

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

04 June 2024

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

Submitted by: **Interim Chief Executive**

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

Ward(s) affected: **All**

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

1. Background

- 1.1** For a number of years, parts of the borough have suffered from 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 from February 2024, reported on a weekly basis. Historical complaint data is attached to this report as Appendix 1.

	Complaints to NuLBC	Complaints to Environment Agency
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	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	18	75
15/04/24- 21/04/24	32	145
22/04/24- 28/04/24	55	196
29/04/24- 05/05/24	41	167
May 2024		
06/05/24- 12/05/24	75	311
13/05/24- 19/05/24	76	192
20/05/24- 26/05/24	90	240
27/05/24- 02/06/24	73	

- 2.2** Officers highlight any odour events where 10 or more odour complaints have been recorded.

There have been 5 odour events in the month of April 2024:

- Monday 01 April
- Tuesday 02 April
- Thursday 18 April
- Monday 22 April
- Friday 26 April

The highest number of complaints reported to NuLBC on 01 April (25 complaints)

There have been 15 odour events in May 2024:

- Saturday 04 May - Monday 06 May (3 consecutive days)
- Thursday 09 May - Friday 10 May (2 consecutive days)
- Thursday 16 May
- Saturday 18 May
- Sunday 19 May
- Tuesday 21 May - Wednesday 22 May (2 consecutive days)
- Friday 24 May
- Monday 27 May - Thursday 30 May (4 consecutive days)

The highest number of complaints reported to NuLBC was on 21 May (39 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.

No odour assessments were undertaken in April.

23 spot assessments were undertaken in May of which landfill odour was detected in 7 assessments. 5 assessments had an intensity rating of 4 and 2 assessments had an intensity rating at 3.

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 6.95ppb at Cemetery Road at 16:19 on 21 May 2024.

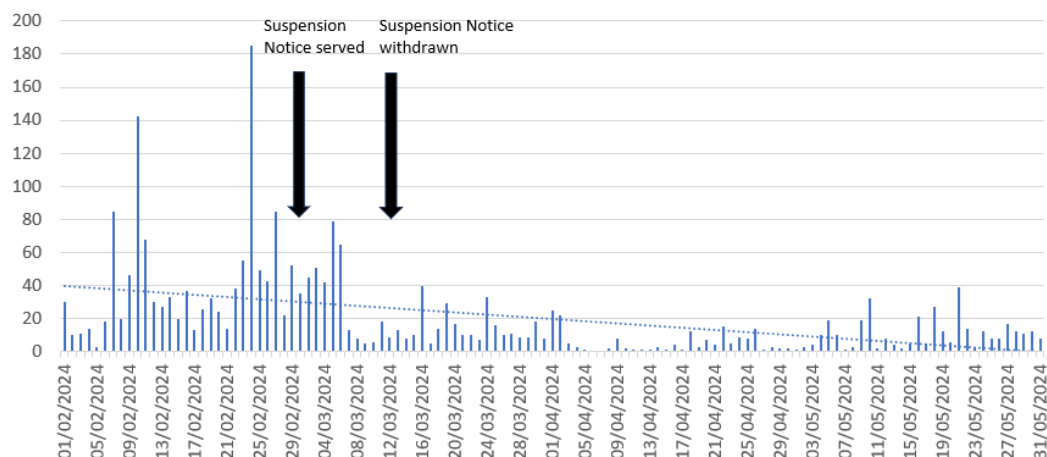
NULBC Actions

- 2.6** It is disappointing to report that over the recent winter period there had 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 May to date, is variable showing some periods of improvement and some deterioration compared to April's figures.

- 2.7 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.
- 2.8 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.
- 2.9 The Council has written to the Secretary of State requesting permission in relation to legal proceedings. A response is awaited. In the meantime officers have now instructed leading environmental experts to prepare the expert evidence which has been requested by our KC as a pre-requisite of the commencement of legal proceedings, in the event that we receive the required permission of the Secretary of State. Regular meetings will continue in the coming weeks between our KC and legal team and nominated experts to collate the evidence required to support any legal proceedings which may be commenced.
- 2.10 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 initial improvement, however it is too early to say whether this is coincidental, due to the works or weather.
- 2.11 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 & May



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 has been held.
- 2.13** At a 1st May member meeting briefings/information to help members understand some of the technical issues involved in WQ and effects from the operations, in preparation for the Inquiry session(s) were presented. Members also considered responses received to date from participants in the 2020/21 exercise who had been invited to review/update their previous statements.
- 2.14** Plans are being put in place to obtain statements for the Committee of Inquiry Day now planned for 23rd July, when participants will be invited to appear before members.

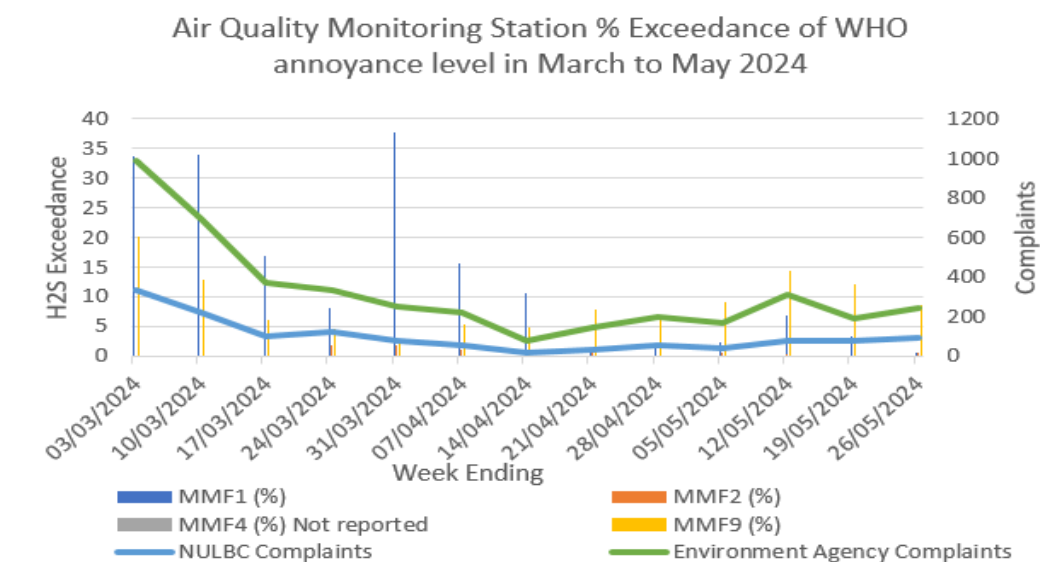
Air Quality & Health

- 2.15** 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.
- 2.16** 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 \(engagementhq.com\)](#)
- 2.17** 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.
- 2.18** 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. The EA updated that as the monitoring at the Silverdale Pumping Station is a continuation of the previous dataset, the EA will continue to call this MMF2 Silverdale Pumping Station.
- 2.19** The table below has therefore been amended

Time Period	MMF1 (%)	MMF 2 (%)	MMF 4 (%) Now 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
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
15 April – 21 April 2024	0.9	1.2		7.9
22 April – 28 April 2024	1.8	0		6.7
29 April – 05 May 2024	2.4	0.6		9.0
06 May – 12 May 2024	6.85	0.3		14.3
13 May – 19 May 2024	3.3	0		12.2
20 May – 26 May 2024	0.6	0.6		8.6

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



H2S Data Adjustment Method

2.21 The EA provided an update on 10 April 2024 as follows:

‘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.’

2.22 There are no further updates regarding the data adjustment method.

Environment Agency Regulatory and Enforcement Action

2.23 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>

2.24 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.

2.25 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
24/01/24	06/02/24	DP3734DC-0491578	Site inspection - announced	0
15/02/24	07/03/24	DP3734DC-0496622	Site inspection - unannounced	31
01/03/24	15/03/24	DP3734DC-0497401	Site inspection - announced	0
18/03/24	15/04/24	DP3734DC-0500961	Site inspection - unannounced	0
27/03/24	22/04/24	DP3734DC-0500465	Site inspection - unannounced	0
11/04/24	25/04/24	DP3734DC-0501575	Site inspection - unannounced	0
17/04/24	25/04/24	DP3734DC-0501930	Site inspection - unannounced	0
23/04/24	23/04/24	DP3734DC-0501701	Report/data review- CQA Plan for procedures for the installation of temporary capping	0

23/04/24	25/04/24	DP3734DC-0501852	Site inspection – unannounced	0
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2.26 The non-compliance identified in the CAR dated 15 February 2024 states:

“You have been scored a category 2 non-compliance (31 CCS points), because you have not operated the activities using the techniques and in the manner described in specified documentation, namely the OMP. The relevant series of events is as follows:

- A surface emissions and gas management system emissions survey were undertaken by GGS on 08 November 2023 (“the November Survey”).
- You submitted the results of the November Survey to the Environment Agency on 07 December 2023.
- The November Survey (see Appendix D) included specific areas of the site identified as having emissions of methane above 100 parts per million (ppm).
- You submitted a description of remedial measures taken to address elevated surface emissions to the Environment Agency on 11 December 2023.

You did not submit any retesting of the affected area(s) following the remediation measures as specified in section 4.4 of the OMP. Instead, you sought to rely on the regular bi-monthly survey (the January Survey), which occurred some 76 days after the November Survey which identified the affected areas to be remediated.

This is a non-compliance which could have a significant effect on quality of life if not addressed promptly and adequately, due to an increased risk of fugitive emissions of landfill gas from incomplete or ineffective remediation of those areas on the site which have been identified as having emissions of methane above 100 ppm. It is reasonably foreseeable that fugitive emissions of odorous landfill gas will lead to interference/restrictions on normal daily life as local residents shelter inside their homes.

Action 3 in CAR 0485800 remains outstanding because you did not provide a report which “**demonstrates the effectiveness** of the actions taken” (***emphasis added**), using monitoring undertaken in accordance with the specification which appears in Environment Agency Guidance LFTGN07. The Environment Agency’s position is that you cannot retrospectively complete this action due to the subsequent changes to the operational area.

You have repeated this non-compliant behaviour.

- The January Survey, which occurred on 23 January 2024 identified areas which had emissions of methane above 100 parts per million (ppm) in Appendix C.
- You submitted that report to the Environment Agency on 07 February 2024, together with a description of remedial measures taken to address elevated surface emissions identified in the January Survey.

However, you have not submitted any retesting of the affected area(s) following the remediation measures, as specified in section 4.4 of the OMP.

This is a non-compliance which could have a significant effect on quality of life for the reason specified above.

Action DP3734DC/0496622/1: Provide a survey report to demonstrate the effectiveness of the actions taken to rectify methane emissions identified in the January 2024 GGS survey. All monitoring shall be undertaken in accordance with the

specification which appears in Environment Agency Guidance LFTGN07. **Deadline:** 22 March 2024.

Total non-compliance score

In accordance with our guidance Waste operations and installations: assessing and scoring environmental permit compliance, we consolidate all non-compliances relating to an individual permit condition. This means that during an assessment we only give a permit holder one category and score per permit condition.

The total non-compliance score for this assessment is 31 CCS points”.

2.27 It is noted that in the Compliance Assessment Report dated 11 April 2024 the EA stated:

“WQL indicated that Bennett Environmental Engineering Ltd (BEEL) was present on site carrying out a surface emissions survey using a portable Flame Ionization Detector (FID) to measure methane levels”

“WQL informed officers that BEEL would be carrying out daily FID surveys on site. Records of the surveys would be kept, and any remedial measures would be completed immediately and evidenced, including photographs”.

Impact Study

2.28 An Impact study, commissioned jointly by a group of public bodies, including Staffordshire County Council, Newcastle-under-Lyme Borough Council, the Environment Agency and UK Health Security Agency, will be carried out by the independent Arcadis Consulting and findings will be published later in the year.

2.29 Communities affected by emissions from a landfill site are to be involved in an independent study detailing their experiences. Researchers will talk directly to residents, businesses and schools to ask not only how the long-running problems at Walleys Quarry landfill in Newcastle have affected their physical and mental health, but how they may have influenced children’s education, the local economy, community safety, the value of homes and other factors.

2.30 A copy of the press statement is available at:

<https://www.newcastle-staffs.gov.uk/news/article/254/wide-ranging-study-begins-into-impact-of-landfill-odours>

Key Performance Data

2.31 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.

2.32 The data from the Council covers the period from February 2024 to April 2024 and provides complaint numbers and officer assessments.

2.33 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 is uploaded as Appendix 3 and the data for April will be uploaded 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. NULBC Key Performance Data
- 13.3 Appendix 3. WQL Key Performance Data