

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO COUNCIL

20 November 2024

Report Title: Walleys Quarry – Odour Issues Update

Submitted by: 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 checked="" type="checkbox"/> No <input type="checkbox"/>
<p>Council is recommended to:</p> <ol style="list-style-type: none"> Note and endorse the action being taken by the Council in respect of legal action against Walleys Quarry Ltd for alleged breaches of an Abatement Notice, which obliges the operator to not create or allow statutory odour nuisance. Note the continued and increasing level of complaints in respect of odours at Walleys Quarry. Approve the additional funding allocation of £400k (£250k from the General Fund Reserve, £150k from the Budget and Borrowing Support Fund) for costs associated with legal action, and delegate to the Chief Executive and Section 151 Officer, in consultation with the Portfolio Holders for One Council, People and Performance and Town Centres and Finance, to draw down and remit such funds as are necessary for this action. 	
<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. 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 take legal action in respect of an offence of breaching an abatement notice, as the site is permitted by the Environment Agency. Such consent has been obtained in July 2024.
- 1.5 Appointed Members and Officers attend Liaison Meetings to maintain contact 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. Issues

Progressing the Abatement Notice

- 2.1 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. Nevertheless, the Environment Agency is the primary regulator of this site and should reasonably be relied upon to take all necessary enforcement action, which would negate the need for the Council to act.
- 2.2 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.
- 2.3 At the core of next steps are two issues – whether 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.
- 2.4 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 legal action.

- 2.5 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.”
- 2.6 On 31 October 2024 the Chief Executive Gordon Mole, Chief Executive of Newcastle-under-Lyme Borough Council, updated by noting that the process is underway now that the Council has appointed Jeremy Phillips KC and Horatio Waller, both of FTB Chambers, which has a strong reputation in this field. There is a complex, detailed process to be followed.

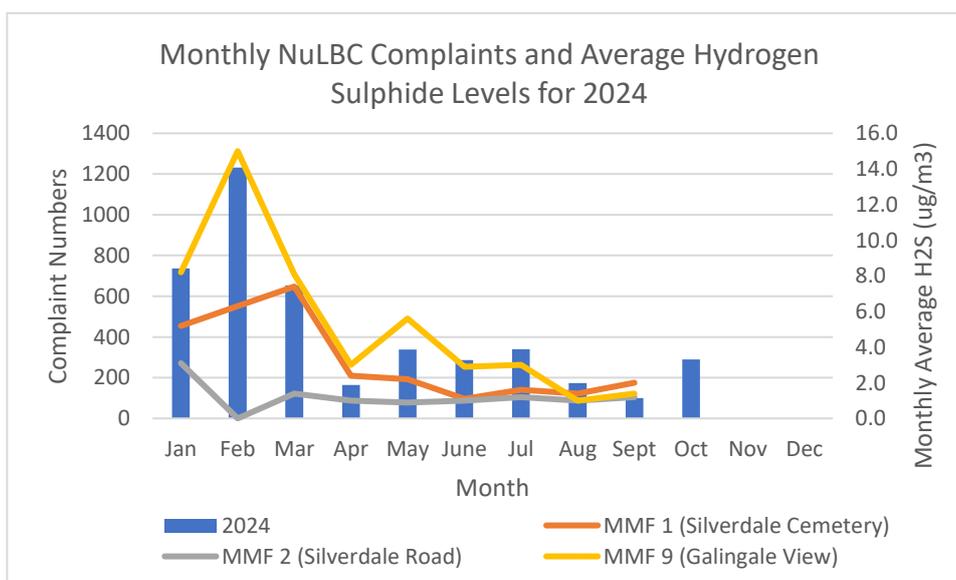
Complaint Data

2.7 Complaints in relation to odour arising from Walleys Quarry remains the single most complained about issue in the Borough. Below is a table showing complaint numbers each year since 2021.

	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sept	Oct	Nov	Dec
2021	920	3266	4801	3316	3465	1880	1648	891	630	190	251	185
2022	504	141	921	548	158	112	54	79	53	206	145	94
2023	129	47	109	253	343	230	87	42	63	87	198	248
2024	736	1232	653	165	338	286	340	174	100	290		

2.8 Complaint numbers are dominated by the 2021 peak, however it can be seen that complaints in 2024 exceed the complaints received in 2023, with the exception of April and May.

2.9 The graph below shows the data for complaints received and the monthly average hydrogen sulphide levels for 2024. This shows good correlation between the two.



Environment Agency

- 2.10 The Environment Agency on 31 October 2024 published an amended and reissued Compliance Assessment Report 0476949 (the CAR).
- 2.11 The CAR records that: “The non-compliance with permit condition 2.4.1 in respect of the Capping and Phasing Plan has been removed because the Environment Agency accepts that the Capping and Phasing Plan was not incorporated as a specified operating technique for the purposes of condition 2.4.1. [of the permit].
- 2.12 Following a response from the Minister for Nature to the Leader of the Council in respect of the need to hold a public inquiry, where it was noted by the Minister that such an inquiry would not represent value for money, the Chief Executive has written to the Secretary of State asking that this decision be kept under review following publication of the Committee of Inquiry report.
- 2.13 The Leader of the Council and Chief Executive have also asked the Member of Parliament for Newcastle-Under-Lyme to support a public inquiry, as detailed in the Committee of Inquiry update, below.

Committee of Inquiry:

- 2.14 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.
- 2.15 A member-led Committee of Inquiry was established to look at the impact on local communities from the Walleys Quarry Landfill operation.
- 2.16 The specific lines of inquiry, determined by Full Council, and considered by the Committee of Inquiry were:
- 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?
- 2.17 The Committee of Inquiry members prepared a report which was endorsed at the meeting of Council on 25th September 2024 a copy of the Council report and recommendations is available at [Committee of Inquiry - Walleys Quarry](#) .
- 2.18 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.

2. Investigate the costs for restoration of the site against the value of the restoration bond. Early assessment has been carried out, with further work to follow in the New Year.

- 3. Seek evidence of previous core sampling and carry out new sampling if safe to do so, to establish waste content.** This action has been raised through the Strategic Co-ordination Group.
- 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.** See action below.
- 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. As no response has been received to date, on 5th November, the Leader of the Council and Chief Executive wrote to the Member of Parliament for Newcastle-Under-Lyme to request support in seeking a public inquiry.
- 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 continue to meet and share information on the site's operation and plans.
- 7. Independent monitoring of emissions on the site are needed, to restore public confidence in findings.** Officers are actively exploring monitoring options and associated costs.
- 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.** This action sits with the Public Health service.
- 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]. The Chief Executive at CIWM responded 30th September 2024, noting "I'm saddened to hear the impact the site has had on your residents. The powers CIWM have are limited to either removing an organisation from the membership if it fails to comply with our code of conduct or investigating a complaint of an individual member which could result in disciplinary action and removal from the membership including no longer being able to use the letters after their name.

I have investigated Walleys Quarry Ltd, and we have no such organisation in the membership and therefore, we can't pursue this line of investigation. If the council has a concern/complaint about the conduct of an individual member of CIWM and we can verify them to be a member then we can instigate our process in line with our constitution"
- 10. A copy of this report to be sent to ARCADIS consultants for information.** 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 when available. On 8th October 2024 a copy of the Inquiry report was sent to Arcadis.

3. Proposal

- 3.1 Council is recommended to:

- Note the contents of this update report and endorse the Council's approach to seeking legal action against Walleys Quarry Ltd.
- Approve the sum of £400k (£250k from the General Fund Reserve, £150k from the Budget and Borrowing Support Fund) for costs associated with action to prosecute, and delegate to the Chief Executive and Section 151 Officer, in consultation with the Portfolio Holders for One Council, People and Performance and Town Centres and Finance, to draw down and remit such funds as are necessary for this action.

4. Reasons for Proposed Solution

- 4.1 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.

5. Options Considered

- 5.1 To provide regular updates to Council.
- 5.2 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.

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 Funding will be provided through the Walleys Quarry Reserve £300k which was approved at Full Council in February 2024.
- 8.2 Further funding of £300k was made available through the transfer of useable reserves (£100k from the Borough Growth Fund and £200k from the Budget and Borrowing Support Fund). Which did not require Council approval, this transfer resulted in a total allocation of £600k.
- 8.3 Should proceedings regarding the breach of the Council's Abatement Notice exceed £600k, a further £400k will be made available following approval at this Council meeting of 20 November 2024. This additional resource would be met by a transfer of usable reserves of £150k from the Budget and Borrowing Support Fund and £250k would be required from the General Fund Reserve.
- 8.4 In order to utilise £250k from the General Fund Reserve, the Service Director for Finance (S151 Officer) has completed a review of the Risk Assessment on Required Balances as at the 31 March 2024 which was presented to Council on 14 February 2024. The General Fund Risk Assessment include risks associated with income levels regarding the impact of covid and non-realisation of budget savings. These two risks area have been reviewed and reduced due to recovery from covid and previous years budget savings being consistently achieved.

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. 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

12.1 This is a Key Decision.

13. Earlier Cabinet/Committee Resolutions

13.1 This matter has been variously considered previously by Economy, Environment & Place Scrutiny Committee, Council and Cabinet on 21 April 2021, 9th June 2021, 7th July 2021, 21st July 2021, 8th September 2021, 13th October 2021, 3rd November 2021, 17th November, 1st December 2021, 12th January 2022, 2nd February 2022, 23rd February 2022, 23rd March 2022, 20th April 2022, 7th June 2022, 19th July 2022, 6th September 2022, 18th October 2022, 8th November 2022, 6th December 2022, 10th January 2023, 7th February 2023, 13th March 2023, 5th April 2023, 6th June 2023, 18th July 2023, 19th September 2023, 17th October 2023, 7th November 2023, 5th December 2023, 16th January 2024, 6th February 2024, 14th February 2024, 19th March 2024,

10th April 2024, 4th June 2024, 16th July 2024, 10th September 2024, 25th September 2024, 15th October 2024, 5th November 2024.

14. List of Appendices

None