

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

15 October 2024

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

Submitted by: **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. 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 needs 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. Such consent has been obtained.
- 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 June 2024, reported on a weekly basis. Historical complaint data is attached to this report as Appendix 1.

	Complaints to NuLBC	Complaints to Environment Agency
July 2024		
01/07/24- 07/07/24	45	103
08/07/24-14/07/24	52	155
15/07/24 -21/07/24	118	277
22/07/24 -28/07/24	93	189
August 2024		
29/07/24- 04/08/24	61	162
05/08/24-11/08/24	53	143
12/08/24-18/08/24	50	160
19/08/24-25/08/24	35*	185
September 2024		
26/08/24-01/09/24	7	46
02/09/24 -08/09/24	14	42
09/09/24 -15/09/24	25	95
16/09/24-22/09/24	43	118
23/09/24-29/09/24	16	53
October 2024		
30/09/24-06/10/24	52	147

*Revised figure please refer to paragraph below

As highlighted in the previous report Officers have reviewed the odour events that occurred on 20 and 21 August 2024. The complaints which described the odour as being:

- 'urine',
- 'manure'
- 'sewage'
- 'toilet'

- 'different...from before'

for this 2-day period have been removed from the Walleys Quarry complaint statistics. This has amended the daily complaint figures as follows:

Date	Number of complaints		
	Previously reported figure	Complaints linked to alternative source	Revised figure
20 August	23	10	13
21 August	24	13	11

Please note that the total number of complaints for August reported in Appendix 2 has been revised from 197 to 174 complaints.

September 2024

There have been 3 odour events in the month of September:

- Friday 13 September 2024
- Tuesday 17 September 2024
- Thursday 19 September 2024

2.2 The overall trend is for “spikes” in complaints when odours are prevalent.

NULBC Odour Assessments

2.3 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.

In September, 10 assessments were undertaken over 5 mins. Each assessment detected landfill related odour. 7 of the 10 assessments recorded a maximum intensity rating of 4.

69 spot assessments were undertaken of which landfill related odour was detected in 31 assessments with intensity ratings from 1 (very weak) to 4 (strong odour).

NULBC Mobile Air Quality Monitoring (using Jerome monitor)

2.4 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 24.17ppb at Galingale View on 13 September 2024.

NULBC Actions

2.5 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.

- 2.6** 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.
- 2.7** On 29 July 2024 the Rt Hon Steve Reed OBE MP, Secretary of State Environment, Food and Rural Affairs responded to the Leader’s request for permission to prosecute Walleys Quarry Ltd. under statutory nuisance legislation, confirming that he would grant consent for the prosecution to proceed.
- 2.8** On 30 September 2024 the Chief Executive confirmed an intention to move to legal action, noting “We are moving as quickly as possible in a complex situation. There are very few precedents for taking legal action against an operator regulated by a Government agency, so there is a great deal of legal advice and preparation involved, however I believe we will be ready to take the next step by the end of October.”

Scrutiny- Committee of Inquiry

- 2.9** A member-led committee of inquiry has been set up to look at the impact on local communities from the Walleys Quarry Landfill operation.

The specific lines of inquiry have been determined by Full Council and are as follows:

- What is the impact of the ongoing odour issue?
- What needs to be done next, and by whom, to bring about resolution?
- What, if any, opportunities have been missed to resolve this issue sooner?

- 2.10** The summary was presented to Full Council on 25 September 2024 with the following recommendations:

The Committee of Inquiry's recommendations, along with an update on actions, is shown below:

- 0. For the Environment Agency to serve a closure notice to commence the process of the site being closed**
- 1. Support further legal action being taken by the Borough Council.** The Council has confirmed that it is progressing legal action (see para 2.9)
- 2. Investigate the costs for restoration of the site against the value of the restoration bond.**
- 3. Seek evidence of previous core sampling and carry out new sampling if safe to do so, to establish waste content.**
- 4. Reiterate the need for a Government-led Public Inquiry into the role of the EA as a regulator and their failings in respect of the Walleys Quarry site.** On 30 September 2024 the Chief Executive wrote to the Office of Environmental Protection.
- 5. Note that the Office for Environmental Protection (OEP) is the appropriate body to support such an Inquiry.** On 30 September 2024 the Chief Executive wrote to the Office of Environmental Protection.

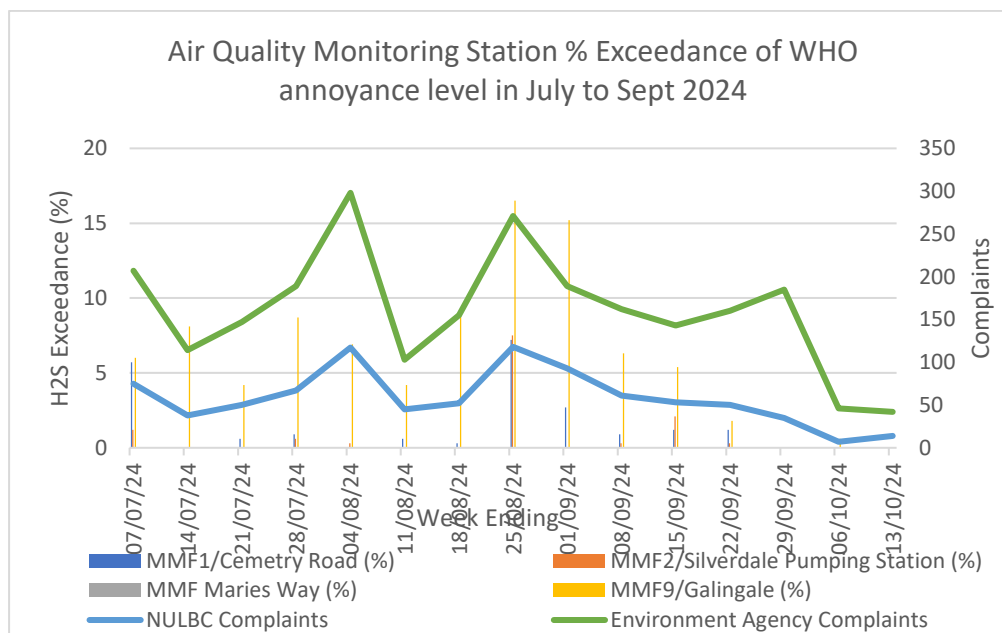
6. It was suggested that the WQ Liaison Committee should continue to look at restoration plans to ensure that the site is capped and restored effectively and to the correct standards. The Liaison Committee meetings are ongoing.
7. Independent monitoring of emissions on the site are needed, to restore public confidence in findings.
8. Implement Dr Scott's coding system in use at the Silverdale and Keele GP practices across all surgeries in the borough, to capture health issues.
9. Share a copy of this report with the Chartered Institute of Waste Management and invite their comment on the findings. On 30 September 2024, the Chief Executive wrote to the Chartered Institute of Waste Management [CIWM].
10. A copy of this report to be sent to ARCADIS consultants for information. On 8th October 2024 a copy of the report was sent to Arcadis.

Air Quality:

- 2.11 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 (EA).
- 2.12 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. Historic data is available in Appendix 4.

Time Period	MMF1 (%)	MMF 2 (%)	MMF 9 (%)
01 July - 7 July 2024	0.6	0.0	4.2
08 July - 14 July 2024	0.3	0.0	8.9
15 July - 21 July 2024	7.2	7.5	16.5
22 July - 28 July 2024	2.7	0.0	15.2
29 July - 04 August 2024	0.9	0.3	6.3
05 August - 11 August 2024	1.2	2.1	5.4
12 August - 18 August 2024	1.2	0.3	1.8
19 August - 25 August 2024	0	0	0
26 August - 01 September 2024	0	0	0.6
Time Period	MMF Maries Way (%)	MMF Silverdale Pumping Station (%)	MMF Galinagle View (%)
02 September - 08 September 2024	0.6	0.0	1.1
09 September - 15 September 2024	1.8	3.3	5.7
16 September - 22 September 2024	0.3	0.0	10.8
23 September - 29 September 2024	4.8	0.6	0.6
30 September - 06 October 2024	18.7	3.6	7.2

- 2.13 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

- 2.14** On 18 September 2024 the EA following a public meeting with UKHSA on 28 August 2024, published answers to the [Slido questions](#) on the EA [hydrogen sulphide calibration issue](#) web page.

Environment Agency Regulatory and Enforcement Action

- 2.15** 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>
- 2.16** 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.
- 2.17** 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
31.03.24	13.09.24	DP3734DC/0506294	2024 Q1 Monitoring Data Review (Jan-Mar) Note: amended and revised copy issued	16.1
01.05.24	20.08.24	DP3734DC-0507639	Audit - Waste acceptance & Appendix	0
19.07.24	08.08.24	DP3734DC-0514302	Site inspection - unannounced	0
05.08.24	14.08.24	DP3734DC-0514920	Site inspection Fire incident response, Management and Impacts,	0

			engineering and containment	
06.08.24	16.08.24	DP3734DC-0514923	Site visit – announced	0
08.08.24	08.08.24	DP3734DC-0514520	Report/data review – Cell 4 Upper sidewall CQA report	0
15.08.24	22.08.24	DP3734DC-0516045	Site inspection – unannounced	0
30.08.24	30.08.24	DP3734DC-0517140	Report/data review – temporary capping assessment report Q2	0
30.08.24	30.08.24	DP3734DC-0517145	Report/data review-capping and restoration works 2023 CQA report	0

Non-compliance identified in Compliance and Assessment Reports

2.18 The amended Compliance and Assessment Report dated 31 March 2024 and issued on 13 September relates to Quarter 1 monitoring period January 2024- March 2024.

2.19 The table below summarises the non-compliance, the potential impact, and the category of non-compliance/CCS score allocated.

Non-compliance	Impact on environment	Category	CCS
Leachate recorded above the compliance limit of 83m AOD for wells LS1C, LS2C, LS3A, LS4 and LS5A.	Minor	3	4
The compliance limit of 1m above the basal seal has also been exceeded for wells LS6, LS7A, LS8 and LS9.			
Methane exceedance against a limit of 1 %, recorded in the 8 boreholes.	Minor	3	4
Ammoniacal nitrogen exceedance against a limit of 0.5mg/l at the pumped groundwater discharge in lagoon O1 2024	Minor	3	4
Failed to undertake all monitoring required by schedule 3, namely: <ul style="list-style-type: none"> Table S3.3: Turbidity and Maximum Rate of Discharge Table S3.9: for groundwater monitoring requirements which also requires testing for hazardous substances as only Mecoprop, Xylene and Tributyltin were monitored in 2022. Table S3.10: NOx and CO for landfill gas engines A1, A2 and A4 post turbo as shown on drawing 1695.VAR.06 9 dated 12-12-2013 	Minor	3	4

<ul style="list-style-type: none"> Table S3.11: Hazardous substances. 			
Not immediately informing the EA following the breach of leachate level limits, methane emissions and ammoniacal nitrogen	No potential environmental impact	4	0.1
Total CCS score			16.1

2.20 The EA stated: “We are concerned that non-compliances in 2023 have continued into 2024. You were issued with a warning in respect of the Q4 2023 environmental monitoring report non-compliances but have failed to take appropriate remedial action to prevent further non-compliances”.

2.21 The report indicates that if WQL do not complete the actions by the specified dates the EA will “consider what further enforcement action is appropriate. This may include service of a Regulation 36 Enforcement Notice and/or prosecution”.

The report in Section 3 under ‘Enforcement Response’ states that ‘at present we do not intend to take further enforcement action. This does not preclude us from taking additional enforcement action if further relevant information comes to light or offences continue’.

Walleys Quarry update

2.22 Walleys Quarry Limited presented an overview of the fire incident on 04 August 2024 and to the Liaison Group on the evening of 09 September 2024. The video of the meeting can be found on YouTube using this [link](#).

2.23 On 10 September 2024, WQL published on their website and information update:

“Key Points from the Meeting:

- **Investigation Findings:** We (WQL) shared our findings so far in respect of our ongoing investigation into the potential causes of the fire. We have concluded and confirmed that there were no activities onsite at the time of the incident and operations in the area affected had been completed for some time prior to the event.

- **Response to the Fire:** Our team, in coordination with the Staffordshire Fire and Rescue Service, responded quickly to contain the fire. The landfill gas infrastructure was safeguarded, and all waste operations were suspended during the event. We thank Staffordshire Fire and Rescue Service for their prompt and effective response and the support they have given us.

- **Preventative Measures:** In the interests of good practice, we are in the process of reviewing our operational and safety procedures. We are reaching out to Staffordshire Fire and Rescue Service to allow us to benefit from their views, experience and any further advice they could provide. We are also in dialogue with the Environment Agency as the prime regulator for the facility. This will support our objective of ensuring continuous improvement within our operation and minimise the risk of future incidents occurring.

- **Lithium Battery Risks:** While the fire may have been linked to lithium polymer batteries, we are exploring all potential causes as part of our ongoing investigation. Batteries are not accepted at our landfill, and we encourage their responsible disposal. As a precautionary and preventative measure, we have reinforced the requirements of our waste acceptance protocols including the specific condition prohibiting batteries.”

WQL also provided 'a timeline of the key stages of the incident from when it started to the point at which it was effectively closed down. There is still ongoing work in respect of concluding our investigation and process review and during this time we continue to work in conjunction with our regulator, the Environment Agency, who also attended last night's meeting'.

The timeline is published on the [information page](#) on WQL website together with a [slide presentation](#)

Impact Study

- 2.24** 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.

Key Performance Data

- 2.25** 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.
- 2.26** The data from the Council covers the period from July 2024 to September 2024 and provides complaint numbers and officer assessments.
- 2.27** 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 August are uploaded as Appendix 3 (A) and (B) respectively. The data for September will be uploaded in the next report to Cabinet.

3. Recommendation

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;

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. One Council

Please confirm that consideration has been given to the following programmes of work:

- One Commercial Council
- One Digital Council
- One Green Council

12. Key Decision Information

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

13. 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, 4th June 2024, 16th July 2024, 10th September 2024, 25th September 2024.

14. List of Appendices

- 14.1** Appendix 1. Historical Complaint data
- 14.2** Appendix 2. NULBC Key Performance Data
- 14.3** Appendix 3. WQL Key Performance Data
- 14.4** Appendix 4. Percentage exceedance above WHO odour annoyance guideline