

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET**

**7 July 2021**

**Report Title:** **Walleys Quarry Update Report**

**Submitted by:** Chief Executive

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

**Ward(s) affected:** All

**Purpose of the Report**

To provide Cabinet with a further update regarding ongoing work to address problem odours in the Borough associated with Walleys Quarry.

**RECOMMENDATIONS**

**Cabinet is recommended to:**

- (1) Note that a response has been received to the letter before action, served on Walleys Quarry Ltd, which was not, in the view of Officers, sufficient to address the concerns raised.**
- (2) Note that despite the works that have taken place at Walleys Quarry landfill site, a significant level of complaints continue to be received from residents of the Borough and air monitoring data continues to show odour levels in exceedance of annoyance levels.**
- (3) Agree to hold a Special Cabinet Meeting on 21<sup>st</sup> July 2021 to carefully consider all of the evidence collated to date, and receive advice on whether or not an Abatement Notice should be served, and consider the financial implications of this.**
- (4) Progress the next steps in developing a temporary respite accommodation scheme including requesting financial support for the scheme from Government.**
- (5) Note the formation of the SCG and agree that the Council continues to work with and support multi agency partner organisations in order to investigate and resolve the odour issues.**
- (6) Prepare an update report for the Full Council Meeting on 21<sup>st</sup> July 2021.**

**Reasons**

**To ensure that Cabinet are aware of the latest position regarding this high priority area of work and make arrangements to consider what next steps need to be taken.**

**1. Background**

- 1.1 Previous reports have detailed how, 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. The site is in Silverdale and is operated by Walleys Quarry Ltd which is part of the RED Industries group of companies. Addressing this issue has been a priority for the current administration, with a specific

budget of £50,000 agreed in February to enable specialist advice to be secured and targeted work to be undertaken.

- 1.2 The Environment Agency is the lead regulator for such sites, testing and enforcing compliance with the permit under which the site operates. The Council also has a role in influencing the operation and performance of such sites, where an operator fails to comply with actions required under an abatement notice issued by the Council in relation to any statutory nuisance caused by the site. Issuing an abatement notice may enable enforcement action to be taken in respect of future breaches.
- 1.3 At the last meeting of the Cabinet, a number of actions were agreed as follows:
  - (1) Note that work to date by Council officers, supported by the efforts of other agencies, has ruled out the existence of any credible source of the borough odour problem other than Walleys Quarry, and once again calls on the operator of Walleys Quarry to accept its role in this issue and work to resolve it.
  - (2) Note that a letter before action has been served on Walleys Quarry Ltd informing them of the Councils work regarding statutory nuisance and affording them the opportunity to provide to this Council any information to satisfy it that the company has an effective action plan and acceptable timeline in place to prevent the emission of regular, persistent and offensive odours detectable beyond the site boundary.
  - (3) Note that any information received from Walleys Quarry Ltd to the letter before action will be considered after the expiry of the 14 day period for response, to inform the subsequent decision on the appropriateness of the Council serving a statutory abatement notice.
  - (4) Agreed that the Council continues to work with and support multi agency partner organisations in order to investigate and resolve the odour issues.
  - (5) Welcomed the proposal put forward by Councillor Derrick Huckfield and requests officers to evaluate the approach with the Environment Agency to inform future actions.
  - (6) Request that officers prepare with Staffordshire County Council a letter to residents in affected areas highlighting the work of the two Councils
  - (7) Ask officers to investigate, in consultation with the portfolio holder, the case for establishing an emergency accommodation scheme for those with underlying health conditions in areas most affected by hydrogen sulphide emissions.
  - (8) Invite the Health, Wellbeing and Partnerships Scrutiny Committee to discuss the health issues arising from the gas odours from Walleys Quarry.
- 1.4 This report summarises both the latest position following a detailed report at your last meeting regarding the odours, action to regulate the Walleys Quarry site, and the actions being taken by the Council.

## 2. **Issues**

- 2.1 Since the incident on the 26-28 February, and the subsequent Council debate, there continues to be 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 continue to 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 in a number of key areas, as summarised in the last report.

## **Complaints**

2.2 Complaints of foul odours escaping from the site continue to be made by residents to both the Council and the Environment Agency. Table 1 below shows complaints made since January 2021, reflecting the major spike in complaints at the end of February 2021.

In the first 6 months of 2021 the Council has received a total of 17,638 complaints, and the Environment Agency 29,712. The Council routinely shares anonymised complaints with the landfill operator so that they can be aware of and address community concerns. In some cases the same complaint will have been submitted to both the Environment Agency and the Borough Council.

Crucially, whilst complaint levels appear to have decreased, they continue at a level which indicates that the issue with odours escaping the site have not abated and continue to have a negative impact on residents.

Complaints To	January 2021	February 2021	March 2021	April 2021	May 2021	June 2021 To date	Total Year to Date
Council*	921	3,263	4,799	3,316	3,466	1,873	17,638
Environment Agency	2,050	4,098	6,347	6,181	8,482	2,554	29,712

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

### Update Council Activity in relation to the Odour Problems

2.3 At the last meeting it was reported that a Letter before Action had been served on the operator, Walleys Quarry Ltd to give the company the opportunity to provide to this Council any information to satisfy it that the company has an effective action plan and acceptable timeline in place to prevent the emission of regular, persistent and offensive odours detectable beyond the site boundary.

Cabinet noted that any information received from Walleys Quarry Ltd to the letter before action would be considered after the expiry of the 14 day period for response, to inform the subsequent decision on the appropriateness of the Council serving a statutory abatement notice.

A response to the Council's letter has been received from Walleys Quarry Ltd. Whilst the Officer's view at this stage is that its content was not sufficient to address the concerns put to Walleys Quarry Ltd, it will be considered alongside the full range of information and evidence that is currently being prepared to establish whether there is a case for an Abatement Notice to be served.

2.4 In terms of progress made against the actions agreed at your last meeting, this is set out below:

- That the Council continues to work with and support multi agency partner organisations in order to investigate and resolve the odour issues.

The Council continues to be engaged in a multi-agency effort to secure co-ordinated action to address the issues related to Walleys Quarry. This work has involved colleagues from Environment Agency, Staffordshire County Council, Public Health England and the Clinical Commissioning Group.

A review of this work has been completed and in recognition that the issue has not yet been resolved, as well as the additional wider support and funding that may be required, a decision was made to move to a Strategic Co-ordinating Group structure to co-ordinate the partnership response to the ongoing incident.

- Welcome the proposal put forward by Councillor Derrick Huckfield and requests officers to evaluate the approach with the Environment Agency to inform future actions.

The proposal put forward by Cllr Huckfield has been evaluated and consists of steps to close the site, manage the gas and leachate removal infrastructure, manage dust and restore the site. With the exception of site closure, the effective management of gas, leachate and dust from the site are actions that sit with the EA are in their role of principle regulator.

The Environment Agency has also been engaged in respect to these proposals which also includes the question of the potential impact of a geological fault, which is in the vicinity of the landfill. A response from the EA is expected in respect of that latter point.

- Request that officers prepare with Staffordshire County Council a letter to residents in affected areas highlighting the work of the two Councils

Following the updating of health advice regarding the situation with Walleys Quarry, a multi-agency news release was produced highlighting the changed advice and the community engagement event arranged where the work of all agencies could be highlighted.

- Ask officers to investigate, in consultation with the portfolio holder, the case for establishing an emergency accommodation scheme for those with underlying health conditions in areas most affected by hydrogen sulphide emissions.

Investigations into options for the provision of temporary respite accommodation have been undertaken and a proposal prepared that would allow eligible residents to make use of a respite accommodation scheme. If implemented, the scheme envisages:

- Scheme open to any Newcastle-under-Lyme resident, and any family members with whom they live, whose GP confirms they have a health condition which is being adversely impacted by the odours from Walleys Quarry to the extent that short term respite is required;
- Respite for 1 two day break in any 6 month period;
- Respite accommodation to be in Staffordshire, to support local economy;
- Respite accommodation to be either 2-3 Star on Dinner, Bed, and Breakfast basis OR 2-3 Star Self Catered;
- Scheme to run for one year.

The case for respite accommodation is well understood in the arena of social care in providing positive impacts on mental health and personal resilience, and a scheme used by Highways England to provide relief for householders adjacent to certain major highways works is being researched to establish whether it provides a useful precedent.

The costs of the scheme which has been outlined is significant and for that reason it is proposed to seek urgent financial support from the Government to allow the scheme to be delivered.

- Invite the Health, Wellbeing and Partnerships Scrutiny Committee to discuss the health issues arising from the gas odours from Walleys Quarry.

Arrangements are being finalised for a joint scrutiny to be undertaken by the relevant Members from Staffordshire County Council and Newcastle-under-Lyme Borough Council to be held in Newcastle. It is envisaged that representatives from Staffordshire County Council Public Health, Public Health England and the local Clinical Commissioning Group will be in attendance.

### **3. Air Quality Monitoring**

- 3.1 The Council, Staffordshire County Council, and the Environment Agency are jointly funding a campaign of air quality monitoring which will run until August utilising four static air monitoring stations. Data from these stations is reviewed to provide information in relation to two standards relating to Hydrogen Sulphide (H<sub>2</sub>S) – the WHO Health threshold and the WHO annoyance threshold, with this analysis published by stakeholders.
- 3.2 Hydrogen sulphide concentrations were above the World Health Organization's odour annoyance guideline level (7 µg/m<sup>3</sup>, 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
MMF1 - Silverdale Cemetery	18%	4%	6%	15%	1%	7%	30%	1%	11%	2%	
MMF2 - Silverdale Road	8%	10%	21%	20%	9%	15%	1%	10%	7%	1%	
MMF6 - NuL Fire Station	4%	13%	6%	1%	10%	16%	6%	10%	9%	4%	
MMF9 - Galingale View	21%	35%	48%	10%	53%	47%	18%	19%	13%	12%	

- 3.3 From this data it is apparent that whilst the periods when the annoyance level has been in exceedance has reduced overall, there remained potential for significant odour complaints to occur over these periods, with the Galingale View area remaining the most significantly impacted.

Although the EA has ensured the operator has undertaken significant improvements to gas capture, capping and leachate management, It is considered premature to view the reductions in gas detected at the monitoring stations as a permanent reduction in gas escaping from the landfill. There may be seasonal atmospheric factors in play that reduce the detection of H<sub>2</sub>S gas at this time of year. Further measures such as on site gas emission testing will be necessary to determine whether there has been a significant reduction of gas escaping the landfill.

### Odour Nuisance Investigations

- 4.1 The Council's environmental health officers have been following up complaints to establish whether a statutory odour nuisance exists under the provisions of section 79 of the Environmental Protection Act 1990.

Work is now focusing on the collation and assessment of a range of potential evidence sources that will be used to consider whether a Statutory Abatement Notice should be served on Walleys Quarry Ltd. before the end of July.

## 5. Environment Agency Enforcement Action

- 5.1 The Environment Agency are engaged in a programme of compliance checking and enforcement activity relating to the Walleys Quarry site, with the priority objective of addressing the odour issues associated with the site experienced by the community.

## 5.2 Actions Required by the Environment Agency (EA) of Walleys Quarry Ltd

Since your last meeting, the EA have issued further updates on regulatory and enforcement action:

- EA 24<sup>th</sup> June update: *We have held a meeting with the operator to discuss gas management on the site and have agreed an action plan to improve gas containment and collection to further reduce odour. An additional 500 cubic metres per hour of landfill gas is now being collected and managed by the gas plant since February following the works which have been completed on site. This included additional capping, the installation of additional gas extraction wells and better sealing of the gas wells. Further capping on the flanks of the landfill is expected to commence mid-July.*

*We have recently installed continuous water quality monitors downstream of the landfill and are also in the process of installing an additional monitor upstream of the site. The monitors will allow us to obtain live data on some key water quality parameters remotely. We know this has been a local concern and will allow us to monitor water quality in the local area continuously. Currently the landfill is not discharging to the local watercourse.*

- EA 17<sup>th</sup> June update: *We have assessed monitoring data submitted by the operator for Quarter 1. As part of this process we have recorded three minor breaches. These include:*

*Breaches of the permitted limits for leachate levels within the landfill. The company submitted an application in July 2020 to increase their permitted leachate level limits. We are currently considering their application.*

*The methane limit was exceeded at two boreholes. This was a minor exceedance of the limit which is 1%. The recorded level was 1.8%. Additional monitoring has been instigated to monitor this.*

*The company failed to monitor all the leachate points as required by their permit and one groundwater point which was reported as blocked. In response to these breaches we have issued the company with a compliance assessment report (CAR) that details action that they need to take by 25<sup>th</sup> June 2021.*

- EA 10<sup>th</sup> June update: *WLQ are continuing to work on the necessary actions from the Environment Agency's recent compliance assessment reports. As a result the operator has identified areas suitable for additional sealing works to reduce the odour. This will see a further 17,200m<sup>2</sup> of uncapped areas sealed. Additional sealing would help to reduce the odour by ensuring it doesn't escape and instead is captured by the gas wells.*

- EA 1<sup>ST</sup> July update: *Walleys Quarry Limited is currently working to deliver the actions we've instructed them to carry out to manage the odour and landfill gas originating from the site. This includes:*

*An action plan to improve the gas management and gas collection. This will see a further 22 gas collection wells drilled across the site over the coming months bringing the total to 77 gas wells.*

*Activity to cap the steep flanks of the landfill. This means nearly 70% of the site will be permanently or temporarily capped. Capping is important as landfill gas from the site needs to be better 'contained' on the site, rather than escaping off the site. Once contained, it can be processed and destroyed through the gas management system.*

- *Walleys Quarry Limited raised concerns about a potential other source of hydrogen sulphide on the 25 March. Following that, the Environment Agency, along with the Coal Authority and Severn Trent Water investigated the issue and found no evidence of another source. On the 22 June we received a further, more detailed report from the operator on other potential sources of hydrogen sulphide in the vicinity of the landfill. We welcome this report from Walleys Quarry Limited and will now consider its findings.*
- *In March, we instructed the operator to permanently cap cell one and temporarily cap cell two, install further gas wells and better seal existing gas wells. This work now means an additional 500 cubic metres per hour of landfill gas is collected and managed, on top of the levels already being managed on the site. Previously this landfill gas may have been escaping off the site.*
- *The Environment Agency has deployed significant resources to monitor emissions in the air around Walleys Quarry. Our 4 mobile monitoring facilities (MMFs) monitor for hydrogen sulphide and other chemicals including benzene, toluene, ethylbenzene and xylene (BTEX). These are some of the most commonly produced chemicals in the world and are seen at low levels almost everywhere in the country. Our raw monitoring data has so far shown low levels of BTEX, in the vicinity of the Walleys Quarry. We have agreed with our partners to produce the full BTEX data set in the final report at the end of the monitoring exercise.*

The current focus of the remedial work being required by the Environment Agency remains consistent with the issues identified by the Council's own advisors as being necessary to bring the odour problems under control.

## 6. Health Surveillance

- 6.1 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 was exceeded at MMF9 on two days during the monitoring period: 7 and 8 March 2021, the highest of which was 202  $\mu\text{g}/\text{m}^3$ . 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.

The current hydrogen sulphide data up to the end of May shows continuing exposure to the population around the site, although any risk to long-term physical health is likely to be small. However, we would stress that we cannot completely exclude a risk to health from pollutants in the area, especially if exposure continues at these levels. Short-term health effects may be experienced such as irritation to the eyes, nose and throat. People who have health conditions that affect breathing, such as asthma, may experience increased frequency and/or severity of symptoms.

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.

Staffordshire County Council are maintaining an online “Symptom Tracker” to enable residents to log any health impacts which they are experiencing, and work is ongoing with Keele University to review existing health data to identify whether there are any identifiable changes in GP or other medical presentations which correlate to the impact of the landfill operation.

## **7. Proposal**

### **7.1 That Cabinet:**

- (1) Note that a response has been received to the letter before action, served on Walleys Quarry Ltd, which was not, in the view of Officers, sufficient to address the concerns raised.
- (2) Note that despite the works that have taken place at Walleys Quarry landfill site, a significant level of complaints continue to be received from residents of the Borough and air monitoring data continues to show odour levels in exceedance of annoyance levels.
- (3) Agrees to hold a Special Cabinet Meeting on 21<sup>st</sup> July 2021 to carefully consider all of the evidence collated to date, and receive advice on whether or not an Abatement Notice should be served, and consider the financial implications of this.
- (4) Progress the next steps in developing a temporary respite accommodation scheme including requesting financial support for the scheme from Government.
- (5) Note the formation of the SCG and agree that the Council continues to work with and support multi agency partner organisations in order to investigate and resolve the odour issues.
- (6) Prepare an update report for the Full Council Meeting on 21<sup>st</sup> July 2021.

## **8. Reasons for Proposed Solution**

- 8.1 To ensure that Cabinet are aware of the latest position regarding this high priority area of work and make arrangements to consider what next steps need to be taken.

## **9. Options Considered**

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

## **10. Legal and Statutory Implications**

- 10.1 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
- The Environmental Protection Act 1990, section 79 sets out the law in relation to statutory nuisance. This is the principal piece of legislation covering the Council’s duties and responsibilities in respect of issues relating to odour nuisance.
  - The relevant part of Section 79 defines a statutory nuisance as any smell or other effluvia arising on industrial, trade or business premises which is prejudicial to health of a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether or not a statutory nuisance exists.
  - Where a statutory nuisance is identified or considered likely to arise or recur, section 80 of the Act requires that an abatement notice is served on those responsible for the nuisance.



The abatement notice can either prohibit or restrict the nuisance and may require works to be undertaken by a specified date(s).

- There is a right of appeal against any abatement notice issued on a number of grounds, one of which is that the site operator is using “best available techniques” to prevent the odours complained of. Compliance with the Environmental Permit issues by the Environment Agency, and any actions required by the Environment Agency will often be sufficient to demonstrate that an operator is using “best available techniques” and that can result in an abatement notice being quashed on appeal.
- The appeal process represents a significant resource commitment for the council in both time and expense, so it is important for the Council to be content that it stands a reasonable prospect of defending an appeal against any abatement notice that it issues.
- If the council succeeds in securing an abatement notice following any appeal process, it is then a criminal offence to breach the terms of the abatement notice. Because the site is regulated by the Environment Agency under an Environmental Permit, the council would need to obtain the consent of the Secretary of State before it is able to prosecute any offence of breaching an abatement notice.

## 11. Equality Impact Assessment

- 11.1 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.

## 12. Financial and Resource Implications

- 12.1 None directly arising from this report, however the adoption of a temporary respite accommodation scheme has significant financial implications, in the range of £525k – £1.03m dependant on take-up, which is currently unaffordable if the Council were required to fund the costs itself. For that reason it is proposed to seek urgent financial support from the Government to allow the scheme to be delivered

## 13. Major Risks

- 13.1 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. It needs to balance that risk against the risk of issuing an abatement notice in circumstances where it does not stand a reasonable prospect of succeeding in any appeal against any notice that it issues.
- These risks are best abated by the Council continuing to work alongside its partner agencies to shape action taken by the Environment Agency as the primary regulator of the site and to encourage all partners to play active roles in addressing this issue.

## 14. Unsustainable Development Goals (UNSDG)





## 15. Key Decision Information

15.1 This is not a Key Decision.

## 16. Earlier Cabinet/Committee Resolutions

16.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and most recently, Cabinet on 21<sup>st</sup> April 2021 and 9<sup>th</sup> June 2021.

## 17. List of Appendices

None