

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO FULL COUNCIL

21st July 2021

Walleys Quarry – Update on Problem Odours in the Borough

Addendum

Introduction

1. Item 5 on the Full Council agenda for 21st July is a report on Walleys Quarry and the associated odour problems. This addendum is to update members on decisions taken by Cabinet at its meeting on 21st July.

Cabinet Consideration of Odour Issues

2. Cabinet considered a two part report by the Chief Executive updating on the work being undertaken to assess whether the odours from Walleys Quarry amount to a Statutory Nuisance, and should therefore trigger the serving of an Abatement Notice. Part 1 of that report is a publically available report which summarised the various strands of evidence collected to date, and is appended to this addendum. Part 2 of the report (available to Councillors on request to the Chief Executive) is a confidential appendix which provided the advice of Officers in respect Statutory Nuisance relating to Walleys Quarry Ltd and any other interested parties, in terms of:
 - Evidence collated to date – across complaint data, air quality monitoring, community impact, assessments by Environmental Health Officers, measurements by handheld air quality monitoring equipment, potential alternative sources of the odour, and the conclusions of experts advising the Council.
 - Financial implications, detailing the scale of resource required to enable any Abatement Notice to be taken through any appeal process.
 - Legal process involved, summarising the steps in the process to be followed and the potential timescales involved in those processes.
 - Risks associated with the decisions recommended to Cabinet.
3. The decision regarding Statutory Nuisance and the serving of Abatement Notices is not a matter for Cabinet – rather it is a decision which is taken by the Head of Environmental Health Services as the appropriately qualified officer.
4. Having received and considered the officer advice, Cabinet resolved to:

Approve an initial reserve of £1,000,000 to meet the costs associated with taking formal action (in the event of a decision to do so) and authorise the Executive Director- Operational Services in consultation with the Leader of the Council, to call on this reserve, to meet the potential cost associated with serving and progressing any notices served.

5. This decision means that officers are now able to progress with taking enforcement action as and when required in relation to this matter.
6. The Head of Environmental Health Services has concluded that the odours do amount to a Statutory Nuisance. The Council has retained the services of a leading environmental QC to advise on the next steps and to ensure that any actions now taken are properly executed. This will involve ensuring that full consideration is given to the range of parties that an abatement notice should be served on, which could include contractors operating on site and companies within the same group as Walleys Quarry limited. Care also needs to be taken to ensure that any notices are precisely drafted so as to ensure that they survive any appeal process.

Legal Process

7. Where a statutory nuisance is identified or considered likely to occur or recur, section 80 of the Environmental Protection Act 1990 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).
8. There is a right of appeal against any abatement notice issued on a number of grounds, and the appeal process represents a significant resource commitment for the council in both time and expense. Any appeal would be heard in the Magistrates Court.
9. If the council succeeds in securing an abatement notice following any appeal process, it would be at this stage (should it arise) that the Council could seek to prosecute for breaching the abatement notice. However, as 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 was able to prosecute any offence of breaching an abatement notice. It is a criminal offence to breach the terms of the abatement notice.

Community Support

10. In addition to the issues addressed at Cabinet on 21st, the Leader of the Council has written to the Secretary of State for Environment, Food and Rural Affairs, Mr George Eustice MP regarding the provision of respite accommodation for residents most impacted by the ongoing odours. The Leader's letter, and proposal regarding respite accommodation is appended to this addendum