

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

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

**8<sup>th</sup> November 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 including progress in relation to agreement reached following mediation with the operator.

**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 landfill.

**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. (WQL)

- 2.2 The Abatement Notice afforded WQL 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 and odour experts.
- 2.3 On 2 September 2021, WQL 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.
- 2.4 At the Cabinet meeting on 18 October 2022, Members received a report detailing the outcome of a mediation process that had been undertaken. The mediation process was guided by the former Supreme Court Judge and environmental law specialist the Right Honourable Lord Carnwath of Notting Hill. As a result of that process, the council and WQL were able to agree terms for a settlement which enabled WQL to withdraw their appeal against the notice
- 2.5 On 6 October 2022, His Honour District Judge Grego approved the settlement that the parties had reached, and issued a court order upholding the Abatement Notice and dismissing WQL’s appeal. HHJ Grego is the judge who was overseeing the court case and who would have decided the matter following the four-week trial had a settlement not been reached.
- 2.6 Key elements of the settlement agreement

Whilst details of discussions held during the mediation process remain confidential to the parties involved, the agreement reached at the end of the process is not confidential. The key elements of the agreement are as follows.

- **Walleys Quarry Ltd (WQL) have withdrawn their appeal.** This means that the council’s objective of having a legally enforceable Abatement Notice in place has been achieved. This is the best enforcement outcome that would have been possible to achieve in court.
- **There has been one minor amendment to the Abatement Notice.** The map of the area covered by the abatement notice has been amended to exclude the site itself, however the effect of the original notice outside of the site remains unchanged. All land and property protected by the original notice remain covered in the amended notice. This change was made as WQL are only required to abate the nuisance off site.
- **The agreement recognises that various plans which WQL have in place (for example; Phasing and Capping Plan; Gas Management Plan) currently represent Best Practical Means (BPM).** BPM is a set of plans and processes that should, if followed, prevent unacceptable levels of odours occurring. The council has accepted this on the advice of its specialist advisors who have undertaken a considerable amount of detailed work in reviewing WQL’s plans including critical challenge to WQL’s experts. This agreement also reflects the significant reduction in odours in recent months.
- **The agreement recognises that what constitutes BPM changes over time,** and it is for WQL to maintain BPM and demonstrate to the council that they are meeting BPM requirements at all time.
- **The agreement commits the council and WQL to engage constructively and in good faith** with one another, and for WQL to share information with the council relating to BPM, and for council officers to have access to inspect the site from time to time. This will allow the council to maintain an understanding as to whether the policies, procedures and practices adopted the WQL remain consistent with BPM over time.

- **The agreement commits WQL to specific measures relating to Community Engagement, including:**
  - publishing its operational plans,
  - providing advance notification of activities on site which might give rise to odours in the community,
  - refreshing the Liaison Committee,
  - and publishing recordings of its meetings online.
  
- **It reflects the council's intention to continue monitoring H2S levels in the community,** WQL have agreed to pay the council £60,000 towards this activity, in addition to £400,000 towards the council's costs incurred in responding to the appeal.

## 2.7 Benefits for the Community

The settlement agreed ratified by the court delivers more for the community than would have been achieved through a formal trial.

- An Abatement Notice is now in place requiring Walleys Quarry Limited (WQL) to abate the odour nuisance off site and prevent its reoccurrence. This provides a route to further action in the event of any future significant sustained problems.
- By WQL maintaining Best Practical Means (BPM), the community is afforded the best possibility of improved odour conditions off site.
- The council will be routinely working with WQL to understand how Best Practical Means (BPM) are being maintained.
- There is a structure to give the community access to information about activities on the site.
- Public funds expended on progressing the Abatement Notice have been significantly recouped.

These outcomes are more far reaching than what the council would have been able to achieve from simply defending an Abatement Notice at trial. A trial alone would not have delivered ongoing information to the community or the council which is reflected in the agreement

## 2.8 Progress and Next Steps

As part of the Agreement, Council officers, including the Chief Executive, with Walleys Quarry Limited (WQL) to ensure that all aspects of the agreement are implemented. The first of what will be regular meetings between senior officers and representatives of WQL has taken place. Both parties engaged constructively and in good faith with each other with the primary purpose of the initial meeting being to determine the working arrangements and information sharing. It was agreed to develop standard key information relating to the Councils complaint and investigation data along with WQL operational data, which will then be shared in future Cabinet reports.

## 3. Complaint Data

- 3.1 Below is a schedule of complaints received by the Council and by the Environment Agency during 2022, on a weekly basis over the last 2 months. 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. Historical complaints data is attached to this report as Appendix 1.

	Complaints to NuLBC	Complaints to Environment Agency

<b>September 2022</b> 5/9/22 – 11/9/22	9	64
12/9/22 – 18/9/22	13	83
19/9/22 – 25/9/22	14	79
26/9/22 – 2/10/22	13	58
<b>October 2022</b> 3/10 – 9/10	42	102
10/10 – 16/10	52	165

#### 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 through 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 Over the last 2 months, 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. Historical data is attached to this report in Appendix 2.

Location	MMF1 - Silverdale Cemetery (%)	MMF2 - Silverdale Road (%)	MMF6 - NuL Fire Station (%)	MMF9 - Galingale View (%)
29/8 – 4/9	0	0	0	0
5/9 – 11/9	0	0	0	4.2
12/9 – 18/9	0	0.3	0	2.9
19/9 – 25/9	0	0	0	1.8
26/9 – 2/10	0	0	0	4.2
3/10 - 9/10	0	0.4	0	3.7
10/10 – 16/10	0	1.9	0	0
17/10 – 23/10	0	0.6	0.3	1.5

- 4.3 The data continues to show that whilst the frequency of incidences when the WHO annoyance threshold with data for the last 2 months showing consistently low percentage exceedances above the annoyance threshold.

#### 4.4 Jerome Portable device air monitoring

Your officers have continued to deploy portable Jerome air monitoring equipment in various locations surrounding the landfill site in response to complaints from residents as well as proactively when potentially problematic climatic conditions are forecast. The result of the monitoring for the 3<sup>rd</sup> quarter of 2022 are appended to this report in Appendix. 3.

The data shows that there have been a few relatively short duration instances where the equipment has recorded H<sub>2</sub>S levels above the 5ppb threshold in a number of different locations. The equipment has also recorded significant periods where H<sub>2</sub>S is below 5ppb.

## Environment Agency Regulatory and Enforcement Action

- 4.4 The Environment Agency has continued to provide weekly updates on their regulatory activity on the Walleys Quarry Landfill Citizens Space website. These updates reflect regular EA officer presence at the site to review progress with the Contain Capture Destroy strategy. Extracts from the last 3 weekly updates are provided below:
- 4.5 News in brief – 13 October 2022 - Regulatory activity. On 5 October 2022 officers carried out a site inspection, which focussed on waste acceptance criteria and sampling, together with an off-site odour assessment. Officers carried out a further unannounced site inspection on 10 October 2022. They focussed on surface water management, the revised submitted capping and phasing plan proposals, and gas management. The average landfill gas collection rate remains steady.
- 4.6 News in brief – 20 October 2022 - Regulatory activity. We continue to actively regulate and assess Walleys Quarry Ltd.'s compliance with its environmental permit, including announced and unannounced inspections and remote audits. We have this week carried out an unannounced inspection and carried out an offsite odour assessment, as part of our plan to contain, capture and destroy landfill gas from the site. Following a review of Walleys Quarry Ltd.'s Capping and Phasing Plan, we have requested some further details and amendments.
- 4.7 News in brief - 27<sup>th</sup> October 2022 - Regulatory activity. We continue to actively regulate and assess Walleys Quarry Ltd.'s compliance with its environmental permit by reviewing data and conducting inspections. Our most recent announced inspection took place on 26 October 2022. Hydrogen sulphide levels within the bulk landfill gas continue to decline, and are at 1100ppm this week. The current landfill gas collection rate is approximately 3,050 m<sup>3</sup>/hr.

## 5. Proposal

**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 landfill and to keep under review opportunities to further action.

## 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).
- 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 minimising this impact as soon as possible.

## 10. Financial and Resource Implications

- 10.1 There are none directly arising from this report.

## 11. Major Risks

- 11.1 There are no new 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, 23<sup>rd</sup> February 2022, 23<sup>rd</sup> March 2022, 20<sup>th</sup> April 2022, 7<sup>th</sup> June 2022, 19<sup>th</sup> July 2022, 6<sup>th</sup> September 2022 and 18<sup>th</sup> October 2022.

## 15. List of Appendices

- 15.1 Appendix 1. Historical Complaint data
- 15.2 Appendix 2. Historical Monitoring Station data
- 15.3 Appendix 3. Jerome data for 3<sup>rd</sup> quarter 2022

### Appendix 1. Historical Complaint Data

	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 – 29/5/22	20	81

<b>June 2022</b> 30/5/22 – 5/6/22	27	169
6/6/22 – 12/6/22	42	234
13/6/22 – 19/6/22	25	263
20/6/22 – 26/6/22	28	208
26/6/22 – 2/7/22	9	54
<b>July 2022</b> 3/7/22 – 9/7/22	4	34
10/7/22 – 16/7/22	14	72
17/7/22 – 23/7/22	21	52
24/7/22 – 30/7/22	12	93
<b>August 2022</b> 31/7/22 – 6/8/22	22	124
7/8/22 – 13/8/22	32	133
14/8/22 – 21/8/22	11	79
22/8/22 – 28/8/22	12	89
29/8/22 – 4/9/22	10	30
<b>September 2022</b> 5/9/22 – 11/9/22	9	64
12/9/22 – 18/9/22	13	83
19/9/22 – 25/9/22	14	79
26/9/22 – 2/10/22	13	58
<b>October 2022</b> 3/10 – 9/10	42	102
10/10 – 16/10	52	165
17/10 – 23/10		186
24/10 – 30/10		



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
30/5 – 5/6	0.3	0	1.2	7.4
6/6 – 12/6	0.3	0.6	2.1	3.6
13/6 – 19/6	0	0.6	0.6	11
20/6 – 26/6	0	0.9	0.3	15.5
26/6 – 2/7	0	0	0	0
3/7 – 9/7	0	0	0	0
10/7 – 16/7	0	0	0	0.9
17/7 – 23/7	0	0	0.3	1.5
24/7 – 30/7	0	0	0.3	1.2
31/7 – 6/8	0	0	0	1.5
7/8 – 13/8	0	0	0	1.8
14/8 – 21/8	0	0	0	0.6
22/8 – 28/8	0	0.3	0	0
29/8 – 4/9	0	0	0	0
5/9 – 11/9	0	0	0	4.2
12/9 – 18/9	0	0.3	0	2.9
19/9 – 25/9	0	0	0	1.8
26/9 – 2/10	0	0	0	4.2
3/10 - 9/10	0	0.4	0	3.7
10/10 – 16/10	0	1.9	0	0
17/10 – 23/10	0	0.6	0.3	1.5
24/10 – 30/10				