

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET

20 April 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.**

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 13th 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 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.
- 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 required further documents and at a hearing on 25 March, the court dealt with this issue and set out a revised estimated timeline.
- 2.6 Disclosure of documents should be completed by the end of May and this process will be used to finalise the expert evidence which both parties are due to exchange in September. A pre-trial review will take place on 30 September with the final hearing currently scheduled for 24 October - this is expected to take up to four weeks.
- 2.7 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 Complaints 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. Complaints rise and fall broadly in line with the H2S levels recorded at the four monitoring stations around the site, with higher levels of H2S generally causing more annoyance in the community. Complaints for the year to date are set out below:

| | Complaints to NuLBC | Complaints to Environment Agency |
|---------------------|---------------------|----------------------------------|
| January 2022 | | |
| 3/1/22- 9/1/22 | 73 | 352 |
| 10/1/22 -16/1/22 | 258 | 1045 |
| 17/1/22 -23/1/22 | 134 | 651 |

| | | |
|---|-----|------|
| 24/1/22 – 30/1/22 | 25 | 139 |
| February 2022 31/1/2 – 6/2/22 | 16 | 64 |
| 7/2/22 – 13/2/22 | 31 | 120 |
| 14/2/22 – 20/2/22 | 49 | 166 |
| 21/2/22 – 27/2/22 | 40 | 264 |
| March 2022 28/2/22 – 6/3/22 | 118 | 571 |
| 7/3/22 – 13/3/22 | 72 | 285 |
| 14/3/22 – 20/3/22 | 224 | 1126 |
| 21/3/22 – 27/3/22 | 412 | 1848 |
| 28/3/22 – 3/4/22 | 243 | 1072 |
| April 2022 4/4/22 -10/4/22 | 132 | 895 |

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) 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 |
| 7/3 – 13/3 | 0.3 | 3.3 | 4.2 | 6.0 |
| 14/3-20/3 | 3.3 | 8.1 | 10.8 | 21.2 |
| 21/3-27/3 | 6.8 | 10.1 | 21.1 | 43.2 |
| 28/3 – 3/4 | 1.9 | 9.3 | 18.8 | 25.2 |
| 4/4-10/4 | 1.8 | 2.5 | 6.1 | 26.0 |

- 4.3 The data shows that whilst the frequency of incidences when the WHO annoyance threshold was exceeded reduced through the autumn of 2021, the data for 2022 to date shows a less positive picture, with the WHO annoyance threshold exceedances being broadly comparable to the data this time last year. This 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.

Jerome Data

- 4.4 The Council has procured two handheld air quality monitors (Jeromes) which have been deployed in homes and premises in areas impacted by the odours. This deployment is designed to assess the extent to which the H₂S prevalent in the community is entering homes. Attached at Appendix 1 is a report of the Jerome findings from January – March 2022.
- 4.5 The analysis shows that whilst there have been no instances recorded where H₂S in homes has exceeded the World Health Organisation threshold for health impact, there have been a number of instances where the World Health Organisation Annoyance Threshold has been exceeded inside homes.
- 4.6 The Council has been working with the UK Health Security Agency (UKHSA) to review Jerome data. The work undertaken by the UKHSA has shown that the fluctuations in Jerome readings broadly mirror the fluctuations in readings at the four static monitoring stations.

Environment Agency Enforcement Action

- 4.7 During January 2022 there were two weeks when the H₂S 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 10th to 16th January. This was the highest recorded H₂S concentration since May 2021.
- 4.8 In light of the elevated H₂S 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.
- 4.9 In relation to the issues identified above, the Environment Agency issued a CAR form which detailed three “Category 1” breaches of the permit under which the site operates. The CAR form also notes that the resulting total Compliance Classification Scheme score places Walley Quarry in Band F. Sites in compliance bands E and F must significantly improve in order to achieve permit compliance. These sites are more likely to have their permit revoked unless there is substantial evidence that they are working towards achieving compliance in a timely manner.
- 4.10 Subsequent to the issues outlines above, the Environment Agency have confirmed that Walleys Quarry Ltd have begun installing a 300mm thick clay formation layer to phase 1 of the landfill as part of permanent capping works. The capping process will also involve the installation of up to 18 additional gas wells. This will require boreholes to be drilled into the waste. Environment Agency have advised that, whilst unlikely, the drilling may cause a temporary increase in the escape of gas from the site. Walleys Quarry Ltd have informed the EA that the drilling rig to be used has local exhaust ventilation which should help to reduce excessive escape of landfill gas during the drilling operations. Drilling work is expected to begin from 11 April 2022.

- 4.11 In May it is planned that a geotextile membrane is to be installed on top of the clay formation layer. This membrane will have the effect of sealing the waste mass from the atmosphere. This step is expected to improve the containment and capture of odorous emissions, reduce the negative impact on neighbouring properties, and allow the capture of greater quantities of gas for destruction.
- 4.12 These works are taking place on the largest open phase of the landfill. Once completed, the largest mass of waste at the site will be permanently capped. Subsequent planned phases are much smaller in size. The Environment Agency expect these to be completed more quickly, reducing the potential for odour nuisance.

Health Risk Assessment

- 4.13 Cabinet will receive a briefing on the latest health risk assessment at the meeting.

Council Complaint regarding Regulation

- 4.14 Coming as it did almost one year since the exceptionally bad weekend for odour pollution in February 2021, the spike in H₂S 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. Upon receipt of the response the Council secured the support of the Newcastle under Lyme MP, Mr Arron Bell, to raise a complaint with the Parliamentary and Health Service Ombudsman, in line with the process commended to us by the DEFRA Minister, Rebecca Pow MP in her letter of April 2021
- 4.16 Regrettably, the Council received a response from the Parliamentary and Health Service Ombudsman advising that they could only consider complaints from individuals, not from publicly funded organisations such as the Council. This response has been referred to Mr Aaron Bell MP who sponsored the Council’s complaint to the Ombudsman.
- 4.17 Staffordshire County Council has sought a meeting with the relevant government minister on behalf of the County and Borough Councils and this is scheduled for May.

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, 9th June 2021, 7th July 2021, 21st July 2021, 8th September 2021, 13th October 2021, 3rd November 2021, 17th November, 1st December 2021, 12th January 2022, 2nd February 2022 and 23rd February

15. List of Appendices

15.1 Jerome Data Summary