

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

CORPORATE LEADERSHIP TEAM'S

REPORT TO CABINET

05 November 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 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. 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
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
07/10/24 -13/10/24	80	187
14/10/24 - 20/10/24	37	136
21/10/24 - 27/10/24	100	311
November 2024		
28/10/24 -03/11/24	41	

*Revised figure

October 2024

The number of odour events has increased to 12 in the month of October compared to 3 odour events reported in September.:

- Thursday 03 October 2024
- Friday 04 October 2024

- Saturday 05 October 2024
- Monday 07 October 2024
- Thursday 10 October 2024
- Friday 11 October 2024
- Saturday 12 October 2024
- Saturday 19 October 2024
- Monday 21 October 2024
- Tuesday 22 October 2024
- Wednesday 23 October 2024
- Saturday 26 October 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,

12 assessments were undertaken over a 5-minute period:

- Each assessment detected landfill related odour.
- 10 of 12 assessments recorded a maximum intensity rating of 4 (strong odour)
- 2 of 12 assessments recorded a maximum intensity rating of 5 (very strong odour).

42 spot assessments were undertaken of which 19 detected landfill related odour ranging from 2 (slight/weak) to 5 (very strong).

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 35.96ppb on 22 October 2024 at 20:46.

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 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.”
- 2.9** On 31 October 2024 the Chief Executive Gordon Mole, Chief Executive of Newcastle-under-Lyme Borough Council, updated by noting “The process is underway now that we have 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 and whilst understandably we cannot provide a running commentary on progress we would hope to share the latest position with the public in the next few weeks.”
- 2.10** It is intended that an update report on legal action will be brought to full Council.

Scrutiny- Committee of Inquiry

- 2.11** Following the issuance of letters to enact the recommendations of the Committee of Inquiry, the Chief Executive has written to the Secretary of State for Environment, Food and Rural Affairs to ask that the Department continues to actively consider a public inquiry and to take forward actions within the Committee of Inquiry report, following correspondence from the Minister for Nature to the Leader of the Council, where it was noted that the Government was not minded to hold a Public Inquiry.
- 2.12** The Leader of the Council noted on 31st October 2024 that “We have asked the Government to take action to help our community, but we’re told that ministers have full confidence in the Environment Agency. Unfortunately, I do not share that confidence which is why Newcastle Borough Council is doing all it can, with its limited powers and resources, on behalf of residents to resolve this problem.”

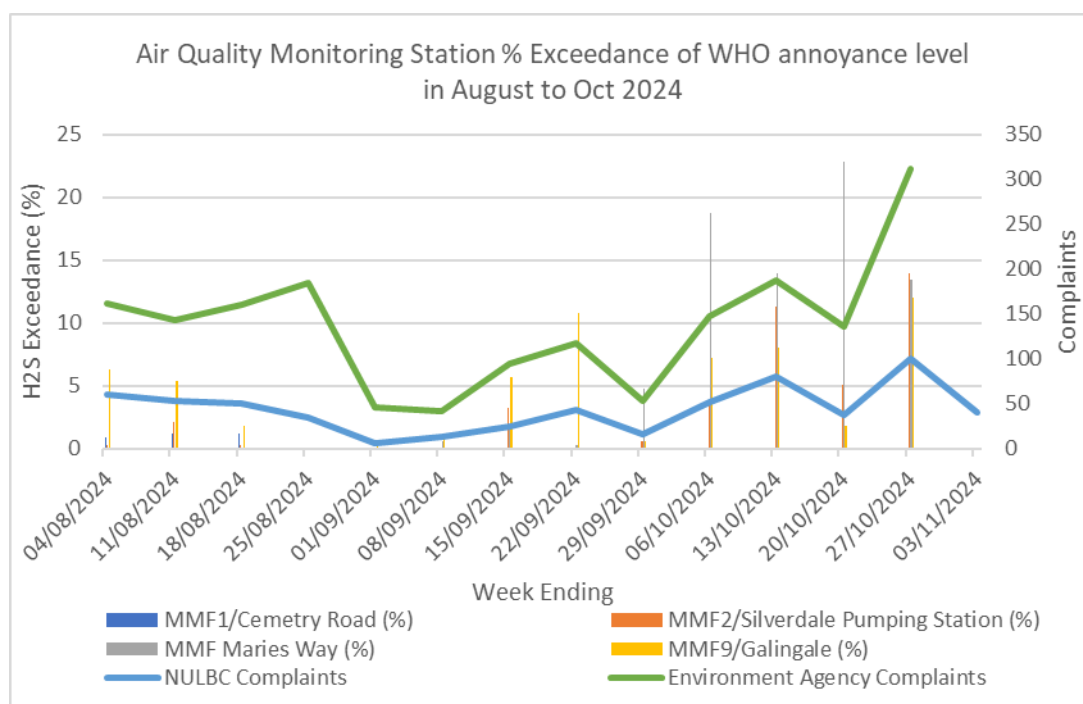
Air Quality:

- 2.13** 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).
- 2.14** 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 3.

Time Period	MMF1 (%)	MMF 2 (%)	MMF 9 (%)
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 Galingale 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
07 October - 13 October 2024	14.0	11.3	8.0
14 October - 20 October 2024	22.8	5.09	1.8
21 October - 27 October 2024	13.4	14.0	12.0

2.15 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

2.16 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

2.17 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.engagemthq.com/hub-page/walleys-quarry-landfill>

- 2.18** 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.
- 2.19** 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
03.09.24	12.09.24	DP3734DC/0518924	Site inspection – announced	0
02.10.23	16.10.23	DP3734DC/0476949	Amended and reissued CAR	31

Non-compliance identified in Compliance and Assessment Reports

- 2.20** The EA on 31 October 2024 published an amended and reissued Compliance Assessment Report 0476949 (the CAR).
- 2.21** 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.
- 2.22** References to the estimated completion dates of temporary capping now appear under the heading *Advice and Guidance* in the CAR.
- 2.23** The total CCS score for this CAR remains unchanged as the 2 non-compliances in the original CAR were consolidated to give a single score of 31 CCS points. The amended and re-issued CAR now records 1 non-compliance for condition 2.4.1 with a score of 31 CCS points. The site compliance band for 2023 for Walleys Quarry remains unchanged.

Walleys Quarry update

- 2.24** On 15 October 2024 the Walleys Quarry Liaison Committee was held. The link to the recording of the meeting can be found [here](#) in the latest information for November on the WQL website.
- 2.25** On 25 October 2024 WQL published an information update as follows:

Aligned with the proven record on continual development and investment in the Walleys Quarry (WQ) Facility, Walleys Quarry Ltd (WQL) is currently undertaking several projects across the site. These have been facilitated by the operational infilling of the available void, which has been fundamental in the development of the site to its current position.

Capping:

Earlier in 2024 a significant area of the western flank was temporary capped, utilising a geomembrane media comprised of LLDPE plastic. This material was placed across the western flank, including areas previously capped utilising locally sourced engineering clay. Following this extensive work, the remaining areas of the western

flank, now available for capping due to continued infill of the landfill facility have been subject to further capping. Using the same LLDPE geomembrane, the entire western flank has been capped. At the northern and southern extremities, this temporary capping has been integrated into the existing permanent capping, which covers the eastern half of the WQ facility. The works are now complete.

In addition, the central area of the facility comprising an area of approximately 11,000m² is being subjected to permanent capping. Utilising the same high specification LLPE geomembrane, the works are currently in the process of concluding meaning that the central area of the facility is now fully encapsulated, with the newly installed permanent capping integrated into the areas of capping previously completed in the north, south and eastern quadrants of the facility.

Sidewall Engineering:

In order to complete the basal lining of the Walleys Quarry facility and to allow it to safely continue through the operational phase and into restoration and aftercare, the last remnants of sidewall engineer are being completed to the western edge of the historic quarry wall. The works, which have been impacted by the inclement weather experienced through 2023 and 2024 are focussed on the installation of high-quality, locally sourced engineering clay. This material has an incredibly low permeability and is being constructed under the process of Construction Quality Assurance (CQA) aligned with a specification approved by the Environment Agency. Works continue, and subject to the effects of weather should conclude in 2024.

Landfill Gas Infrastructure:

As the site develops, the infrastructure installed across the facility with the aim of collecting and transferring landfill gas to the on-site Gas Utilisation Plant is also subject to continued development. This process, steered through the Walleys Quarry Landfill Gas Management Plan leads to the continued development of the system and the installation of a series of vertical, horizontal and sacrificial wells into the waste mass to facilitate this gas capture. Utilising negative pressure generated through the Gas Utilisation Plant, landfill gas which is created through the natural degradation of waste whilst in the landfill environment is encouraged from the waste mass to the Gas Utilisation Plant. Here, it is successfully treated through energy recovery to generate electricity which is supplied directly into the grid. Commencing in late October, the latest series of wells will be installed into the current active area, located in the west of the facility. These are installed utilising a drilling rig, to allow for the installation of perforated well casing to be installed, connected and integrated into the system and thus increasing the scope of gas capture at the facility.

“As always, we remain dedicated to working with our community and the regulators to provide a clean, responsible and sustainable operation for Newcastle-under-Lyme”.

Impact Study

2.26 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.

Key Performance Data

- 2.27 Through the settlement agreement both Walleys Quarry Ltd and the Council have developed key performance indicators in relation to relevant data from each organisation. The key performance indicators are shown in Appendix 2.
- 2.28 The data from the Council covers the period from August 2024 to October 2024 and provides complaint numbers and officer assessments.
- 2.29 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 for September has not been submitted by the operator.

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. Percentage exceedance above WHO odour annoyance guideline