

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

19 March 2024

Report Title: Walleys Quarry – Odour Issues

Submitted by: Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<p><u>Purpose of the Report</u></p> <p style="text-align: right;"><u>Key Decision</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.</p>
<p><u>Recommendation</u></p> <p>Cabinet is recommended to:</p> <p>1. Note the contents of this update report.</p>
<p><u>Reasons</u></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 \(newcastle-staffs.gov.uk\)](http://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.

	Complaints to NuLBC	Complaints to Environment Agency
December 2023		
4/12/23- 10/12/23	83	151
11/12/23- 17/12/23	48	180
18/12/23 -24/12/23	28	79
25/12/23-31/12/23	44	129
January 2024		
01/01/24 - 07/01/24	236	627
08/01/24 - 14/01/24	76	268
15/01/24 - 21/01/24	270	824
22/01/24 - 28/01/24	86	261
February 2024		
29/01/24 - 04/02/24	133	416
05/02/24 - 11/02/24	382	905
12/02/24 - 18/02/24	186	527
19/02/24 - 25/02/24	397	1264
26/02/24 - 03/03/24	333	990
March 2024		
04/03/24 - 10/03/24	217	694
11/03/24 – 17/03/24	99	

- 2.2 Officers highlight any odour events where 10 or more odour complaints have been recorded. There have been 28 odour events in the month of February, with only 1 day in the entire month recording less than 10 complaints.
- 2.3 The overall trend is for “spikes” in complaints when odours are prevalent. The highest number of complaints reported to the Council was on Saturday 24 February 2024 at 185 complaints.

NULBC Odour Assessments

- 2.4 Officers have undertaken odour assessments during normal working hours and out of hours. The monitoring has been reactive to odour complaints and proactive where low odour dispersion is predicted.

The type of monitoring includes spot assessments (instantaneous assessments) and assessments made over a 5-minute period where the odour intensity is recorded every 10 seconds.

9 odour assessments were undertaken on 2 separate dates in February. All 9 assessments detected landfill related odour. 8 out of 9 assessments detected distinct or strong landfill related odour on:

- Wednesday 07 February 2024
- Saturday 24 February 2024

47 spot assessments were undertaken on 5 separate dates in February. Of these, 30 assessments detected landfill related odour.

27 out of the 30 assessments where landfill odour was detected reported distinct or strong odour on:

- Friday 02 February
- Wednesday 07 February
- Tuesday 13 February
- Saturday 24 February

NULBC Mobile Air Quality Monitoring (using Jerome monitor)

- 2.5 Officers have monitored the levels of hydrogen sulphide within the community using the mobile Jerome monitor. The highest level of hydrogen sulphide recorded in the community was 29.56ppb at Maries Way on 24/02/24 at 09:26.

NULBC Actions

- 2.6 It is disappointing to report that over this winter period there has been a continued deterioration in the odour conditions from Walleys Quarry as shown in the data reported.
- 2.7 Officers are awaiting the rectified air quality data for February published by the EA to compare the data against the findings from Officer assessments and the Jerome air quality data.
- 2.8 Following the Council's request to Walleys Quarry Limited to review the upturn in November and December and January odour, they have provided potential areas of

landfill gas emissions, along with the actions taken by WQL in these areas. This comprises the following areas:

- *Internal waste flanks and surfaces which is actioned through ongoing temporary capping and specifically following engineering works to the facility to install 5 new full-depth leachate wells and permanent capping of an area to the southeast of the facility, which although not at height could be completed ahead of schedule. Works to line this area is scheduled to be undertaken in mid-March.*

- *Operational area which is actioned through landfill gas extraction from operational areas through installation of 8 vertical wells in January, temporary horizontal wells due to be installed on 4th March and 3 pin wells installed in January. Confirmation that these wells have been commissioned.*

- *Gas collection which is actioned through completion of sector review relating to gas balancing. Gas collection has increased to 3600m³/hr.*

- *Expert review which has been agreed and commission by WQL and NuLBC to review all aspects of gas capture, collection and treatment at the facility, along with review of critical policies and procedures. This work has resulted in a site visit being undertaken followed by a meeting whereby a number of actions were agreed, including:*

- *to review the size of the tipping area;*
- *to establish a methodology for a H₂S survey of the WQ facility;*
- *for a H₂S survey to be undertaken.*

This work is on-going.

- *Landfill Gas Management which is actioned through the implementation of the Landfill Gas Management Plan and review of the Gas Utilisation Plant and associated infrastructure.*

WQL conclude "Thus far, no one area has been identified as having impacted odour at the WQ boundary and its immediate environs. We will be continuing our investigations, including but not limited to, GUP performance and expert analysis."

2.9 As referenced above, the Council's landfill expert, and the landfill expert retained by Walleys Quarry Ltd have met in February 2024 to identify any additional actions which could be taken to resolve the situation. Following this, WQL have since reported that the western internal flank (facing Cemetery Road) which was previously clay capped is being covered with approximately 21,000m² of welded plastic geomembrane.

2.10 Officer monitoring and assessments will continue to be undertaken in March, both in and out of office working hours to continue monitoring and to respond to the issues raised.

Action Following Special Council

2.11 Council received an update report at the meeting on 14 February in relation to the recent increase in odour. The following motion was agreed:

1. That odours emanating from Walley's Quarry Landfill represents a significant public health emergency for the residents of the borough.
2. That Full Council ask the relevant Scrutiny Committees to hold a public hearing, to receive impact statements from residents, stakeholders, including businesses, the operator, Staffordshire County Council, and local health bodies.

3. That Council endorses the decision made by the Cabinet on 16th January to encourage the Environment Agency (EA) to consider a Closure Notice and formally resolves to call on the EA to go further than 'suspending the operator's licence' and issue a Closure Notice.
4. That the Environment Agency be requested to publish immediately a full 365 days' air monitoring data set to examine impact against the chronic-term health guidelines where 1.4 ppb and 2µg/m³ are applicable.
5. That Council continues to focus its energies on resolving foul odour from Walleys Quarry Landfill within its Abatement Notice powers as a priority and asks the Monitoring Officer, with appropriate legal support, to assess the most effective route, including Judicial Review, to securing an end to the community's suffering.
6. That the Monitoring Officer's advice is referred to the relevant Scrutiny Committees for consideration prior to consideration by Cabinet and Full Council.
7. That Council endorses the Cabinet budget proposal to increase the Walleys Quarry Legal Action Reserve to £300,000, with any further expenditure being a Full Council decision at the appropriate time.

Scrutiny

- 2.12** With regard to Scrutiny, a report outlining a proposed approach to convening a 'Committee of Inquiry' was presented at Health, Wellbeing & Environment Scrutiny Committee on 26th February 2024, this can be found at [WQ Scrutiny post Council.pdf \(newcastle-staffs.gov.uk\)](#) the recommendations were endorsed. The Committee of Inquiry members have been selected and the scoping meeting is being arranged.

Requests to Environment Agency

- 2.13** With regard to the two requests to the Environment Agency (to progress a closure notice and to release air quality data), the Council's Chief Executive wrote to the Chief Executive of the Environment Agency to communicate these requests. A copy of this letter and the response is attached as Appendix 2.

Legal Options

- 2.14** With regard to point 6, there are two issues upon which members can be updated – position regarding Judicial Review and the position regarding the Council's Abatement Notice.
- 2.15** In terms of the Judicial Review, Council discussed two areas of potential review – the absence of EA action to suspend the operator's permit, and the decision by the Secretary of State not to initiate a Public Inquiry.
- 2.16** Since the Council debate the EA have suspended the operator's permit and specified works to be completed. These works were duly undertaken and the suspension lifted, with the EA signalling its commitment to using all available powers to address off site odours arising from the site. Whilst it may still be possible to undertake a Judicial Review concerning the absence of this action earlier, this is unlikely to impact future action and therefore bring about early resolution of the problem as per the agreed Council resolution.
- 2.17** Counsel's advice has been sought regarding other legal routes, including the viability of undertaking a Judicial Review of the Secretary of State's decision not to order a

Public Inquiry. Pending that advice, the Monitoring Officer has provided a preliminary assessment as set out in Appendix 5.

Progressing the Abatement Notice

- 2.18** The Council secured an Abatement Notice in relation to the Walleys Quarry site and, if necessary, now has the power to take enforcement action in relation to odours from Walleys Quarry, subject to establishing a breach of the notice and obtaining Secretary of State's permission.
- 2.19** In order to consider any breaches of the Abatement Notice, it is useful to revisit the relevant requirements of the abatement notice. The requirements are detailed below, with the italic bold text reflects the requirements or text used within the abatement notice:
- 2.20** ***Satisfied of the existence of smell amounting to a statutory nuisance under section 79(1)(d)*** – This was considered against the issues of frequency, intensity, duration and offensiveness and location (the FIDOL factors). Such factors would have to be established in determining a breach of the notice. Although much of the monitoring relates to hydrogen sulphide, this is not the only odorous compound and any in relation to any future breaches, all smells could be considered.
- 2.21** ***Premises (including land) falling wholly or partially within the area encompassed by the boundary line identified on the attached plan reference NULBC02*** - An area of land where the nuisance exists was defined in order ensure that the notice was clear and specific in nature and to enable the Council and Walleys Quarry Ltd to be able to assess compliance. Any breach would have to be substantiated within this area.
- 2.22** ***to abate the nuisance*** - There are numerous different options abate the nuisance, which are not prescribed. Additionally, the Notice provides an ongoing responsibility for Walleys Quarry Ltd to comply with the terms of the abatement notice and not create or allow a further statutory odour nuisance. Any breach would have to demonstrate that the nuisance had not been abated.
- 2.23** Critically, under the law, whilst odours may exist off site at levels which could be considered a breach of the notice, that breach would be unenforceable (or a defence against creating a statutory nuisance) if the operator can show that Best Practical Means (BPM) are routinely deployed in the management of the site. Whilst the existence or not of BPM can be debated, it would be a court which would determine whether BPM was in place at the time of the breach.
- 2.24** At the time of the agreement, WQL operational plans were agreed to constitute BMP. It was also agreed that these would evolve with the site's development. It is evident that ongoing, consistent, good management at the landfill site is key to controlling off-site odour.
- 2.25** Officers have continued to use both air monitoring data, complaint data, and odour assessments to identify whether the Abatement Notice has been breached. At this stage, the officer assessment is that the recent odours could amount to a breach of the Abatement Notice, and the decision on next steps depends on how best to deploy the Council's powers to improve the experience of local residents. This is reflected in the sequential process for enforcement outlined below, and also in the risks associated with progressing enforcement action, particularly given that the Environment Agency is the primary regulator of this site and should reasonably be

relied upon to take all necessary enforcement action, negating the need for the Council to act.

2.26 The Council's enforcement policy involves a sequential approach to enforcement. In order to progress any enforcement action in relation to the Abatement Notice, there is a process that needs to be followed, and the thrust of any action taken in relation to the policy is to bring about an improvement in the odour for the community. The progress of the Council through this process is summarised in the table below:

Receipt of odour complaint	Complaints have increased in the winter of 2024, as set out in various reports to Cabinet and Council
Evidence gathering - around the odour event to establish elements of FIDOL	Officer assessments have been undertaken to establish the elements of FIDOL
Engagement with Operator	In addition to regular meetings with the operator, Officers have formally requested information from WQL about the situation in January and February, any remedial action that they intend to undertake. The operator has responded to these requests, and are taking action following the joint meeting of experts.
Determining whether odours off site are consistent with a breach of the Abatement Notice	The decision in relation to the existence of a breach of the Abatement Notice is to be determined by Officers on the evidence obtained to date.
Consideration of BPM defence	Information through engagement with the operator will provide an initial view on BPM. An experts view on BPM at the time of the breach is necessary to determine whether a defence is held.
Operators Right to reply	This would be through a formal interview under the Police and Criminal Evidence Act
Collation of Case file	A case file would include all evidence and material in relation to the case. This would include witness statements, the Councils experts reports, the operators defence.
Review against Enforcement Policy	Upon completion of the case file a further review against the enforcement policy is undertaken to determine the most appropriate enforcement action.
Request permission from Secretary of State to take legal action	This stage is necessary in relation to this case, as the sites principal regulator is the Environment Agency. In order to proceed approval needs to be obtained from the Secretary of State. There is no fixed stage in the process where this has to be undertaken.

Cabinet / Council Decision	The decision in relation to the existence of a breach of the Abatement Notice is determined by Officers. There are many elements that would follow from making such a decision, which would need to be considered by members, such as the endorsement of a breach and approval to progress enforcement action, with the necessary approval of funding.
Commencement of Legal action	This stage would be through the issue of summons to WQ Ltd for a breach of the Abatement Notice.

2.27 At the core of next steps are two issues – whether the action taken by the Environment Agency as the primary enforcement agent for this site have been successful in remedying the issues; and whether a defence of BPM exists. Where either of these are assessed to be in place it would not be in the public interest for the Council to pursue this matter further.

Air Quality & Health

2.28 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.

2.29 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 (H₂S) monitoring data collected at the monitoring stations. This update is available at the following link [Latest News | Engage Environment Agency \(engagementhq.com\)](https://www.engagementhq.com)

2.30 On 19 October 2023, the EA calibrated the H₂S 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.

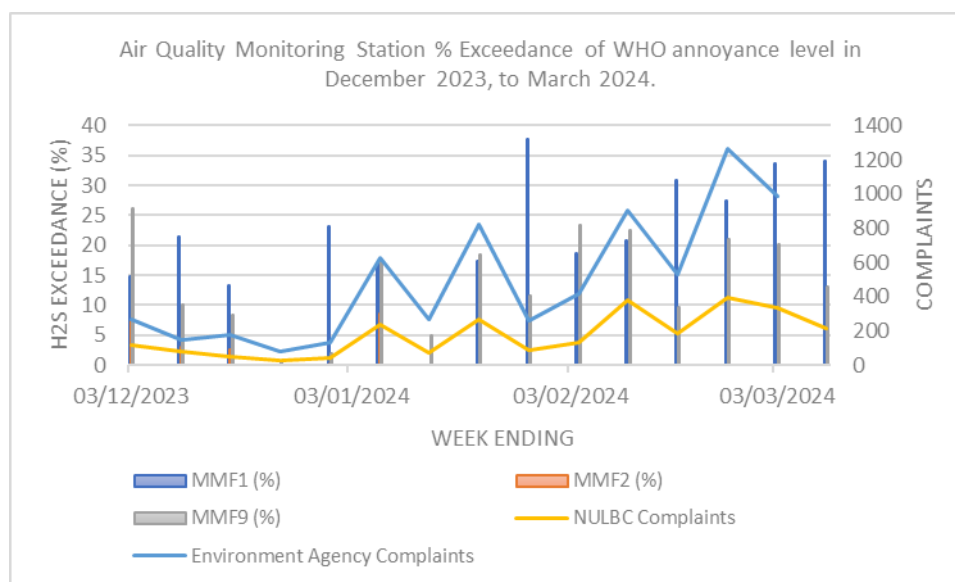
2.31 The latest H₂S data is set out in the table below, defining the proportion of the time periods where H₂S levels were above the WHO Odour Annoyance guideline of 7ug/m³.

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	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
27 November – 3 December 2023	14.9	7.4	26.2
4 December – 10 December 2023	21.4	3.0	10.2
11 December – 17 December 2023	13.4	2.68	8.33
18 December – 24 December 2023	0	0	0.6
25 December- 31 December 2023	23.21	0.3	1.9
01 January – 07 January 2024	16.9	8.7	17.7
08 January – 14 January 2024	0		5.0
15 January – 21 January 2024	17.4		18.4
22 January – 28 January 2024	37.8		11.6
29 January – 04 February 2024	18.6		23.4
05 February – 11 February 2024	20.8		22.6
12 February – 18 February 2024	30.8		9.6
19 February – 25 February 2024	27.4		21.1
26 February – 03 March 2024	33.7		20.1
04 March – 10 March 2024	34		13

NR= not reported

- 2.32** The complaint data and weekly % exceedance of the WHO annoyance level have been combined and is shown on the graph below. This shows good correlation between the two and it also shows an increasing trend for % exceedance of the WHO annoyance level and complaint numbers.



MMF2 update

- 2.33** The EA were required to remove Mobile Monitoring Facility (MMF) 2 from Silverdale Pumping Station as the landowner planned to carry out construction works at the site. MMF 2 was removed on 8 January 2024, along with the electrical connection.

The EA have recently updated 'as the construction works have now been delayed until 2024, the landowner has agreed to allow us to use the site again'.

'To make progress as quickly as possible we have put MMF 4 on the site. MMF 4 will carry out the same air quality monitoring using the same parameters as MMF 2. There will be a short delay before MMF4 is operational as we will need to replace the electrical connection, which involves complying with the relevant electrical safety controls. We hope that MMF 4 will be recording monitoring data before the end of March 2024'.

'We will continue our work to identify a longer-term alternative site before Silverdale Pumping Station becomes unavailable again in September 2024'.

H2S Data Adjustment Method

2.34 The EA previously updated on the issue with H2S data being recorded by the analysers and the degree of uncertainty, providing the following detail.

- We have developed a method that could allow us to adjust historic H2S data. This method is the subject of an independent peer review. We anticipate that the group's findings will be finalised by the end of January 2024. We are regularly updating partners and the local community on this issue.
- We have 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 H2S calibration gas, which is not easily available commercially. This means there may be a short delay.

2.35 On 09 February 2024, the EA issued a further update:

'In November 2023 we explained that we had developed a data adjustment method that could allow us to adjust historic hydrogen sulphide (H₂S) data and that an independent peer review group was assessing this method. We told you that we expected the group's findings to be finalised by the end of January 2024.

We know that this work has progressed well, and we anticipate that the report will be published shortly by the Department for Environment, Food & Rural Affairs' (Defra), whose Chief Scientific Adviser chairs the group. We will share a link to the peer review group's report on Engagement HQ, when it becomes available.

Once we have seen the peer review group's report, we will be able to outline to our partners and the community our next steps in respect of the historic data. We will of course continue to update you with our progress.'

Environment Agency Regulatory and Enforcement Action

2.36 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>

2.37 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.

2.38 The following table provides a summary of the published CAR (Compliance Assessment Report) forms since the last Cabinet report:

Date of Report	Date issued	CAR reference	Assessment	Compliance Score
13/12/23	21/12/24	DP3734DC-0485800	Site inspection (unannounced)	62
05/01/24	05/01/24	DP3734DC-0487498	CQA validation report for Cell 4 Sidewall (Upper)	0
11/01/24	25/01/24	DP3734DC-0490052	Site inspection (unannounced)	0
16/01/24	16/01/24	DP3734DC-0486955	CQA Plan for gas well installation	0
18/01/24	18/01/24	DP3734DC-0489307	Addendum to the leachate management action plan	0
01/02/24	12/02/24	DP3734DC-0492410	Site inspection (unannounced)	0

Compliance Assessment Report – where non-compliance has been identified

2.39 The Compliance Assessment Report dated 13 December 2023 identified 3 actions:

Action 1: Install any missing temporary clay capping over the top of Phases 4 and 5, and the flank of Phase 6 as required by the agreed CPP. The capping shall be to an appropriate standard. Deadline: 13 January 2024

Action 2: Carry out remedial measures required in areas identified in the GGS Survey as having elevated methane emission levels to prevent gas emissions causing off-site pollution. These shall include the installation of appropriate infrastructure, including but not limited to (i) pin wells, (ii) gas wells, and (iii) temporary capping. Deadline: 13 January 2024.

Action 3: Provide a report to the Environment Agency which sets out the actions taken to rectify fugitive landfill gas emissions reported in the GGS Survey and demonstrates the effectiveness of the actions taken. All monitoring shall be undertaken in accordance with the specification which appears in Environment Agency Guidance LFTGN 07. Deadline: 20 January 2024.

A total non-compliance score of 62 CCS points was issued.

2.40 It was previously reported to Cabinet that the EA Officers conducted a site inspection on Wednesday 24 January 2024.

During that inspection the EA established that Walleys Quarry Ltd (WQL) had carried out works to reduce uncontrolled emissions from the operational area (tipping face), which were required following an inspection on 13 December 2023. The works consist of:

- vertical, deep gas wells which have been connected to the landfill gas management system.
- 3 pin wells that will be connected to the landfill gas management system by 28 January 2024.
- 2 horizontal gas wells along the southern boundary.
- A further horizontal well, which is due to be installed by 28 January 2024.

In addition, temporary clay capping is being installed on the top of Phase 4 and Phase 5, and on the western facing flank of Phase 6. Nine pin wells are being installed along the northern boundary of the site.

Suspension Notice

2.41 On 1 March 2024 the EA issued a Regulation 37 Suspension Notice to Walleys Quarry Ltd (WQL), which requires the company to take immediate action to remove the risk of serious pollution from fugitive emissions of landfill gas to the air causing significant and widespread offence to human senses due to odour.

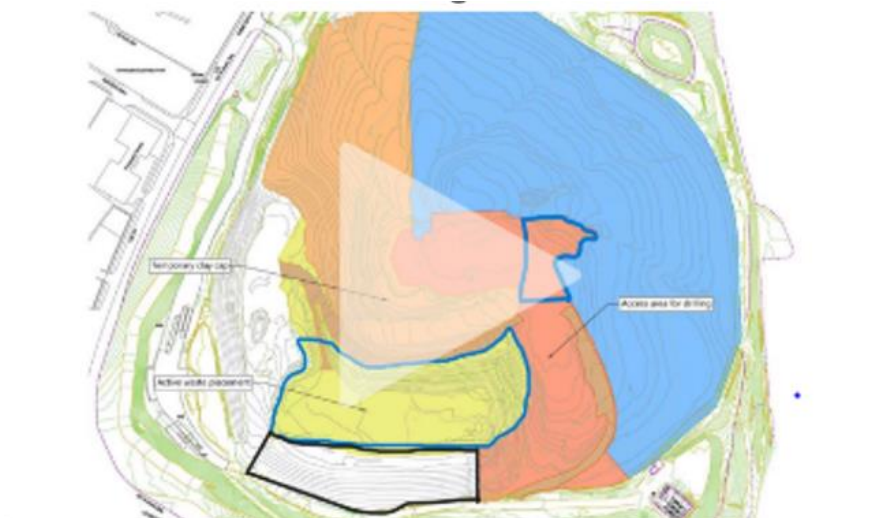
The Suspension Notice requires WQL to immediately stop the acceptance and disposal of waste, except for inert wastes which do not contribute to the odour.

The Suspension Notice also requires WQL to:

- **install additional gas extraction infrastructure in a key part of the operational area of the site by 17 March 2024;**
- **to connect it so that it extracts gas by 24 March 2024;**
- **to install additional temporary capping (using either compacted clay or geomembrane) in two other operational areas, by 24 March 2024.**

The work which is required is shown on the plan on the EA video:

- the gas infrastructure in the area edged in black
- the temporary capping is required in the two areas edged in blue;



‘The EA acknowledged the calls for the EA to close the site. ‘However, as we have previously explained, we will only issue a Closure Notice as a last resort, having exhausted all other enforcement and regulatory options. The purpose of this work is to reduce as quickly as possible fugitive emissions of landfill gas from these areas of the site and the impact experienced by the community. This is our priority and is best achieved in the short-term by using a Suspension Notice’.

‘We recognise that some will be disappointed that we have stopped short of closing the site. We will continue to assess the situation and are keeping all regulatory options under review. We will continue to require WQL to comply with its environmental permit and implement all the measures necessary to manage emissions of landfill gas from the site’.

‘The Environment Agency continues to robustly regulate WQL, informed by our Contain, Capture and Destroy strategy. Areas where action is required by the Suspension Notice do not currently have the infrastructure in place to contain (capping) and capture (gas infrastructure) so that landfill gas can be sent to be destroyed. For more information on this please see our video [here](#)’

The EA state ‘there have been recent unacceptable increases in hydrogen sulphide emissions around Walleys Quarry, and in odour reports from local residents. We have every sympathy with the local community and remain committed to maintaining long-term improvements in emissions from the site.’

- 2.42** Walleys Quarry Limited issued a statement on 01 March 2024 in relation to the Suspension Notice. “This Suspension Notice is unnecessary and entirely inappropriate. It is self-serving in terms of seeking to justify the extreme scrutiny under which the Agency has placed Walleys Quarry over the past years in response to political pressure placed on it.

‘As the EA is fully aware, there is already extensive work under way involving gas infrastructure and capping at the site. This work was already in progress prior to the Agency issuing the Notice and was instigated and continues to be fully funded by Walleys Quarry Ltd who had developed the design and commenced works prior to the service of the Notice.

Walleys Quarry will be working to the withdrawal of this pointless Notice in the minimum timeframe possible as it continues as a responsible business to take all necessary safe and sustainable steps to ensure the eventual completion of the site.’

- 2.43** On 12 March, the Environment Agency released news that the EA has ‘assessed the action taken by Walleys Quarry Ltd (WQL) to comply with the Suspension Notice (‘the Notice’) issued on 1 March 2024. The Notice was issued to secure immediate action to remove the risk of serious pollution from fugitive emissions of landfill gas to the air causing significant and widespread offence to human senses due to odour. The Notice required WQL to install additional gas extraction infrastructure in a key part of the operational area; to connect it so that it extracts gas; and to install additional temporary capping in two other operational areas.

We are satisfied that the steps required have been completed and have therefore withdrawn the Notice. This means that WQL is no longer prohibited from accepting and disposing of non-inert waste specified in its permit.

The Environment Agency will now carefully assess the effectiveness of the action taken to reduce fugitive emissions of landfill gas from the areas of the site identified in the Notice. We will continue to require WQL to comply with its environmental permit and implement all the measures necessary to manage emissions of landfill gas from the site. All regulatory options remain under consideration.

WQL has notified the Environment Agency that it has appealed against the Suspension Notice to the Planning Inspectorate. We have informed the Planning Inspectorate that, following compliance, the Notice has been withdrawn’.

- 2.44** Walleys Quarry Limited issued a press statement on 12 March 2024 following the ‘withdrawal’ of the Suspension Notice:

‘Lifting this Suspension Notice is 100 per cent the correct decision. Imposing it just over a week ago was inappropriate and ill-conceived as we said at the time.

It appeared to serve only the interests of the Environment Agency in seeking to justify its over-zealous scrutiny of Walleys Quarry. While we welcome the inevitable decision to lift the Notice, we do not believe it was ever justified.

Today's Withdrawal Notice comes following a significant effort by Walleys Quarry to complete the onsite works already in progress at the time that the Notice was issued in the shortest timescale possible.

Following the lifting of the Notice, we will continue our work, implementing our extensive gas infrastructure and environmental engineering works in accordance with our focused, long running and ongoing programmes.

Ironically, the only effect this Notice has had is to disrupt works already in progress, impose works we still consider superfluous and led to the delay of the site's wider development and capping programme.

As always, we remain dedicated to working with our community and the regulators to provide a clean, responsible and sustainable operation for Newcastle-under-Lyme'.

- 2.45** On 18 March 2023 WQL issued a further press statement on the Suspension Notice maintaining its position that the issuing of any Notice was unnecessary and inappropriate. 'The key areas identified in the Notice of temporary capping and installation of sacrificial gas infrastructure was already underway or planned as part of ongoing site development'. Further detail is then given on the sacrificial gas infrastructure and temporary capping. WQL outline next steps which include: 'We are considering our next steps as the withdrawal of the Notice by the EA removes our opportunity to have an independent appeal hearing to the planning inspectorate'.
The press statement on the WQL website is found [here](#).

Walleys Quarry Update

- 2.46** With regard to the planned liaison committee, WQL advised 'Further to the Environment Agency's actions on 1st March 2024 and the service of a suspension notice, WQL management team must focus on the completion of our engineering works at the site in the minimum timeframe possible. This means that involvement in any outside activity will not be possible for us at this time. This extends to our planned involvement in the Liaison Group meeting scheduled for 5th March 2024 from which we must excuse ourselves and therefore postpone. In doing so we provide our assurances that the conditions of the section 106 agreement will continue to be met.'
- 2.47** On 15 March 2024 WQL published a 'Community Update' stating that: 'WQL continues to invest heavily in the landfill site. This includes major financial investment into a wide range of planned projects together with significant internal and external resources being ploughed in to support the busy programme of works we are engaged in at this time'. The update contains details regarding:
- Sidewall engineering
 - Permanent capping
 - Temporary capping
 - Temporary geomembrane capping to the western flanks
 - Gas infrastructure

The link to the Community Update on WQL website is found [here](#)

Key Performance Data

- 2.48** 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 3 and 4.
- 2.49** The data from the Council covers the period from December 2023 to February 2024, and provides complaint numbers and officer assessments.
- 2.50** 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 January and February are contained in Appendix 4.

3. Proposal

3.1 Cabinet is recommended to:

- Note the contents of this update report.

4. Reasons for Proposed Solution

- 4.1** 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.

5. Options Considered

- 5.1** To provide regular updates to Cabinet.

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 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.

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 minimising this impact as soon as possible.

8. Financial and Resource Implications

- 8.1 Dedicated officer resource has been allocated to continue the Council's work regarding Walleys Quarry Landfill.
- 8.2 From April 2023 there is £100k reserved for legal action associated with Walley Quarry landfill site.
- 8.3 From April 2024 there is a £300k reserve for works associated with Walleys Quarry Landfill site.
- 8.4 In the event that formal action is required, a separate report will be brought to full Council to approve additional funds.

9. Major Risks

- 9.1 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.
- 9.2 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.

10. UN Sustainable Development Goals (UNSDG)



11. Key Decision Information

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

12. Earlier Cabinet/Committee Resolutions

13.1 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, 23rd February 2022, 23rd March 2022, 20th April 2022, 7th June 2022, 19th July 2022, 6th September 2022, 18th October 2022, 8th November 2022, 6th December 2022, 10th January 2023, 7th February 2023, 13th March 2023, 5th April 2023, 6th June 2023, 18th July 2023, 19th September 2023, 17th October 2023, 7th November 2023, 5th December 2023, 16th January 2024, 6th February 2024, 14th February 2024.

13. List of Appendices

- 13.1 Appendix 1. Historical Complaint data
- 13.2 Appendix 2. EA Letters
- 13.3 Appendix 3. NUL Key Performance Data
- 13.4 Appendix 4. WQL Key Performance Data