

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

8 September 2021

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

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

Ward(s) affected: All

Purpose of the Report

To advise Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Cabinet is recommended to note:

- that despite the further 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;
- that officers have served an Abatement Notice on Walleys Quarry Ltd in relation to the Statutory Nuisance caused by the site;
- that an appeal against the Abatement Notice has been lodged in the Magistrates' Court;
- the ongoing work to address the issues being experienced by residents and businesses.

Reasons

To ensure Cabinet are kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry.

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 Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd, part of the RED Industries group of companies. Addressing this issue has been a priority for the current administration, with a budget 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.

1.3 Funding allocated by Cabinet to research the case around Statutory Nuisance has been expended as follows:

- Specialist landfill and air quality consultancy advice: £26,895
- Legal, Financial and Counsels advice: £18,150
- Equipment hire and purchase: £6,022

2. Statutory Nuisance

2.1 Cabinet allocated a budget of £50,000 to enable officers to undertake the necessary investigations to establish whether the issues of odours from Walleys Quarry amounted to a Statutory Nuisance, requiring the Council to serve an Abatement notice. Following extensive work, officers determined that the odours from the Walleys Quarry site amount to a Statutory Nuisance and, on 13th August 2021, serviced an Abatement Notice on Walleys Quarry Ltd. The Abatement Notice is attached at Appendix 1 of this report. To provide members with clarity over aspects of the Notice, officers advise that:

- The Notice gives Walleys Quarry Ltd a period of 5 months to abate the nuisance. This timeframe was arrived at having discussed the nature and extent of potential works required at the site with colleagues from the Environment Agency and with our own landfill expert. The timeframe for abatement needs to be a credible one in terms of deliverability, hence the notice not requiring instantaneous abatement; it recognises that works will need to be undertaken on site, and allows a reasonable period of time for that to happen.
- The map appended to the Abatement Notice sets out the geography within which the nuisance needs to be abated. This geography has been arrived at through analysis of evidence and also reflects the fact that the actions required to secure abatement within this geography will equally deliver abatement of any nuisance further from the site;
- The operator has the opportunity to appeal the Abatement Notice within a period of 21 days from service of the notice on a number of prescribed grounds.

2.2 On 2 September 2021, Walleys Quarry Ltd lodged an appeal against the Abatement Notice with the Magistrates Court. The appeal is on a wide number of grounds, but does not raise any points that the Council was not anticipating, and in respect of which thorough work was carried out prior to making a decision about whether or not an Abatement Notice should be served.

2.3 The next stage in the process will be for the court to arrange a case management conference to evaluate how long is likely to be required to hear the case, set a date for the hearing and then make an order dealing with things like disclosing and filing documents and witness statements, which must happen before any hearing can take place. There will also be a very strong expectation of the court that the parties enter into a mediation process outside of the court proceedings which can be a swift and cost effective alternative to litigation. Solutions reached through mediation are binding, and court proceedings can be continued in the event that the mediation process is not successful.

3. Complaint Data

3.1 In the first 8 months of 2021, the Council has received a total of 20,082 complaints, and the Environment Agency 38,126.

Complaints 2021	Jan	Feb	March	April	May	June	July	Aug	Total Year to date

Council	921	3263	4799	3316	3466	1880	1648	833	20,126
Environment Agency	2050	4098	6347	6181	8482	4444	4245	2329	38,126

3.2 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. This incident remains, by some margin, the largest source of complaints received on any matter by the Council.

4. Air Quality Monitoring Stations

4.1 The Council, Staffordshire County Council, and the Environment Agency are jointly funding a campaign of air quality monitoring which has been extended to run until March 202 utilising four static air monitoring stations. Data from these stations is reviewed to provide information in relation to two standards relating to Hydrogen Sulphide (H₂S) – the WHO Health threshold and the WHO annoyance threshold, with this analysis published by stakeholders.

4.2 Hydrogen sulphide concentrations were above the World Health Organization's odour annoyance guideline level (7 µg/m³, 30-minute average) over the last 18 weeks 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	12/7 - 18/7
	%	%	%	%	%	%	%	%	%	%	%	%	%
MMF1 - Silverdale Cemetery	18	4	6	15	1	7	30	1	11	2	1	5	0.4
MMF2 - Silverdale Road	8	10	21	20	9	15	1	10	7	1	8	18	2.4
MMF6 - NuL Fire Station	4	13	6	1	10	16	6	10	9	4	8	3	2.1
MMF9 - Galingale View	21	35	48	10	53	47	18	19	13	12	10	17	23

Location	19/7 - 26/7	27/7 -1/8	2/8- 8/8	9/8- 15/8	16/8 - 22/8	23/8 - 29/8
	%	%	%	%	%	%
MMF1 - Silverdale Cemetery	3.6	1.8	1	0.3	1	0
MMF2 - Silverdale Road	0	1.5	4	7	1	0
MMF6 - NuL Fire Station	3.6	11	5	3	4	1.5
MMF9 - Galingale View	16	26	10	6	6	17

- 4.3 From this data it appears that whilst the odour issue persists, the frequency of incidences when the WHO annoyance threshold is exceeded appears to be reducing, albeit less so at the Galingale View monitoring site than at the others. This will not necessarily equate with the lived experience of residents who may well continue to smell the gas at levels below the WHO annoyance threshold.
- 4.4 Although the EA has required the operator to undertake significant improvements to gas capture, containment and destruction, as well as 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 land fill as there may be seasonal atmospheric factors in play that reduce the detection of H₂S 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.

5. Jerome (Hydrogen Sulphide (H₂S) monitoring equipment)

- 5.1 In order to ensure that the Council and its partners have current information about the incidence of H₂S related odours inside their properties, the Council has procured two Jerome hand held monitoring devices. These will be deployed in selected residents' homes or local businesses for extended periods of time as well as assisting Officers complaint investigations. The data will allow the Council and its partners to assess to any ongoing incidences of high gas levels, or, in the absence of such spikes, provide assurance to the community

6. Community Tensions

- 6.1 In recent weeks community concern regarding the odours from Walleys Quarry has manifested itself in a mix of planned and spontaneous demonstrations at the Walleys Quarry site. Arising from these demonstrations, the police have made four arrests relating to obstruction of the highway or obstruction of business.

7. Sources of Odour

- 7.1 A review of alternative possible local sources of odour has been undertaken and to date no credible alternate source has been identified.

8. **Proposal**

Cabinet is recommended to note:

- a. that despite the further 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;
- b. that officers have served an Abatement Notice on Walleys Quarry Ltd in relation to the Statutory Nuisance caused by the site;
- c. that an appeal against the Abatement Notice has been lodged in the Magistrates' Court;
- d. the ongoing work to address the issues being experienced by residents and businesses.

9. **Reasons for Proposed Solution**

- 9.1 To ensure Cabinet are kept updated of the ongoing work to address the issues associated with the odours from Walleys Quarry.

10. **Options Considered**

- 10.1 To provide regular updates to Cabinet

11. **Legal and Statutory Implications**

- 11.1 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 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 Environment 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.

12. Equality Impact Assessment

12.1 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.

13. Financial and Resource Implications

13.1 There are none directly arising from this report.

13.2 Funding allocated by Cabinet to research the case around Statutory Nuisance has been expended as follows:

- Specialist landfill and air quality consultancy advice: £26,895
- Legal, Financial and Counsels advice: £18,150
- Equipment hire and purchase: £6,022

14. Major Risks

14.1 There are no risks beyond those explored in previous reports.

15. Unsustainable Development Goals (UNSDG)



16. Key Decision Information

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

17. Earlier Cabinet/Committee Resolutions

17.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021 and 7th July 2021 and 21st July.

18. List of Appendices

1. Abatement Notice