

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO COUNCIL

17 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 update Council on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.

RECOMMENDATIONS

Council is recommended to endorse the contents of this report.

Reasons

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

1. Background

- 1.1 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. 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.
- 1.2 In March 2021, Council held an extraordinary meeting to receive the report of the Economy, Environment and Place Scrutiny Committee review into the Walleys Quarry issues, and to debate a motion demanding the immediate suspension of operations and acceptance of waste at the Walleys Quarry Landfill site.
- 1.3 In July 2021 Council received a report by the Chief Executive updating on the issues pertaining to the question of Statutory Nuisance and discussing funding requirements moving forwards.

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 The Abatement Notice afforded 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. Once abated, the Notice requires Walleys Quarry to take steps to prevent the nuisance from reoccurring.

- 2.3 On 2nd 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 On 3rd November, representatives for the Council and Walleys Quarry Ltd attended a case management hearing at Newcastle Magistrates Court. This hearing dealt with the administration of the appeal, setting out a timetable leading up to a trial of the issues in June 2022. The timetable, which allows for assembly and exchange of key documents and consideration of key documents by each party’s expert advisors, is as follows:
- 12 January 2022 – Exchange of Documents
 - 9 February 2022 – Exchange witness statements of all witnesses of fact
 - 9 March 2022 - The parties mutually serve reports setting out the substance of any expert evidence
 - 30 March 2022 - The parties shall, if so advised, file expert reports by way of rebuttal
 - 20 April 2022 – Following discussion between experts, submit to court joint Statement of Issues identifying those on which they agree and disagree, together with a summary of their reasons.
 - 27 April 2022 - The parties to serve upon each other and the Court a letter indicating which witness statements (if any) are agreed
 - 13 May 2022 - Pre-Trial Review, to take stock and make final arrangements for trial
 - 6 June 2022 – 4-week Trial begins

Mediation

- 2.5 Alongside the legal process, in an attempt to secure speedy resolution of disputes at reduced cost, the court system encourages and expects parties to engage in mediation which, if successful, should result in an enforceable agreement that will resolve the issues much sooner than if the matter were to proceed to Trial, at a lower cost to the Council Tax payer. It would enable the authority and experts to sit down with Walleys Quarry Limited and work through a range of issues and options in detail to arrive at a very specific set of measures, outcomes and sanctions. The Council has written to Walleys Quarry Limited to confirm whether they are willing to enter into a mediation process
- 2.6 If a mediated settlement cannot be secured, the Council would then continue to pursue the Abatement Notice route. If Walleys Quarry then breach the Abatement Notice, the council would need both evidence of the breach and permission from the Secretary of State to bring a prosecution, which can be a long and difficult process.

3. Complaint Data

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

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Year to date
Council	921	3263	4799	3316	3466	1880	1648	833	630	190	20,946
EA	2050	4098	6347	6181	8482	4444	4245	2329	2328	842	41,346

- 3.1 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 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	MMF1 - Silverdale Cemetery (%)	MMF2 - Silverdale Road (%)	MMF6 - NuL Fire Station (%)	MMF9 - Galingale View (%)
19/4 – 25/4	18	8	4	21
26/4 – 2/5	4	10	13	35
3/5 – 9/5	6	21	6	48
10/5 – 16/5	15	20	1	10
17/5 – 23/5	1	9	10	53
24/5 – 30/5	7	15	16	47
31/5 – 6/6	30	1	6	18
7/6 – 13/6	1	10	10	19
14/6 – 20/6	11	7	9	13
21/6 – 27/6	2	1	4	12
28/6 – 4/7	1	8	8	10
5/7 – 11/7	5	18	3	17
12/7 – 18/7	0.4	2.4	2.1	23
19/7 – 26/7	3.6	0	3.6	16
27/7 – 1/8	1.8	1.5	11	26
2/8 – 8/8	1	4	5	10
9/8 – 15/8	0.3	7	3	6
16/8 – 22/8	1	1	4	6
23/8 – 29/8	0	0	1.5	17
30/8-5/9	0	0	0.3	2.1
6/9 -12/9	0	1	13	18
13/9 – 19/9	0	0.6	7.3	11.7
20/9- 26/9	3	2	6	11
27/9-3/10	0	0	0	0.3
4/10 – 10/10	0	0	0.3	5
11/10 – 17/10	0	0.5	1.5	9
18/10-24/10	0	0	0	1.5

25/10 – 31/10	0	0	0	0
1/11 – 7/11	2.9	0	3.3	13.5

- 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.

Environment Agency Enforcement

- 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 In the Environment Agency update of 4th November, the EA responded to concerns raised locally about damage to the temporary Posi-shell capping which had been damaged by vehicles being driven over the capped area. The operator informed the EA that this was necessary to access part of the site for leachate monitoring purposes and that the area has been repaired.
- 4.5 Additionally, the work to increase the number of gas wells on the site, in order to collect for destruction more of the gas generated within the site is now complete. During October, new wells were created at a rate of roughly 1 per day with an additional 28 new or replacement wells and associated infrastructure provided on site.
- 4.6 The volume of hydrogen sulphide gas captured has recently increased to double the amount collected in December 2020 and CLP, the gas management contractor, has reported that this is at a record high value for the site where they are now running both gas engines on full power at 2000KW 24/7 with two flares also in operation.

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.
- 5.2 To date the Jerome's have been typically installed for a week at each property, and have been deployed to date at 8 discrete locations downwind from the landfill site.

6. Proposal

- 6.1 Council is recommended to endorse the contents of this report.

7. Reasons for Proposed Solution

- 7.1 To ensure Council 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 Council

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 At the Cabinet meeting on 21st July 2021, and following a review of the Financial Risk Assessment, Cabinet identified a need to make available up to £1m from the General Fund Reserve to meet the costs associated with taking formal Statutory Nuisance action at Walleys Quarry landfill site. That was reported to and noted by Council on 21st July 2021.

11.2 Following the case management hearing at Newcastle Magistrates Court on 3rd November it is now expected that costs will be incurred over the coming months in relation to legal and expert advice required in order to comply with the case timetable outlined in paragraph 2.4, and to fully engage in the mediation process. The spend against both of these work streams is anticipated to be a sum not exceeding £250,000 up to 31 March 2022.

11.3 To date, and spent from funds in existing identified budgets, expenditure has been incurred totalling £130,000. This expenditure includes the following;- £49,000 staff costs, £33,000 legal advice, £48,000 external expert advice including equipment hire and support.

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 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, 8th September 2021, 13th October 2021 and 3rd November 2021..

16. List of Appendices

16.1 None