated by RED Industries Ltd, but in April the name of the operator has been changed to Walleys Quarry Ltd, albeit with many of the same company directors.
- 1.2 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.
- 1.3 Throughout this year Cabinet has received a series of reports updating it on the work being undertaken by the Council and by partners to address this ongoing issue. The latest of these, from 7th July Cabinet, is appended to this report. This report summarises actions by the Council and its partners since the Council debate, and also reports on the specific actions agreed by Council.

1.4 Problems with odours have continued since the February incident. The table below shows the level of complaints received by the Council and by the Environment Agency in 2021.

Complaints To	January 2021	February 2021	March 2021	April 2021	May 2021	June 2021	Total Year to Date
Council*	921	3,263	4,799	3,316	3,466	1880	17,649
Environment Agency	2,050	4,098	6,347	6,181	8,482	4444	31, 602

*verification of complaints data has been undertaken since the last reported figures.

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 working 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, and separate senior level meetings between the Council and the Environment Agency have also taken place, including meetings involving the Leader of the Council, Leader of Staffordshire County Council and senior EA representatives.
- 2.3 Since March partners have worked within the Local Resilience Forum structure of an Incident Management Group (IMG), to co-ordinate actions to monitor the impact of the odours and the action to reduce their incidence. In June 2021 multi-agency working was escalated to a Strategic Co-ordinating Group (SCG) due to the length of time that the odour problem was persisting, and to afford partners a structured route into additional technical support and advice. The SCG includes within its membership a representative of the Ministry of Housing Communities, and Local Government (MHCLG).
- 2.4 Cabinet has received regular reports on the work being undertaken regarding this issue, and has commissioned a variety of work by officers which is reflected in this report.

Actions Arising from Council Meeting – 18th March

- 2.5 Arising from the Council meeting a series of letters were sent. These, and the responses received, are summarised below:
 - **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;
 - **Response** – noted that the EA should only exercise its discretion to suspend permitted activities which are linked to the risk of pollution, and that in this case they did not

believe that the acceptance of fresh waste was the cause of the odour. The response further stated that the EA are “content that our current permit conditions are suitable and enforceable..”

- **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;
 - **Response** – summarised the EA’s work at that time regarding the landfill, and directed the Council to the EA’s complaints process;
- **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”;
 - These requests have superseded by the acceleration of inter-agency working through the IMG and now the SCG in which both PHE and the CCG are fully involved. Work regarding health surveillance has been progressed to include:
 - i. Syndromic Monitoring, through which presentations to GPs, A&E, 111 services, etc are monitored to identify differential trends;
 - ii. Research commissioned from Keele University to identify health trends which can be linked to the odours;
 - iii. Launch of an online Symptom Tracker by SCC to allow residents to report health impacts;
 - iv. Review of Air Quality data by PHE to identify and report any health risks arising (see para 2.7 and onwards below);
- **Staffordshire County Council and Stoke on Trent City Council**, seeking their support in making similar requests to both the Environment Agency and DEFRA.
 - **Response** – Both organisations have offered their support and are actively involved in the SCG;
- In addition, there has been communication with the Prime Minister, and an adjournment debate in Parliament on the matter.

Actions Arising from the Scrutiny Review

2.6 At its meeting on 18th March, Council received the scrutiny report which 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:

Recommendation 1: Undertake a review and appraisal of EA monitoring data and work with the EA for any future monitoring;

2.7 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.

2.8 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.

2.9 Subsequently, the EA, SCC, and this Council have jointly funded an extension to the air quality monitoring, with four static units being in operation. 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. The data from these units is routinely assessed by PHE against World Health Organisation thresholds for annoyance and health impacts, with both the data and their assessments published. This information is summarised in the tables below:

Annoyance Levels

2.10 Hydrogen sulphide concentrations were above the World Health Organization's (WHO) odour annoyance guideline level (7 µg/m³, 30-minute average) for the following percentages of each week:

Location	19/4 – 25/4	26/4- 2/5	3//5 – 9/5	10/5- 16/5	17/5- 23/5	24/5 – 30/5	31/5 – 6/6	7/6 – 13/6	14/6 – 20/6	21/6 – 27/6	28/6 – 4/7	5/7- 11/7
MMF1 - Silverdale Cemetery	18%	4%	6%	15%	1%	7%	30%	1%	11%	2%	1%	5%
MMF2 - Silverdale Road	8%	10%	21%	20%	9%	15%	1%	10%	7%	1%	8%	18%
MMF6 - NuL Fire Station	4%	13%	6%	1%	10%	16%	6%	10%	9%	4%	8%	3%
MMF9 - Galingale View	21%	35%	48%	10%	53%	47%	18%	19%	13%	12%	10%	17%

Health Impact Level

2.11 The data provided to Public Health England (PHE), by the Environment Agency (EA) have been compared to available health-based air quality guidelines and standards or assessment levels for hydrogen sulphide, particulate matter, nitrogen dioxide, and methane. Where the concentrations in air are shown to be lower than appropriate health based standards or guidelines, it may be assessed that the risk to health is minimal. The 24-hour average guideline value for hydrogen sulphide (150µg/m³) was exceeded at one monitoring station on two days during the monitoring period: 7 & 8 March 2021, the highest of which was 202 µg/m³.

2.12 Exposure to concentrations of hydrogen sulphide above the WHO 24-hour guideline value does not necessarily mean eye irritation or other health effects will occur, but it reduces the margin of safety that is considered desirable to protect health. It is important however, to note public concerns in relation to odours. The human nose is very sensitive to odours, and substances that are perceived as odorous are commonly present at levels below which there is a direct toxicological effect. Odours can cause nuisance amongst the population possibly leading

to stress and anxiety. Some people may experience symptoms such as nausea, headaches or dizziness, as a response to odours even when the substances that cause those smells are themselves not harmful to physical health.

2.13 From this data analysed by PHE it is apparent that there are periods when the concentrations of Hydrogen Sulphide are at levels that “annoyance” will be caused, there has only been two days when the levels were above the level which might give rise to health impacts. However, given the length of time that the hydrogen sulphide concentrations have been elevated in the community, PHE have become concerned at the potential cumulative effect of long term exposure should this issue persist. Within the Strategic Co-ordinating Group, a group has been established to provide ongoing expert advice on this matter.

2.14 Whilst the periods when the annoyance level has been in exceedance has reduced overall, the levels create the potential for significant odour complaints to occur, a potential which is borne out by experience, which high levels of complaints continuing.

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

2.15 In addition to joining with the EA on the provision of static air quality monitors, it has also deployed Jerome hand held air quality monitoring devices to be used both by Environmental Health Officers undertaking home visits, and to leave in properties for extended periods to monitor levels of H₂S.

2.16 These monitors have helped officers to develop a picture of H₂S concentrations and patterns of those concentrations over time as part of the effort to determine whether the odours give rise to a Statutory Nuisance, and whether an Abatement Notice should be served.

2.17 As this data was collected for purposes which may result in particular legal action, it has not yet been published on the Council’s website. The data from the four static monitoring stations, however, is routinely published.

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

2.18 At the time of the March Council meeting, the EA had not found itself in a position to categorically state that the odours come from Walleys Quarry. However, that position has now changed, and the EA have identified instances of odour off site which they have been able to directly associate with the site, and have issued a breach notice on the operator for the presence of odour off site. Additionally, EA now routinely refer to the odour as coming from Walleys Quarry as opposed “associated with” or “the vicinity of”.

2.19 Walleys Quarry Ltd have continued to dispute that the odour originates from their site, and recently published a report suggesting an alternative source. The Council has identified no credible alternate source. The Scientific & Technical Advisory Cell (STAC) established under the LRF is analysis the report provided by Walleys Quarry ltd.

2.20 The odour arises from gas escaping from the site. In terms of the method of controlling the odour, the EA are following a strategy of Contain, Capture & Destroy:

- **Contain** – through effective permanent or temporary capping of the landfill cells, in order to contain the gas within the site, and avoid “fugitive emissions” – the term given to gas issuing from the surface and flanks of the site;

- **Capture** – refers to the operation of an effective gas management system which includes a number of wells and associated infrastructure which allows the gas generated within the site to be collected and transported to the Gas Utilisation Plant.
- **Destroy** – The Gas Utilisation Plant comprises generators, which destroy the gas by burning it to generate electricity, and flares, which simply burn the gas.

2.21 This strategy is consistent with the approach advocated by the landfill expert retained by the Council to advise on the Walleys Quarry issue. The EA's work with the landfill operator, and the focus of their enforcement activity, has been to improve the Contain, Capture and Destroy regime in operation on the site. This has involved:

- Increasing the portion of the site which has either been permanently capped or subject to temporary capping. One cell has now been permanently capped, and new approaches to temporary capping are being deployed, with c70% of the site to be capped by September.
- 22 Additional gas wells are being drilled on the site, bringing the total to 77.
- Improvements to capping and gas management to date have resulted in an additional 500 cubic meters per hour (reported by EA)

2.22 Since the weekend of the 26-28th February, the EA identified multiple breaches of the landfill operator's permit.

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;

2.23 Officers have undertaken extensive work to establish whether a Statutory Nuisance exists. This has included:

- Conducted regular odour tours, both within the normal working day and out of hours, to monitor and witness odours;
- EHOs have identified and worked with specimen properties to assess odour in residents' homes;
- Deployment of Jerome hand held air quality monitors to assess H₂S concentrations inside residents' homes;
- Secured additional air quality monitoring data, through joint funding of the four stationary units operated by the EA
- Commissioned expert analysis of EA monitoring data by air quality consultants, Ricardo
- Commissioned advice on issues relating to the operation of the landfill be a landfill expert;
- Analysed impact statements provided by the community, through the Stop The Stink Cap It Off group;
- Collected statements from residents and affected bodies;
- Secured advice from Queen's Counsel's;

2.24 This work has generated a huge portfolio of data and evidence which has been analysed. Walleys Quarry Ltd have been afforded an opportunity to provide the Council with an effective action plan and acceptable timeline in place to prevent the emission of regular, persistent and offensive odours detectable beyond the site boundary, in order to avoid the need to revert to enforcement action. In response, Walleys Quarry provided a copy of their report asserting that the source of the odour lies elsewhere.

2.25 An update on this work will be provided at the Council meeting on 21st July, having been presented to Cabinet earlier the same day.

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;

2.26 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. The advice further indicated the process through which this would then be progressed.

2.27 At Cabinet's request, officers have undertaken an appraisal of how respite support might be arranged for residents particularly impacted by this problem, and have designed a scheme. This scheme is being appraised by the STAC to assess its sufficiency and suitability. In addition, financial support for such a scheme is being sought from the Government.

2.28 Within the structure of the SCG, the Chief Executive is leading a multi agency team to assess the ongoing impact of the odours in the community, and to establish a range of support interventions. This group is making use of the considerable body of evidence provided by the community regarding the impact of the odours on both their health and their everyday lives. This has come mainly from two sources, which produce broadly comparable reports of the impact:

- Health impact Survey (HI) prepared by Aaron Bell MP;
- Impact Statements (IS) collected by the Stop the Stink Cap it Off group;
- Symptom Tracker (ST) conducted by County Council

2.29 These surveys show that:

- Headache is the symptom that is consistently reported as the most common across all the surveys, although the range is wide (between 49% IS to 82% HI).
- The results for Mental Health are similar across all three surveys and accounted for just under half of all participants.
- Nausea/feeling sick was reported by over half of respondents in two of the surveys (ST and HI).
- Eye irritation and disturbed sleeping were also reported by large amounts of respondents in both the (ST and HI surveys).
- Difficulty breathing was reported by just under a third of ST respondents and just under a quarter of HI respondents.

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;

2.30 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 now routinely review monitoring data and making public the results.

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

Current Situation

2.32 Since Cabinet allocated additional resource to address this issue, and since the special Council discussed the matter, there has been significant work undertaken both by the Council and by its partners to understand the causes of the odour problems from Walleys Quarry, to establish a plan of action to address the cause, and to inform and advise the public regarding the associated risks.

2.33 Notwithstanding this, the problem of foul odours from the Walleys site continues to cause significant problems in the community, reflected in the volume of complaints which continue to be generated. The scale of the problem is such that co-ordinated action by a range of organisations continues to be required to address the issue, which has received both national media attention and been discussed at the highest levels of government.

2.34 On 21st July, Officers are taking a report to Cabinet inviting its consideration of the evidence assembled regarding Statutory Nuisance and its agreement to provide a budget to pursue an abatement notice in the event of a decision to do so. Any decision to issue an abatement notice will be taken by the Head of Environmental Services, as the appropriately qualified and authorised officer. An update on this will be reported at the Council meeting on 21st July.

3. **Proposal**

3.1 The Council is recommended to note the current position regarding the persistent foul odours from Walleys Quarry, and the work being taken to address this issue.

4. **Reasons for Proposed Solution**

4.1 To ensure that Council 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 by Council on 18th March 2021. Updates have been provided to Cabinet at its April, June, and July meetings.

13 **List of Appendices**

Report to Cabinet – 7th July 2021

14 **Background Papers**

14.1 None