

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

23 April 2024

Report Title: Walleys Quarry – Odour Issues

Submitted by: Interim Chief Executive

Portfolios: Sustainable Environment; One Council, People & Partnerships

Ward(s) affected: All

<p><u>Purpose of the Report</u></p> <p>To update Cabinet on the latest position regarding the problematic odours in the Borough associated with Walleys Quarry.</p>	<p><u>Key Decision</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></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 \(newcastle-staffs.gov.uk\)](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.

	Complaints to NuLBC	Complaints to Environment Agency
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	133	416
29/01/24 - 04/02/24		
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	217	694
04/03/24 - 10/03/24		
11/03/24 – 17/03/24	102	374
18/03/24- 24/03/24	118	330
25/03/24-31/03/24	81	254
April 2024		
01/04/24-07/04/24	56	220
08/04/24- 14/04/24	17	75

- 2.2 Officers highlight any odour events where 10 or more odour complaints have been recorded. There have been 20 odour events in the month of March:

- 01 March – 07 March 2024 (7 consecutive days)
- 11 March 2024
- 13 March 2024
- 15 March -16 March 2024 (2 consecutive days)
- 18 March - 21 March 2024 (4 consecutive days)
- 24 March - 27 March 2024 (4 consecutive days)
- 30 March

The highest number of complaints reported to NULBC was on Tuesday 5 March 2024 at 79 complaints.

- 2.3** The overall trend is for “spikes” in complaints when odours are prevalent.

NULBC Odour Assessments

- 2.4** Officers have undertaken odour assessments. 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.

3 odour assessments were undertaken on Wednesday 20 March 2024. All 3 assessments detected landfill related odour. 2 detected distinct odour (intensity rating 3) and 1 detected strong odour (intensity rating 4).

In addition, 15 spot assessments were undertaken of which 6 detected landfill related odour. 4 detected distinct odour (intensity rating 3) and 1 detected strong odour (intensity rating 4).

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 9.77ppb at Cemetery Road at 22:13 on 20 March 2024.

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. However, it can be seen that the data for April to date, is showing an improvement in complaint numbers and also air quality levels.
- 2.7** Officer monitoring and assessments will continue to be undertaken in April.
- 2.8** 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.
- 2.9** On 8 April 2024 WQL were notified in writing that a breach of the Abatement Notice had occurred.
- 2.10** The report to Council on 10 April 2024 explains the legal options and challenges in terms of actioning a breach of the Abatement Notice. Council agreed the following:

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.

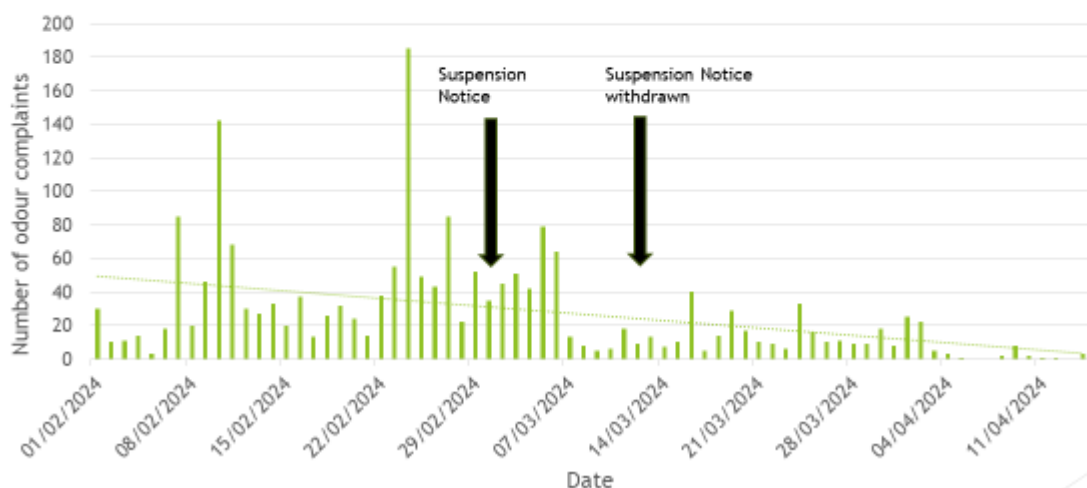
2.11 Critically, under the law, whilst odours may exist off site at levels which could be considered a breach of the notice, that breach would be unenforceable (or a defence against creating a statutory nuisance) if the operator can show that Best Practical Means (BPM) are routinely deployed in the management 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.

2.12 At the core of next steps are two issues – whether the action taken by the Environment Agency as the primary enforcement agency 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.

2.13 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.

2.14 The graph below of NULBC Complaints shows the detailed complaint numbers in relation to the EA suspension notice.

Odour Complaints reported to NULBC February, March & April



- 2.15** 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.”

WQL 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.”

- 2.16** Walleys Quarry Ltd have responded to the media enquiries and a spokesperson from WQL has said:

"Walleys Quarry Ltd would urge Newcastle Borough Council to reconsider any proposed legal action. We instead ask them to discuss their concerns with us as part of our ongoing collaborative efforts to see the best outcomes for the community. We refute these allegations and should the council proceed, we will of course consider our response under the advice of our legal team”.

“WQL has made demonstrable, substantial and sustained progress in our capping programme as well as with efforts to minimise emissions from the site as we continue to use Best Practicable Means with the eventual objective of ceasing landfill operations and completing restoration onsite”.

Scrutiny

- 2.17** 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 has been held. A further meeting is planned for 1st May 2024.

Air Quality & Health

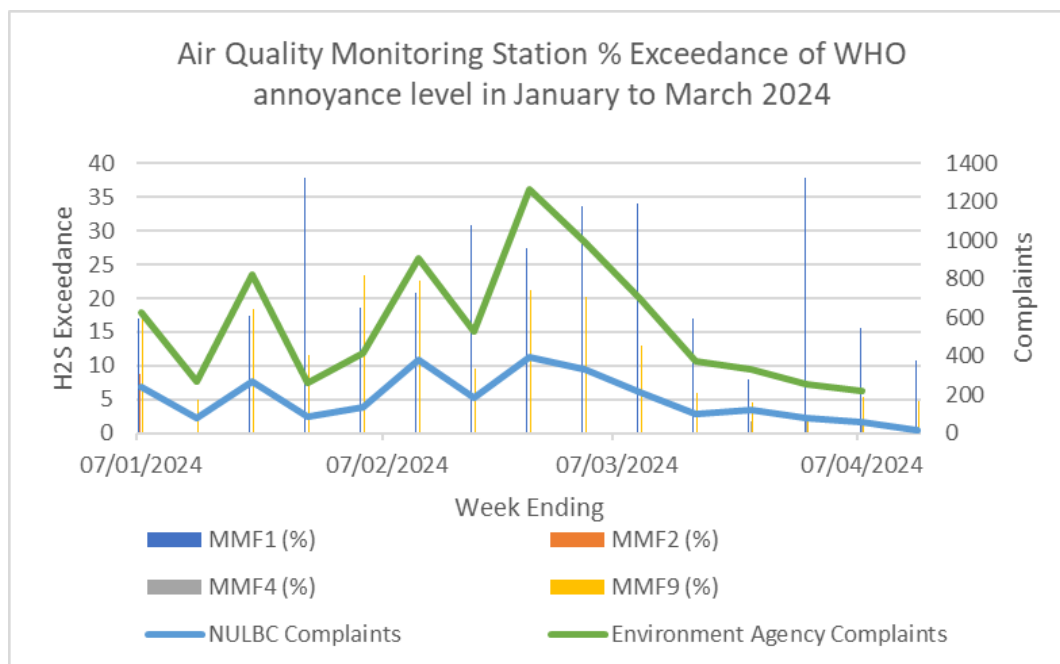
- 2.18** The Council, Staffordshire County Council, and the Environment Agency have jointly funded a campaign of air quality monitoring utilising three static air monitoring stations. The Environment Agency manage and operate these air quality monitoring stations. Data from these stations has been routinely published weekly by the Environment Agency.
- 2.19** 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 \(engagementhq.com\)](#)
- 2.20** 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.

2.21 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	MMF1 (%)	MMF 2 (%)	MMF(4) (%)	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
11 March – 17 March 2024	17.0			6.0
18 March – 24 March 2024	8		1.8	4.5
25 March – 31 March 2024	37.8		1.8	2.1
01 April - 07 April 2024	15.6		1.2	5.4
08 April – 14 April 2024	10.7		0	4.8

NR= not reported

2.22 The complaint data and weekly % exceedance of the WHO annoyance level have been combined and is shown on the graph below.



2.23 On 22 March 2024 the EA updated:
 ‘There has been an improvement in the raw monitoring data for the week commencing 11 March 2024. This follows completion of the steps specified in the Suspension Notice we issued on 01 March 2024. Exceedance of the World Health Organisation (WHO) odour annoyance guideline level decreased to 17 % (from 34% the previous week) at MMF 1, and 6 % at MMF 9 (from 13.0% the previous week). The levels of hydrogen sulphide detected also fell’.

MMF2 update

2.24 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’.

The EA confirmed MMF 4 is now operational and will begin publishing data for MMF 4 with effect from 25 March 2025.

H2S Data Adjustment Method

2.25 On 10 April 2024 the EA provided the following an update in ‘Latest News’:

‘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, led by Defra’s Chief Scientific Adviser was assessing this method’.

‘In February 2024 we informed you that we expected the group’s findings to be published shortly. We understand that the report has been undergoing quality assurance. Unfortunately, no firm date has been given for its publication’.

‘We recognise that members of the community may be feeling frustrated by the delay. Once the report is formally approved and published, we expect to outline next steps,

including the possibility of adjusting historic data, and anticipate offering another virtual public meeting’.

Environment Agency Regulatory and Enforcement Action

- 2.26 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>
- 2.27 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.
- 2.28 There have been no further Compliance Assessment Reports published by the EA.

Key Performance Data

- 2.29 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.
- 2.30 The data from the Council covers the period from January 2024 to March 2024, and provides complaint numbers and officer assessments.
- 2.31 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 March will be uploaded as Appendix 3 when available.

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 2024 there is a £300k reserve for works associated with Walleys Quarry Landfill site. 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
- 8.3** 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.

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

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

12. Earlier Cabinet/Committee Resolutions

12.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, 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, 10th April 2024.

13. List of Appendices

- 13.1** Appendix 1. Historical Complaint data
- 13.2** Appendix 2. NUL Key Performance Data
- 13.3** Appendix 3. WQL Key Performance Data