

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

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

**23 March 2022**

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

**RECOMMENDATIONS**

**Cabinet is recommended to:**

- 1. Note the contents of this update report.**
- 2. Note that the Council's complaint about the effectiveness of the regulatory response to Walleys Quarry is being escalated to the Parliamentary and Health Service Ombudsman.**

**Reasons**

**To ensure Cabinet is 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 Cabinet has received monthly updates on the issues relating to the odours, and Council has also been regularly updated.

**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 13<sup>th</sup> August 2021, served 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.
- 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 On 3<sup>rd</sup> 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.
- 2.5 A key element of the legal process is the disclosure process, through which each party provide the other with documents upon which they intend to rely during the legal proceedings. In early February the first part of this process was completed but each party are also seeking from the other additional documents and court time will now be required to determine which documents will need to be released. This has the effect of extending the timetable and it is now anticipated that the trial of the issues will take place in the autumn of 2022.
- 2.6 No agreement has been reached with Walleys Quarry Ltd to seek to resolve this matter through mediation.

### 3. Complaint Data

- 3.1 In 2021, the Council received a total of **22,239** complaints. This figure represents two thirds of the overall complaints for all the various environmental services contacts for that year. i.e in 2021, there were 33,245 contacts in total, of which Walleys Quarry complaints were 22,239 and all other environmental contacts put together were 10,803. In the same period, the Environment Agency received **43,262** complaints about Walleys Quarry.
- 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. In January and February 2022 complaints regarding odours increased alongside increases in H2S recorded at monitoring stations around the site, as shown below

<b>2022</b>	Jan 3-9	Jan 10-16	Jan 17- 23	Jan 24- 30	Feb 31/1 – 6-2	Feb 7-13	Feb 14- 20	Feb 21- 27	Feb 28- 6/3	March 7-13
Complaints to NuLBC	73	258	134	25	16	31	49	40	118	
Complaints to EA	352	1045	651	139	64	120	166	264	571	
% time above Annoyance Threshold MMF1 (Silverdale Cemetery)	1.2	14.9	6	0	0	0	0	0	2.4	

% time above Annoyance Threshold MMF2 (Silverdale Rd)	0	11.9	7	0	0	0	3.6	4.8	0	
% time above Annoyance Threshold MMF6 (Fire Station)	2.1	21.4	10	0	0	0.9	0.3	0.6	0.3	
% time above Annoyance Threshold MMF9 (Galingale)	16.2	53.3	41	5.1	0	2.4	2.4	8.0	15	

#### 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 (H<sub>2</sub>S) – 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/m<sup>3</sup>, 30-minute average) 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
8/11 – 14/11	0	0	1	10
15/11 – 21/11	0	0	0	1.2
22/11-28/11	0	0	0	11
29/11-5/12	0.6	0.9	0	9
6/12 – 12/12	0.6	0	0.9	2.4
13/12-19/12	0.9	0	3	18.5
20/12-26/12	0	0	0	3
27/12-2/1/22	0	0	0	2.4
3/1-9/1	1.2	0	2.1	16.2
10/1-16/1	14.9	11.9	21.4	53.3
17/1-23/1	6	7	10	41
24/1 – 30/1	0	0	0	5.1
31/1-6/2	0	0	0	0
7/2 – 13/2	0	0	0.9	2.4
14/2 – 20/2	0	3.6	0.3	2.4
21/2 – 27/2	0	4.8	0.6	8.0
28/2 – 6/3	2.4	0	0.3	15

- 4.3 The data shows that over 2021 and into 2022 the frequency of incidences when the WHO annoyance threshold is exceeded appears to have reduced, however, the more recent data indicates that the issue is by no means abated, and odours will recently have given rise to annoyance to residents – as reflected in the complaints data.
- 4.4 During January 2022 there were two weeks when the H<sub>2</sub>S concentrations recorded at the 4 monitoring stations were significantly elevated – with odours exceeding the WHO annoyance threshold for over half of the week at the Galingale site from 10<sup>th</sup> to 16<sup>th</sup> January. This was the highest recorded H<sub>2</sub>S concentration since May 2021.
- 4.5 In light of the elevated H<sub>2</sub>S levels and associated complaints, Environment Agency officers inspected Walleys Quarry landfill site on 14 January 2022 . Officers detected an odour of landfill gas at a level likely to cause pollution outside the site boundary. Officers also carried out a review of landfill gas management data. They identified that gas collection infrastructure was repeatedly blocked between 7 January and 13 January due to poor drainage and surface water flooding. This led to a significant loss of gas capture, which in

turn was likely to have resulted in increased risk of gas emissions and nuisance odours. Remedial works connected to drainage completed by Walleys Quarry Ltd by 20 January 2022.

- 4.6 The EA have stated that another factor which contributed to the temporary increase in H<sub>2</sub>S levels was the weather. The EA have reiterated that meteorological conditions, particularly in winter, can cause increases in landfill gas emissions. They have found that increases in H<sub>2</sub>S levels, correlate to lower air temperatures and pressure, along with still air conditions.

### Health Risk Assessment

- 4.7 The UKHSA has published its latest health risk assessment and has reported that:
- 4.8 Data, provided to UKHSA by the Environment Agency up to the end of January 2022, have been compared to appropriate health-based air quality guidelines and standards or assessment levels for hydrogen sulphide, particulate matter, nitrogen dioxide, sulphur dioxide, methane and volatile organic compounds (VOCs comprising benzene, toluene, ethylbenzene and xylene (BTEX)). In addition, for hydrogen sulphide and toluene the concentrations have been compared to the odour annoyance guideline and odour detection thresholds respectively. Air concentrations of particulate matter, nitrogen dioxide, sulphur dioxide, methane and VOCs a All reference to Public Health England has now been changed to UKHSA in this report<sup>5</sup> 2 are lower than appropriate health-based and odour standards, guidelines or assessment levels, and therefore, the risk to health from these substances is minimal.
- 4.9 The short-term 24-hour average guideline value for hydrogen sulphide was exceeded at MMF9 on two days at the beginning of the monitoring period: 7 and 8 March 2021. Exposure to concentrations of hydrogen sulphide above this guideline 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.
- 4.10 The hydrogen sulphide data up to the end of January 2022 shows continuing exposure to the population around the site. For two of the monitoring sites (MMF1 and MMF2) concentrations are below the long-term (lifetime) health-based guidance value, as they have been since June/July 2021. The third site (MMF6) monthly average concentrations have been below the long-term (lifetime) health-based guidance value since July 2021, with the exception of January 2022, which showed a slight exceedance. The cumulative averages for MMF1, MMF2 and MMF6 are below the longterm (lifetime) health-based guidance value. At the fourth site (MMF9), concentrations in January 2022 remain above the long-term (lifetime) health-based guidance value. The monthly average values had plateaued from September to December 2021 but were significantly higher in January 2022 (Figure 3).
- 4.11 Currently any risk to long-term (lifetime) physical health is likely to be small, however, we cannot exclude a risk to health from pollutants in the area, where exposure continues above the long-term health-based guidance value. 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. With continuing exposure, these effects may be prolonged but are not anticipated to continue long-term, once exposure has decreased to acceptable levels.
- 4.12 Hydrogen sulphide is an odorous chemical and the human nose is very sensitive to odours. While substances that are perceived as odorous are commonly present at levels below which there is a direct physical health effect of the substance itself, odours can cause nuisance and temporary symptoms. Such effects include headache, nausea, dizziness, watery eyes, stuffy nose, irritated throat, cough or wheeze, sleep problems and stress. The

concentrations of hydrogen sulphide continue to be above the WHO odour annoyance guideline value for a considerable percentage of the time at one of the monitoring sites, which is undesirable due to the effects on people's wellbeing and the symptoms they are experiencing. Even at hydrogen sulphide concentrations below the WHO odour annoyance guideline value odour may still be present, however as concentrations fall to even lower levels it is anticipated that the strength of any odour should also reduce.

- 4.13 In January 2022, the percentage of time with concentrations above the WHO odour annoyance guideline value was similar to that seen from March to May 2021. This is likely to have an increased impact on people's health and wellbeing above that experienced between June and December 2021. Therefore, UKHSA continues to strongly recommend that all appropriate measures are taken to reduce the off-site odours from the landfill site.

### **Council Complaint**

- 4.14 Coming as it did almost one year since the exceptionally bad weekend for odour pollution in February 2021, the spike in H<sub>2</sub>S in January 2022 was particularly concerning. The approach of managing landfill gas through a strategy of "contain, capture, destroy" remains in place, but the iterative, operator led, approach being followed to deliver this leaves the community with no visibility on a credible plan to direct remediation of the problem. This in turn leaves no clarity on the issue of when the odours will cease to be a problem for local residents.
- 4.15 Following discussion at its February meeting Cabinet tasked the Chief Executive with writing a formal letter of complaint to the Chief Executive of the Environment Agency regarding the effectiveness of their regulatory response to the problems at Walleys Quarry. The response to that complaint is attached at Appendix 1.
- 4.16 The response points to the complexity of the problems associated with Walleys Quarry, and notes that the Environment Agency is deploying more resource to this site than any other of the 1000-plus waste sites that the organisation regulates. However, the response rejects the Council's complaint and concludes that the regulatory work of the Environment Agency is "progressively making a difference for the better". It is not clear from the letter whether there has been any critical evaluation of the regulatory approach to test whether it is in fact being exercised in an optimal way.
- 4.17 In light of the response received, the Council has sought the support of the Newcastle under Lyme MP, Mr Arron Bell, to raise a complaint with the Parliamentary and Health Service Ombudsman.
- 4.18 Also in response to the January spike, and the duration of this problem, the Leader of Staffordshire County Council has written to the Secretary of State, Mr George Eustace, seeking a meeting with both the County and Borough Councils. At the time of writing, a response has not been received.

### **5. Proposal**

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

### **6. Reasons for Proposed Solution**

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

### **7. Options Considered**

7.1 To provide regular updates to Council

## **8. Legal and Statutory Implications**

8.1 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.

## **9. Equality Impact Assessment**

9.1 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.

## **10. Financial and Resource Implications**

10.1 There are none directly arising from this report.

## **11. Major Risks**

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



## 12. Unsustainable Development Goals (UNSDG)



## 13. Key Decision Information

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

## 14. Earlier Cabinet/Committee Resolutions

14.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9<sup>th</sup> June 2021, 7<sup>th</sup> July 2021, 21<sup>st</sup> July 2021, 8<sup>th</sup> September 2021, 13<sup>th</sup> October 2021, 3<sup>rd</sup> November 2021, 17<sup>th</sup> November, 1<sup>st</sup> December 2021, 12<sup>th</sup> January 2022, 2<sup>nd</sup> February 2022 and 23<sup>rd</sup> February

## 15. List of Appendices

15.1 None