

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO COUNCIL

10 April 2024

Report Title: Walleys Quarry – Odour Issues and Breach Notice

Submitted by: Interim Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<u>Purpose of the Report</u>	
To update Council on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.	
<u>Recommendation</u>	<u>Key Decision</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<p>Council is recommended to:</p> <ol style="list-style-type: none"> 1. Note the contents of this update report. 2. Note the breach of the Council's Abatement Notice. 3. Note that the Council has issued a letter to Walleys Quarry Ltd notifying them of the breach of the Abatement Notice. 4. Note that the Council will continue dialogue with Partners via the Strategic Coordinating Group regarding any further enforcement activities to seek to alleviate the suffering of the community. 5. Note that the Council's legal team have been instructed to prepare appropriate legal proceedings in line with the above. 6. Note the £300k Walleys Quarry Reserve to undertake the above and if additional funds are required, a separate report will be brought to Council in due course. 	
<u>Reasons</u>	
To ensure that Council is kept updated on the ongoing work regarding the problem odours associated with Walleys Quarry Landfill Site.	

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.
- 1.6 A special meeting of Council was held on the 14th February 2024 regarding the Walleys Quarry situation. A motion was passed and endorsed with a number of actions one which was the setting up of a Health, Wellbeing and Environment Scrutiny 'Committee of Inquiry' as a public hearing. A report outlining a proposal was presented at Health, Wellbeing & Environment Scrutiny Committee on 26th February 2024, this can be found at [WQ Scrutiny post Council.pdf \(newcastle-staffs.gov.uk\)](https://www.newcastle-staffs.gov.uk) The recommendations were endorsed.
- 1.7 The Committee of Inquiry members have been selected and arrangements are in place for this scrutiny exercise to commence. The first meeting is scheduled for the 9th April.
- 1.8 The Committee of Inquiry will submit a report to the Scrutiny Committee, Cabinet and Council setting out the inquiry findings and recommendations.

Progressing the Abatement Notice

- 1.9 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.
- 1.10 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:
- 1.11 ***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.

- 1.12 **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.
- 1.13 **To abate the nuisance** - There are numerous different options that 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.
- 1.14 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, now the rectified air quality data had been published alongside other data sources, the officer assessment is that the recent odours amount to a breach of the Abatement Notice.
- 1.15 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. That said, prior to entering into any formal legal action it is necessary for the Council to formulate a view with regard to this matter, this is ongoing.
- 1.16 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.
- 1.17 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 an established process 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

	<p>January and February and any remedial action that they intend to undertake.</p> <p>The operator has responded to these requests and are taking action following the joint meeting of experts.</p>
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 determined on the evidence obtained.
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 advisable 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 expert's reports and the operator's 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. 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 normally be through the issue of summons to WQ Ltd for a breach of the Abatement Notice.

- 1.18 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.

1.19 It should be noted that during the same period as the breach works have been completed on site to comply with the Suspension Notice. Data since the works have been completed does show an improvement, however it is too early to say whether this is coincidental, due to the works or weather.

1.20 In terms of the salient points identified in the correspondence from WQL, they confirm they are operating and managing the landfill to BPM, in fact they go slightly further in saying “The measures deployed, representative of BPM and delivered willingly by WQL ahead of any published guidance or best practice will ensure that the capping, containment and extraction systems, methodologies and practices employed at the facility remain exemplary.” They also confirm that through their investigations “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. **Proposal**

2.1 Council is recommended to:

- Note the contents of this update report.
- Note the breach of the Council’s Abatement Notice.
- Note that the Council has issued a letter to Walleys Quarry Ltd notifying them of the breach of the Abatement Notice.
- Note that the Council will continue dialogue with Partners via the Strategic Coordinating Group regarding any further enforcement activities to seek to alleviate the suffering of the community.
- Note that the Council’s legal team have been instructed to prepare appropriate legal proceedings in line with the above.
- Note the £300k Walleys Quarry Reserve to undertake the above and if additional funds are required, a separate report will be brought to Council in due course.

3. **Reasons for Proposed Solution**

3.1 To ensure Council 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.

4. **Options Considered**

4.1 To provide regular updates to Council.

4.2 Having determined that the Abatement Notice has been breached, the Council has considered a variety of potential legal options including:

- Take no action
- Take enforcement action against Walleys Quarry for Breach of the Abatement Notice
- Recognise that the Environment Agency is the lead regulator for the site, and use the evidence collected to support the Agency in its enforcement action;

5. **Legal and Statutory Implications**

5.1 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.

6. **Equality Impact Assessment**

6.1 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.

7. **Financial and Resource Implications**

7.1 Funding will be provided through the Walleys Quarry Reserve £300k which was approved at Full Council in February 2024.

7.2 Should further funding be required, up to £300k can be made available through the transfer of useable reserves (£100k from the Borough Growth Fund and £200k from the Budget and Borrowing Support Fund). These funds can be transferred without Council approval.

7.3 Should proceedings regarding the breach of the Council's Abatement Notice exceed £600k, a further report will be presented to Council in order to seek approval to utilise funds from the General Fund Reserve.

8. **Major Risks**

8.1 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.

8.2 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.

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



10. **Key Decision Information**

10.1 This is a Key Decision.

11. **Earlier Cabinet/Committee Resolutions**

11.1 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, 19th March 2024.

12. **List of Appendices**

12.1 Appendix 1. - Letters