

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

3 November 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.

RECOMMENDATION

Cabinet is recommended to note the contents of this update report.

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 from the Walleys Quarry Landfill Site in Silverdale operated by Walleys Quarry Ltd, part of the RED Industries group of companies.
- 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.

2. Statutory Nuisance

- 2.1 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.
- 2.2 As previously reported, the Abatement Notice gives Walleys Quarry Ltd a period of 5 months to abate the nuisance, with this timeframe being informed by discussion on the nature and extent of potential works required at the site with colleagues from the Environment Agency and with our own landfill expert.
- 2.3 On 2 September 2021, Walleys Quarry Ltd lodged an appeal against the Abatement Notice with the Magistrates Court. This has the effect of “stopping the clock” on the 5 month timeframe to abate the nuisance. The timeframe for abating the nuisance will now be set by the Court, assuming that the appeal is not upheld.

- 2.4 The next stage in the process will be for a case management conference to be held at the court 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. This hearing will take place on 3rd November 2021.

3. Complaint Data

- 3.1 In the first 9 months of 2021, the Council has received a total of 20,756 complaints:

	Jan	Feb	March	April	May	June	July	Aug	Sep	Year to date
Council	921	3263	4799	3316	3466	1880	1648	833	630	20,756
EA	2050	4098	6347	6181	8482	4444	4245	2329	2328	40,504

- 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. Data for October will be reported at the meeting as this is available at time of writing.

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 2022 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	30/8-5/9	6/9-12/9	13/9-19/9	20/9-26/9	27/9-3/10	4/10-10/10	11/10-17/10
	%	%	%	%	%	%	%	%	%	%	%	%	%
MMF1 - Silverdale Cemetery	3.6	1.8	1	0.3	1	0	0	0	0	3	0	0	0
MMF2 - Silverdale Road	0	1.5	4	7	1	0	0	1	0.6	2	0	0	0.5
MMF6 - NuL Fire Station	3.6	11	5	3	4	1.5	0.3	13	7.3	6	0	0.3	1.5
MMF9 - Galingale View	16	26	10	6	6	17	2.1	18	11.7	11	0.3	5	9

- 4.3 From this data it appears that 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 The Environment Agency continue to work with the operator to improve the infrastructure on site with a view to reducing gas emissions and as a consequence, odours off site. The application of Posi-shell has now been completed and as a consequence approximately 70% of the surface area has been either temporarily or permanently capped. This should reduce fugitive emissions.
- 4.5 Additionally, work is ongoing to increase the number of gas wells on the site, in order to collect for destruction more of the gas generated within the site. Gas wells are being created at a rate of roughly 1 per day, this work is expected to be completed by the end of October.

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 are 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. Proposal

- 6.1 Cabinet is recommended to note the contents of this update report.

7. Reasons for Proposed Solution

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

8. Options Considered

8.1 To provide regular updates to Cabinet

9. Legal and Statutory Implications

9.1 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 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.

10. Equality Impact Assessment

10.1 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.

11. Financial and Resource Implications

11.1 There are none directly arising from this report.

12. Major Risks

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

13. Unsustainable Development Goals (UNSDG)



14. Key Decision Information

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

15. Earlier Cabinet/Committee Resolutions

15.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021, 7th July 2021, 21st July 2021 and 8th September 2021.

16. List of Appendices

16.1 None