

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**CORPORATE LEADERSHIP TEAM'S**

**REPORT TO CABINET**

**05 December 2023**

**Report Title:** Walleys Quarry – Odour Issues

**Submitted by:** Chief Executive

**Portfolios:** Sustainable Environment; One Council, People & Partnerships

**Ward(s) affected:** All

<p><b><u>Purpose of the Report</u></b></p> <p>To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.</p>	<p><b><u>Key Decision</u></b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p><b><u>Recommendation</u></b></p> <p><b>Cabinet is recommended to:</b></p> <p>1. <b>Note the contents of this update report.</b></p>	
<p><b><u>Reasons</u></b></p> <p>To ensure Cabinet is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry landfill.</p>	

**1. Background**

- 1.1 For a number of years, parts of the borough have suffered from 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 (EA) 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 Following extensive work, officers determined that the odours from the Walleys Quarry site amounted to a Statutory Nuisance and, on 13 August 2021, served an Abatement Notice on Walleys Quarry Ltd. (WQL). Following an appeal by Walleys Quarry Ltd, and a successful mediation process, 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 on 6 October 2022.

- 1.4** The Council continues to assess the prevalence of odours off site. If there are further instances of statutory nuisance identified which amount to a breach of the Abatement Notice, the Council's Enforcement Policy will guide the process to be followed [Reference: [Environmental Health enforcement policy – Newcastle-under-Lyme Borough Council \(newcastle-staffs.gov.uk\)](https://www.newcastle-staffs.gov.uk)]. This would determine what action the Council would take, and whether that would be formal or informal. Enforcement is usually considered sequentially but should the circumstances or nature of the breach be such, escalation direct to prosecution is possible. The Council would need to obtain the consent of the Secretary of State before it is able to prosecute an offence of breaching an abatement notice, as the site is permitted by the Environment Agency.
- 1.5** Officers maintain an ongoing dialogue with Walleys Quarry Ltd, and with other agencies involved with the issue. Cabinet has received monthly updates on the issues relating to the odours, and Council has also been regularly updated.

## **2. Complaint Data**

- 2.1** Below is a schedule of complaints received by the Council and by the Environment Agency over the last 3 months, on a weekly basis. Historical complaint data is attached to this report as Appendix 1.

	<b>Complaints to NuLBC</b>	<b>Complaints to Environment Agency</b>
<b>September 2023</b>		
04/09/23 - 10/09/23	26	71
11/09/23- 17/09/23	12	72
18/09/23- 24/09/23	8	31
25/09/23-01/10/23	8	26
<b>October 2023</b>		
02/10/23 – 08/10/23	8	37
09/10/23 - 15/10/23	29	64
16/10/23 - 22/10/23	22	81
23/10/23 - 29/10/23	26	115
30/10/23 - 05/11/23	5	15
<b>November 2023</b>		
06/11/23- 12/11/23	40	123
13/11/23- 19/11/23	35	119
20/11/23- 26/11/23	36	135
27/11/23 - 03/12/23	115	

- 2.2** Officers highlight any odour events where 10 or more odour complaints have been recorded. There have been 7 odour events in the month of November:

- Friday 10 November 2023 – 11 odour complaints

- Saturday 11 November 2023 – 16 complaints
- Thursday 16 November 2023 – 23 complaints
- Saturday 25 November 2023- 14 complaints
- Tuesday 28 November 2023- 15 complaints
- Wednesday 29 November 2023 – 36 complaints
- Thursday 30 November 2023 – 23 complaints

The overall trend is for “spikes” in complaints from when odours are prevalent. The number of odour events has increased in November.

### 3. Air Quality & Health

- 3.1** The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring stations. Data from these stations has been routinely published weekly by the Environment Agency.
- 3.2** Hydrogen sulphide levels have previously been reported and reviewed as part of this report and a full data set provided in Appendices. On 5 October, the Environment Agency provided an update, alerting the community to a problem with the reliability of the Hydrogen Sulphide (H<sub>2</sub>S) monitoring data collected at the monitoring stations. This update is available at the following link [Latest News | Engage Environment Agency \(engagementhq.com\)](#)
- 3.3** On 19 October 2023, the EA calibrated the H<sub>2</sub>S analysers in MMF1 and MMF2. The EA have sufficient confidence in the raw data recorded for the week commencing 16 October 2023 to allow the EA to restart publishing data from MMF1 and MMF2. The latest H<sub>2</sub>S data is set out in the table below, defining the proportion of the time periods where H<sub>2</sub>S levels were above the WHO Odour Annoyance guideline of 7ug/m<sup>3</sup>.
- 3.4** The latest H<sub>2</sub>S data is set out in the table below, defining the proportion of the time periods where H<sub>2</sub>S levels were above the WHO Odour Annoyance guideline of 7ug/m<sup>3</sup>.

Time Period	Percentage of time the location recorded hydrogen sulphide concentrations above the WHO annoyance guideline level		
	MMF1	MMF 2	MMF 9
02 October – 08 October 2023			0%
09 October – 15 October 2023			9.4%
16 October – 22 October 2023	0.9%	0.0%	7.8%
23 October – 29 October 2023	13.7%	3.0%	10.4%
30 October – 5 November 2023	7.8%	0.6%	NR
6 November – 12 November 2023	8.9%	1.5%	5.6%
13 November – 19 November 2023	6.9%	0.6%	3%
20 November – 26 November 2023	3.3%	2.9%	14.33%

NR= not reported

- 3.5** The EA published a further update on 16 November regarding the current monitoring and the historical monitoring (pre-September):

**Quality Assuring H2S data from 1 September 2023**

'Since announcing in October 2023 that we had identified an issue with how we calibrated the hydrogen sulphide (H<sub>2</sub>S) analysers in our Mobile Monitoring Facilities (MMFs), we have updated the calibration procedure in line with the manufacturer's recommendations. As a result we are confident in the data for current (and any future) studies using these analysers and have therefore been publishing the weekly raw data for all 3 MMFs on our [Air Quality page](#).

However, we recognise that some members of the community may be reluctant to trust this recently published H<sub>2</sub>S data, so we want to provide reassurance. In addition to using information from the manufacturer to adjust the calibration process, we have also engaged an independent third party accredited by the United Kingdom Accreditation Service (UKAS), to audit our 3 MMFs in the vicinity of Walleys Quarry.

The audit will begin once they have obtained the necessary H<sub>2</sub>S calibration gas, which is not easily available commercially. This means there may be a short delay.

We will continue to update partners and the community when we have more information to share.'

- 3.6** **Adjusting H2S data recorded before 1 September 2023**

'During our virtual meeting on 9 October 2023, we told the community that we were getting advice from independent experts to see whether it was possible to reliably adjust historical baseline data and that we would provide more information when it was available.

We are now able to confirm that we have developed a method that we believe can be used to adjust the historic data. This method is currently being scrutinised by an independent peer review group.'

- 3.7** The EA provided an update on the Peer Review Group:

'The expert group will independently assess (i) the data adjustment method developed by the Environment Agency to adjust the historic H<sub>2</sub>S data; and the level of uncertainty associated with it; and (ii) what use can be made of the adjusted data.

The group contains five members from five academic institutions (all of which are independent from Government and the Environment Agency) and will be chaired by the Department for Environment, Food & Rural Affairs' (Defra) Chief Scientific Adviser – Professor Gideon Henderson. Appointed members have expertise in a) air quality measurement; b) instrument calibration and c) health impacts with respect to air quality. None of the members have been previously involved in considering ambient air quality monitoring data from around Walleys Quarry.

Defra is providing the secretariat support for the group. The Environment Agency has provided data and is available to the group to answer any questions that arise. However, in order to preserve the independence of the group, we are not participating in the review. Whilst this means we cannot set or revise the timescales for delivery of the group's findings, we are working with them to minimise any delays in completion.

The group has held its first meeting and is currently reviewing the data alongside the adjustment method. We now expect the group's findings to be finalised before the end of January 2024. We will share the findings with our partners and the community when we are able to do so.

The group is focussing on the Environment Agency's proposed data adjustment method for the H<sub>2</sub>S, data affected by the calibration issue and any uncertainty associated with the updated data.

However, a UK Health Security Agency (UKHSA) representative and a member of the Committee on Medical Effects from Air Pollution (COMEAP) have been invited to attend later meetings of the group as observers, to ensure that they are aware of any findings relevant to human health risk assessments.'

- 3.8** Staffordshire County Council held their Health and Care Overview and Scrutiny Committee at Newcastle Borough Council on 20<sup>th</sup> November 2023 to consider matters relating to Walley's Quarry Landfill Site with a focus on health implications for residents. Officers from Staffordshire Public Health, UK Health Security Agency and Newcastle-under-Lyme Borough Council attended the meeting, however the Environment Agency did not attend. The minutes of this meeting are unavailable at present but will be published at [Agenda for Health and Care Overview and Scrutiny Committee on Monday 20th November 2023, 12:30pm - Staffordshire County Council](#)
- 3.9** At the Council meeting on 22<sup>nd</sup> November a motion was agreed 'That Council agrees that the Leader of the Council will write to the Secretary of State admonishing them for the failure to support this Council's request for a public enquiry; to ask them to reconsider their decision and invite the minister or their representatives to meet with representatives of this Council to discuss our concerns.'

### **Environment Agency Regulatory and Enforcement Action**

- 3.10** The Environment Agency has continued to provide updates on their regulatory activity on the Walleys Quarry Landfill and can be accessed here: <https://engageenvironmentagency.uk.engagementhq.com/hub-page/walleys-quarry-landfill>
- 3.11** These updates reflect regular EA officer presence at the site to review progress with the Contain Capture Destroy strategy. The Compliance Assessment Reports (published on the [EA website](#)) provide further details of the site visits undertaken.
- 3.12** The following table provides a summary of the published CAR (Compliance Assessment Report) forms since the last Cabinet report:

<b>Date of Report</b>	<b>Date issued</b>	<b>CAR Reference</b>	<b>Assessment</b>	<b>Compliance score</b>
30/06/23	06/10/23	DP3734DC/0476803	Monitoring Data Review 2023 Q2 (April-June) - 6 breaches	12.3
10/10/23	10/10/23	DP3734DC/0477254	Report / data review - Cell 4 sidewall CQA (lower) phase 2 CQA letter report	0
25/10/23	25/10/23	DP3734DC/0478708	Report/data review – perimeter monitoring borehole installations CQA Report	0
27/10/23	27/10/23	DP3734DC/0477431	Procedure Review – Odour Management Plan	0

- 3.13 The EA are 'not satisfied that the approved Odour Management Plan is currently capable of identifying and minimising the risks of pollution due to odour from the disposal of waste in landfill'. The CAR dated 27/10/23 expands on this statement;
- the OMP is more than 2 years old, and likely to be out-of-date following changes to operations onsite.
  - language is vague; there should be a clear commitment to the appropriate measures you will take to manage odour.
  - supporting documents and procedures, including waste pre-acceptance and waste acceptance should be cross-referred to correctly (version number or date), and be appended to the OMP.
  - no contingency arrangements are described for those occasions when the site manager is unavailable.
  - adaptation to odour by site personnel is not considered.
  - the description of waste codes in the inventory of odour sources lacks sufficient detail.
  - the procedures for maintaining site cleanliness are not described
  - the description of the active cell measures is insufficient – for example use of daily cover should be described in full, including the waste characteristics, depth of application, arrangements for ensuring sufficient supply. Measures to keep the working face to a minimum are also missing details such as how this is achieved, including when reviews take place.
  - the deadline for installation of permanent capping after waste tipping has been completed is not sufficiently certain.
  - it is not appropriate to delegate gas management to the gas management contractor.
  - the links between the OMP and the landfill gas management plan (LFGMP) are not sufficiently considered
  - leachate management is poorly described, and information about the use of the biofilter to treat odourous headspace air from the leachate plant is missing.
  - different monitoring regimes are not clearly described, and there is no explanation of how weather data will be used.
  - the list of contingency measures is incomplete, with reactive remedial measures rather than preventative measures appearing.

WQL are given two actions to review the OMP and to provide a copy of the revised OMP to the EA by 8 December 2023.

### **Key Performance Data**

- 3.13 Through the settlement agreement both Walleys Quarry Ltd and the Council have developed key performance indicators in relation to relevant data from each organisation. These key performance indicators are shown in Appendix 2 and 3.
- 3.14 The data from the Council covers the period from August to November 2023, and provides complaint numbers and officer assessments.
- 3.15 The data from Walleys Quarry Limited provides data on waste acceptance, odour management, landfill operations, landfill gas management, leachate management and information relating to the EA regulator as the primary regulator of the site. The KPI data and explanatory notes for November is awaited and will be uploaded later as Appendix 3.

## **4. Proposal**

#### **4.1 Cabinet is recommended to:**

- Note the contents of this update report.

#### **5. Reasons for Proposed Solution**

- 5.1 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.

#### **6. Options Considered**

- 6.1 To provide regular updates to Cabinet.

#### **7. Legal and Statutory Implications**

- 7.1 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 or a nuisance. The Council is responsible for undertaking inspections and responding to complaints to determine whether 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 the abatement notice.
- The Act provides powers in respect of a breach. If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, they shall be guilty of an offence. If this is on industrial, trade or business premises shall be liable on conviction to an unlimited fine. It is a defence that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

#### **8. Equality Impact Assessment**

- 8.1 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.

## 9. Financial and Resource Implications

- 9.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 9.2 From April 2023 there is £100k reserved for legal action associated with Walley Quarry landfill site. In the event that formal action is required, a separate report will be brought to full Council to approve additional funds.

## 10. Major Risks

- 10.1 A GRACE risk assessment has been completed including the following main risks:
- Failure to achieve a reduction in odour levels;
  - Community dissatisfaction at odour levels;
  - The ability to take enforcement action against abatement notice;
  - Failure to evidence a breach of the abatement notice;
  - Secretary of State refuses permission to undertake prosecution proceedings.
- 10.2 Controls have been identified and implemented in order to control these risks; the main controls include:
- Provisions in settlement agreement ensures greater transparency for public;
  - Provisions in settlement agreement ensures regular meetings with Walleys Quarry which enable issues to be discussed;
  - Dedicated officer resource for Walleys Quarry work has been secured;
  - Continued air quality monitoring provision;
  - Robust procedure for investigating complaints with experienced officers;
  - Specialist expert advice maintained;
  - Multi-Agency partnership working continues.

## 11. Unsustainable Development Goals (UNSDG)



## 12. Key Decision Information

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



**13. 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, 18<sup>th</sup> October 2022, 8<sup>th</sup> November 2022, 6<sup>th</sup> December 2022, 10<sup>th</sup> January 2023, 7<sup>th</sup> February 2023, 13<sup>th</sup> March 2023, 5<sup>th</sup> April 2023, 6<sup>th</sup> June 2023, 18<sup>th</sup> July 2023, 19<sup>th</sup> September 2023, 17<sup>th</sup> October 2023, 7<sup>th</sup> November 2023.

**14. List of Appendices**

- 14.1** Appendix 1. Historical Complaint data
- 14.2** Appendix 2. NUL Key Performance Data
- 14.3** Appendix 3. WQL Key Performance Data