

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

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

**7<sup>th</sup> June 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 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 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 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 The revised court timeline included a further hearing on 14 June to deal with any remaining disclosure issues. There are some remaining issues that the court will have to deal with at that hearing, although that is not expected to delay the overall timetable. 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
<b>January 2022</b>		
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
<b>February 2022</b> 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
<b>March 2022</b> 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
<b>April 2022</b> 4/4/22 -10/4/22	132	895
11/4/22 – 17/4/22	156	752
18/4/22 – 24/4/22	65	310
25/4/22 – 1/5/22	49	213
<b>May 2022</b> 2/5/22 – 8/5/22	39	193
9/5/22 – 15/5/22	35	160
15/5/22 – 21/5/22	43	134
22/5/22 – 28/5/22	20	81

#### 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 (%)
19/4/21 – 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
11/4 – 17/4	11.9	6.6	9.6	19.7
18/4 - 24/4	7.1	1.8	2.7	10.4
25/4 -1/5	5.1	0	1.5	9.0
2/5 – 8/5	2.7	4.8	n/a	n/a
9/5 – 15/5	0.9	1.2	0	1.8
15/5 – 21/5	0.6	2.1	0	2.7
22/5 – 29/5	0.3	0	0	0.9

- 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 WHO annoyance threshold exceedances still being a regular occurrence.
- 4.4 The Environment Agency have undertaken an evaluation of measurements at MMF9 in 6th March to 30th April 2021 compared to 6<sup>th</sup> March and 30 April 2022, with their report attached as Appendix 1. This shows that whilst the problems have not gone away, some improvement is apparent:
- Complaints/reports are down between 2021 & 2022 – 12,986 for the 2021 period, and 7849;
  - Annoyance threshold exceeded 36.4% during the 2021 period, and 20.1% for the 2022 period;
  - Average measured H2S concentrations have reduced – from 27.2  $\mu\text{m}^3$  in March/April 2021 compared to 12.4  $\mu\text{m}^3$  for the same period in 2022;
- 4.5 The Environment Agency report acknowledges that it is not possible to quantify how much of the differences between the two years in influenced by operations on site, and how much by other variables such as meteorology.
- 4.6 Whilst current monitoring data, and the recent Environment Agency report point to an improving situation. The issue is by no means abated, and odours continue to give rise to annoyance to residents. The absence of certainty about the how much of the improvement can be attributed to the Contain Capture Destroy strategy being implemented on site, and how much is seasonal variation or meteorological conditions point to the need to maintain a clear focus on securing sustainable improvement.

## Environment Agency Enforcement Action

- 4.7 Since the last report to Cabinet in April 2022, the Environment Agency report that during a recent site inspection by their Officers, including observation of waste being received, one load was rejected, and plasterboard identified in another incoming load was removed.
- 4.8 EA have advised that their officers have been regularly on site as part of regulatory work to ensure effective delivery of the plan to 'contain, capture and destroy' landfill gas from the site, including site inspections. They further advise that Walleys Quarry Ltd has contractors on site carrying out permanent capping works. So far 6,000m<sup>2</sup> of the planned 26,000m<sup>2</sup> has been capped, approximately 23% of the total. The EA are monitoring the works and assess implementation of the construction plan. Waste deposits have commenced in Phase 3 following agreement of a management plan to capture the gas from that phase.
- 4.9 The average gas collection value for the last 4 weeks is 3020 m<sup>3</sup>/hr, which is substantially increased from the 2100 m<sup>3</sup>/hr collected in March of this year. The additional capture of gas should lead to lower emissions of landfill gas to ambient air and reduce the negative experience of odour in the community.
- 4.10 The EA report that a survey of gas emissions shows that the gas well installation has led to a significant reduction in the escape of landfill gas from the surface and state the additional capture of gas should lead to lower emissions of landfill gas to ambient air and reduce the negative experience of odour in the community.
- 4.11 On 10 May 2022 EA served a Regulation 36 Enforcement Notice requiring Walleys Quarry Ltd to improve its waste acceptance procedures, part of its written management system, by 10 June 2022. Enforcement Notices are subject to a right of appeal within two months of the date of the Notice. EA served the Enforcement Notice because it believes Walleys Quarry Ltd has breached a permit condition.
- 4.12 EA have also reported temporary monitoring interruptions at mobile monitoring facilities (MMFs) as follows:
- 4.13 *We detected an electrical fault at our air quality mobile monitoring facility MMF9 (at Galingale View) on Friday 6 May. We were unable to access the landowner's electrical supply board until the following day, when power was restored ensuring all the equipment restarted. A power interruption at MMF6 (at the fire station) was detected in the early hours of Saturday 7 May. Power was restored on Monday 09 May, when we were able to check all equipment was operating correctly. Despite this loss of some data the data capture dates remain extremely high for this monitoring study. The causes have not been established, but there has been no reoccurrence. Our officers did not identify odour when attending the MMFs. This is confirmed by the low number of odour pollution reports from the public during that time*

## Consideration of further Council Action

- 4.14 A multi-agency Strategic Co-ordinating Group has been meeting for over a year, bringing together officers from a range of organisations with roles to play in advising on, or directly acting on, issues relating to the problems at Walleys Quarry. Under the auspices of the SCG a number of "Cells" have been established to maintain momentum on regulation and enforcement,

communications, community impacts. The Council's Chief Executive chairs a Tactical Coordination Group comprising the chairs of each of the cells.

- 4.15 Cabinet has requested the creation of an additional body to provide political oversight of, and constructive challenge to, the work of the SCG. This request has been considered by the SCG and agreement has given to form such a group, with the terms of reference now being finalised.
- 4.16 At its meeting in April 2022 Cabinet expressed its frustration that the ongoing issues arising from Walleys Quarry had not yet been successfully addressed. Cabinet specifically tasked officers with a further review of alternative legal avenues that might be available to the Council in order to accelerate progress with addressing the problems experienced by the Community.
- 4.17 The Council is progressing the Statutory Nuisance case in its regulatory role. Officers have previously explored the full range of legal options available to the Council and its partners. Cabinet has also asked officers to consider whether there are any other steps that could be taken to support the community in bringing about an end to the ongoing issues with odours from the site. Officers will advise Cabinet at its July meeting on whether there are any further alternative options it can take or whether it can support any action that might be taken by others.

## 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



