

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Economy and Place Scrutiny Committee
12 October 2022

Report Title: Walley's Quarry Odour Issues

Submitted by: Chief Executive

Portfolios: Environment & Recycling; One Council, People & Partnerships;

Ward(s) affected: All

Purpose of the Report

To provide all members with an opportunity to receive an update and ask questions about the settlement reached in the litigation between the Council and Walleys Quarry Limited.

Recommendation

That the members note the report and the content of the Chief Executive's presentation.

Reasons

To ensure the members are kept updated and have an early opportunity to ask questions about the settlement reached.

1. **Background**

- 1.1 There have been numerous reports to committees, cabinet and full council regarding the ongoing odour issues from Walley's Quarry.
- 1.2 In response to community concerns, the Council served an Abatement Notice on Walleys Quarry Ltd (WQL) on 13 August 2021 requiring them to abate the nuisance within five months. The company appealed the notice triggering a legal process to establish whether or not the notice was valid, with a four-week trial scheduled to start at the end of October this year.

2. **Issues**

- 2.1 Whilst preparing its case for the four-week trial, the Council and WQL had been exploring whether the case could be settled through a mediation process instead. The courts will expect parties to litigation to seek to settle the case as an alternative to court proceedings if at all possible.
- 2.2 In line with that expectation, the parties met in September in a mediation process guided by a former Supreme Court Judge. The parties were able to reach an agreement which was, on 6 October 2022, approved by the Judge who was due to hold the four-week trial. As a result of approving the settlement reached, the judge has issued an Order which upholds the Abatement Notice that the council issued (with one minor amendment), and dismisses WQL's appeal. The four-week trial has therefore been cancelled.
- 2.3 This settlement means that an Abatement Notice is now in place requiring WQL to abate the odour nuisance off site, and to prevent a re-occurrence of a Statutory Nuisance.

There are also a number of other outcomes in place including improved access to information for the Council and Community. More information on the settlement reached is available here:-

<https://www.newcastle-staffs.gov.uk/walleys-quarry/resolving-odour-issues-walleys-quarry>

3. **Proposal**

3.1 That the members note the report and the content of the Chief Executive's presentation.

4. **Reasons for Proposed Solution**

4.1 To ensure the committee is kept updated on the latest developments regarding the problem odours associated with Walley's Quarry.

5. **Options Considered**

5.1 None

6. **Legal and Statutory Implications**

6.1 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.
- Now the council has succeeded in securing an abatement notice, it is 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.

7. **Equality Impact Assessment**

7.1 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 as soon as possible.

8. **Financial and Resource Implications**

8.1 None directly arising from this report.

9. **Major Risks**

9.1 There are no new risks beyond those explored in previous reports.

10. **UN Sustainable Development Goals (UNSDG)**



11. **Key Decision Information**

11.1 This is not a key decision.

12. **Earlier Cabinet/Committee Resolutions**

12.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Health, Wellbeing and Environment 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, 23rd February 2022, 23rd March 2022, 20th April 2022, 7th June 2022, 19th July 2022, 5 September 2022 and 6 September 2022.

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 N/A.