

DATED 27th September 2022

MEDIATION SETTLEMENT AGREEMENT

between

WALLEYS QUARRY LIMITED

and

NEWCASTLE UNDER LYME BOROUGH COUNCIL

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THIS AGREEMENT is dated 27th September 2022

PARTIES

- (1) WALLEYS QUARRY LIMITED incorporated and registered in England and Wales with company number 09910638 whose registered office is at Borough House, Berkeley Court, Borough Road, Newcastle under Lyme, Staffordshire ST5 1TT (“**WQL**”).
- (2) NEWCASTLE UNDER LYME BOROUGH COUNCIL, whose principal office is at Castle House, Barracks Road, Newcastle-under-Lyme, ST5 1BL (“**the Council**”).

RECITALS

- (3) UPON the Council having served upon WQL an abatement notice (Ref: U/005442) dated 13 August 2021 pursuant to section 80(1) of the Environmental Protection Act 1990 (“**the Notice**”) (a copy of which is annexed hereto in Schedule 1) in relation to WQL’s site known as Walleys Quarry Landfill, Cemetery Road, Newcastle under Lyme, Staffordshire, ST5 6OH (“**the Site**”);
- (4) AND UPON WQL having appealed against the Notice on various grounds by way of complaint to the Magistrates’ Court (“**the Court**”) pursuant to section 80(3) of the Environmental Protection Act 1990 (“**the Appeal Proceedings**”);
- (5) AND UPON the Appeal Proceedings being listed for final hearing on 24 October 2022 with a time estimate of 4 weeks;
- (6) AND UPON the Parties having agreed to undertake mediation pursuant to a mediation agreement (a copy of which is annexed hereto in Schedule 2) with the Rt. Hon. Lord Carnwath of Notting Hill appointed as mediator (“**the Mediator**”);
- (7) AND UPON it being recognised that the Council has continuing statutory duties under section 79(1) and 80(1) of the Environmental Protection Act 1990;
- (8) AND UPON it being recognised that the Environment Agency also regulate the Site pursuant to the terms of the Site’s Environmental Permit (Permit Number EPR/DP3734DC) which WQL is required to comply with pursuant to the Environmental Permitting (England & Wales) Regulations 2016;
- (9) AND UPON the Parties agreeing to seek approval from the Court of the Draft Consent Order set out in paragraph 1 of the Agreement below;
- (10) AND UPON the Court approving the terms of that Draft Consent Order;
- (11) It is AGREED between the Parties that:

AGREEMENT

1. DRAFT CONSENT ORDER IN RELATION TO THE APPEAL PROCEEDINGS

1.1 By 3rd October 2022 the Parties agree to file with the Court a Draft Consent Order (in the terms set out in Schedule 3 annexed hereto) (“**the Draft Consent Order**”) compromising the Appeal Proceedings.

1.2 The Parties agree to use their best endeavours to seek the Court’s approval of the Draft Consent Order.

1.3 In the event that the Court refuses to approve the Draft Consent Order:

(a) The Parties agree to use their best endeavours to agree a variation of the terms of the Draft Consent Order to address the Court’s refusal to approve the Draft Consent Order; and failing that

(b) The Parties agree to revert to the Mediator within 7 days of the Court’s refusal to endorse the Draft Consent to attempt to resolve any issue upon which the Court is refusing to approve the Consent Order.

(c) Should the parties fail to agree the basis for the determination of any such issue then the parties shall list a further application for Directions to be given by the Court for the trial of the Appeal.

(d) The terms of this Mediation Settlement Agreement shall not take effect until such time as the Draft Consent Order or any variation is approved by the Court.

1.4 The Draft Consent Order and this Mediation Settlement Agreement are to remain confidential to the Parties until such time as the Draft Consent Order is approved by the Court.

2. NON-CONFIDENTIAL OBLIGATIONS

2.1 In the event that the Draft Consent Order is approved by the Court, it is agreed that the terms of the approved Consent Order will not be confidential.

2.2 For the avoidance of doubt, the fact that the parties have concluded a settlement of the Appeal Proceedings with the assistance of the Mediator is not confidential.

3. CONFIDENTIALITY

- 3.1 The Mediation Agreement, contained in Schedule 2, is to remain confidential. The terms of this Mediation Settlement Agreement are not confidential in accordance with paragraph 16(g) of the Mediation Agreement, contained in Schedule 2.

4. BEST PRACTICABLE MEANS

- 4.1 As regards the control of fugitive odour emissions from the Site, it is agreed that the current versions of:

- (a) WQL's Landfill Gas Management Plan (LFGMP v6, dated 21 January 2022); and
- (b) WQL's Waste Pre-Acceptance and Acceptance Procedures (Reference WQ/MS/MC/009 and WQ/MS/MC/010) (both procedures dated 29 June 2022); and
- (c) WQL's Leachate Management Action Plan (November 2021); and
- (d) WQL's Odour Management and Monitoring Plan (June 2021); and
- (e) WQL's Capping and Phasing Plan (CQA ref. 30481, dated 18 February 2022); ; and
- (f) The use of best endeavours to minimise the size of the operational area in use at any given time for the infilling of waste;

currently represent systems and procedures which are best practicable means in accordance with section 79(9) of the Environmental Protection Act 1990.

- 4.2 It is agreed that the potential for fugitive emissions, and what best practicable means entails, will change at the site according to the circumstances obtaining at the time, including (but not limited to) the amount and type of waste being infilled, meteorological conditions and the development of the site.
- 4.3 It will be for WQL to demonstrate compliance with the systems set out in paragraph 4.1 above (or as replaced, updated, varied or amended from time to time in consultation with the Environment Agency in accordance with the requirements of the Permit).
- 4.4 In the event that the Environment Agency notifies WQL and/or WQL consider that the plans, or procedures in paragraph 4.1 (a-e) above ("**the Operational Plans/Procedures**"), require amendment (whether to the address changes of circumstance/developments at the Site or otherwise), WQL agrees to notify the Council of any written amendments to the Operational Plans/Procedures within 48 hours of such notification by the Environment Agency or WQL proposing any such amendment, and to disclose updated Operational Plans/Procedures and their appendices within 48 hours of such documents being finalised by WQL. For the

avoidance of doubt, documents are considered to be finalised by WQL when they are in a form ready for submission to the Environment Agency for approval.

- 4.5 The Council is at liberty to make representations to WQL and/or the EA in relation to any such amendments, and WQL will respond in writing within a reasonable period after receipt of such representations and use its best endeavours to accommodate any such representations, subject to Environment Agency approval.

5. **ENGAGEMENT WITH COUNCIL**

- 5.1 The parties shall engage constructively and in good faith with each other.
- 5.2 WQL shall disclose to the Council within 7 days from the date of request up to date copies of the documents listed in paragraph 4.1(a) to (e) above and to provide further information insofar as is reasonable.
- 5.3 For the first 6 months from the date of this agreement, and thereafter at a frequency to be agreed by mutual consent but at least half-yearly, a representative(s) of WQL shall attend meetings with Council officers, and Council advisors if invited at the discretion of the Council, to discuss:
- a. progress with capping & phasing, waste acceptance, landfill gas, odour and leachate management plans, and
 - b. Investigation findings, if any, relating to odour events, and
 - c. Future proposed work, and
 - d. Proposed amendment and consultation on WQL plans.
- 5.4 WQL shall provide Council officers, accompanied by advisers if the Council is so minded, with access to the site to inspect periodically on a quarterly basis and also in relation to any investigation of a potential odour event.

6. **ENGAGEMENT WITH COMMUNITY**

- 6.1. The parties agree to the following specific measures:
- (a) **The Liaison Committee:** The parties to refresh, attend and constructively engage in, the liaison committee to provide improved community & stakeholder interactions. The parties shall in due course review the membership of the Liaison Committee, with a view to refreshing community representation. Video recordings shall be made of every committee meeting and then published and retained on WQL's website (or elsewhere online) for a period of 6 months from the date of each meeting and thereafter by the Council (subject to compliance with GDPR obligations).
 - (b) **Inform the Community** – WQL to publish on its website its up-to date Operational Plans/Procedures, as defined above, and to provide reasonable

notification of any operational changes which may impact on odour emissions from the site.

7. JOINT PUBLIC STATEMENT AS TO RESOLUTION OF THE APPEAL PROCEEDINGS

7.1 Upon agreement to compromise WQL's existing appeal being reached the parties shall authorise the mediator to append his name to a statement in the following terms:

"I am pleased to confirm that Walleys Quarry Limited and Newcastle under Lyme Borough Council have today agreed to settle upon terms to enable the company to withdraw its appeal against an abatement notice issued by the Council on 13 August 2021. Walleys Quarry Limited acknowledge that the site has been the source of community complaint, and the Council acknowledge that WQL have improved their operational practices such that odour emissions have recently reduced significantly and best practicable means are currently in place. The terms of the agreement reached by the parties ensure that an abatement notice shall remain in place and require best practicable means to prevent any repetition so far as reasonably possible of any statutory nuisance and provide for ongoing reporting to give continuing assurance to the community."

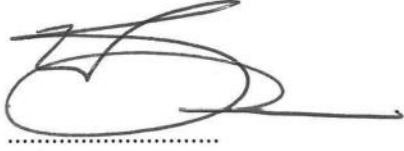
8. COSTS

8.1 WQL shall pay to the Council £400,000 in full and final settlement of the costs and £60,000 as a contribution towards continuing monitoring costs, all such costs to be paid in equal monthly instalments over 36 months, commencing 1st November 2022, enforceable as a judgment debt.

8.2 WQL and the Council waive any entitlement they may have at the date of this agreement to seek an order for legal costs or to claim compensation against the other party.

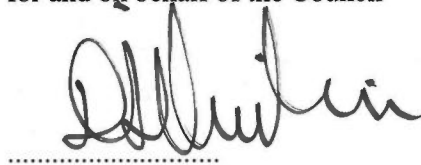
Agreed

for and on behalf of WQL



.....

Daniel Dickinson, Head of Legal and Governance
for and on behalf of the Council



.....

MEDIATION SETTLEMENT AGREEMENT

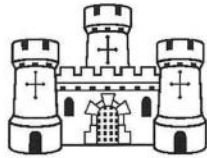
between

WALLEYS QUARRY LIMITED

and

NEWCASTLE UNDER LYME BOROUGH COUNCIL

SCHEDULE 1 – THE NOTICE



NEWCASTLE-UNDER-LYME
BOROUGH COUNCIL

ENVIRONMENTAL PROTECTION ACT 1990 PART III ('the Act')
Abatement Notice in respect of a Smell Nuisance

Ref: U/005442

To: Walleys Quarry Ltd. (Company number 09910638)

Of: Borough House, Berkeley Court, Borough Road, Newcastle-under-Lyme, Staffordshire, ST5 1TT

TAKE NOTICE that the **Borough Council of Newcastle-under-Lyme** being satisfied of the existence and likely recurrence of smell amounting to a statutory nuisance under section 79(1)(d) of the Act at:

Premises (including land) falling wholly or partially within the area encompassed by the boundary line identified on the attached plan reference NULBC01

Within the district of the said Council and caused by:

Smell arising from the industrial, trade or business premises known as Walleys Quarry Landfill, Cemetery Road, Newcastle-under-Lyme, Staffordshire, ST5 6DH.

HEREBY REQUIRE YOU as the person responsible for the cause of the said nuisance at the premises from which the smell is or would be emitted, to abate the nuisance within 5 MONTHS from the service of this notice or, if an appeal is made, the date when the magistrates' court determines any such appeal.

AND ALSO HEREBY PROHIBIT YOU from causing, permitting or otherwise allowing the recurrence of the nuisance thereafter.

~~**THIS** is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisances (appeals) Regulations 1995 applies, and in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, [the nuisance to which this notice relates is [injurious to health] [likely to be of a limited duration such that suspension would render the notice of no practical effect]] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance].~~

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to an unlimited fine.

Further if you fail to comply with this notice, the Council may itself do whatever is required to achieve compliance with this notice and abate the nuisance, recovering from you the necessary expenditure incurred.

Dated 13th August 2021

Signed: *N.S. Barker*
Mrs Nesta Barker
Head of Environmental Health Services

[Time copy served _____]

Please address any communication concerning this Notice and quoting Ref: U/005442 to:-
Newcastle under Lyme Borough Council.
Environmental Health Division
Castle House, Barracks Road
Newcastle-Under-Lyme,
Staffordshire ST5 1BL

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days from the date of service of this notice. See notes attached.

STATUTORY NUISANCE APPEALS REGULATIONS 1995 (SI 1995/2644)

2. APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case-

- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonably in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates -
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b), of the 1990 Act and the smoke is emitted from a chimney, or
 - (iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, or
 - (iv) is a nuisance falling within section 79(1)(fb) of the 1990 Act and -
 - (aa) the artificial light is emitted from industrial, trade or business premises, or
 - (bb) the artificial light (not being light to which sub-paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 80(8A) of the 1990 Act), that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
- (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant being -
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(5) On the hearing of the appeal the court may:-

- (a) quash the abatement notice to which the appeal relates, or
- (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
- (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.(7) In exercising its powers under paragraph (6) above, the court -
 - (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
 - (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

SUSPENSION OF NOTICE

3. Where:-

(1)

- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and -
- (b) either - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal, or (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) This paragraph applies where -

- (a) the nuisance to which the abatement notice relates -
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) applies the abatement notice -

- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply

MEDIATION SETTLEMENT AGREEMENT

between

WALLEYS QUARRY LIMITED

and

NEWCASTLE UNDER LYME BOROUGH COUNCIL

SCHEDULE 2 – THE MEDIATION AGREEMENT

Redacted – Confidential

Freedom of Information Act 2000 Sections 30, 36, 41 and 43

MEDIATION SETTLEMENT AGREEMENT

between

WALLEYS QUARRY LIMITED

and

NEWCASTLE UNDER LYME BOROUGH COUNCIL

SCHEDULE 3 – THE DRAFT CONSENT ORDER

DRAFT CONSENT ORDER

IN THE NORTH STAFFORDSHIRE MAGISTRATES' COURT

CASE NUMBER: 212100189225

BEFORE DISTRICT JUDGE GREGO

WALLEYS QUARRY LIMITED

Complainant

v

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

Respondent

DRAFT CONSENT ORDER

UPON the parties having concluded a mediation agreement with the assistance of the Rt. Hon. Lord Carnwath of Notting Hill acting as the appointed as mediator

AND UPON the parties having agreed this Draft Consent Order for approval by the Court during the aforesaid mediation process

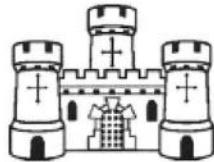
[AND UPON hearing Leading and Junior Counsel for both parties]

IT IS ORDERED THAT:

1. The Abatement Notice (Ref: U/005442) dated 13 August 2021 is varied in accordance with the draft attached hereto as Annex A.
2. The appeal is otherwise dismissed.
3. No order as to costs.

Dated etc.

Annex A



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

ENVIRONMENTAL PROTECTION ACT 1990 PART III ('the Act')
Abatement Notice in respect of a Smell Nuisance

Ref: U/005442

To: Walleys Quarry Ltd. (Company number 09910638)

Of: Borough House, Berkeley Court, Borough Road, Newcastle-under-Lyme, Staffordshire, ST5 1TT

TAKE NOTICE that the **Borough Council of Newcastle-under-Lyme** being satisfied of the existence and likely recurrence of smell amounting to a statutory nuisance under section 79(1)(d) of the Act at:

Premises (including land) falling wholly or partially within the area encompassed by the boundary line identified on the attached plan reference NULBC02 but, for the avoidance of doubt, excluding the area of the landfill shown hatched red.

Within the district of the said Council and caused by:

Smell arising from the industrial, trade or business premises known as Walleys Quarry Landfill, Cemetery Road, Newcastle-under-Lyme, Staffordshire, ST5 6DH.

HEREBY REQUIRE YOU as the person responsible for the cause of the said nuisance at the premises from which the smell is or would be emitted, to abate the nuisance within 5 MONTHS from the service of this notice or, if an appeal is made, the date when the magistrates' court determines any such appeal.

AND ALSO HEREBY PROHIBIT YOU from causing, permitting or otherwise allowing the recurrence of the nuisance thereafter.

~~THIS is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisances (appeals) Regulations 1995 applies, and in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, [the nuisance to which this notice relates is [injurious to health] [likely to be of a limited duration such that suspension would render the notice of no practical effect]] [the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance].~~

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to an unlimited fine.

Further if you fail to comply with this notice, the Council may itself do whatever is required to achieve compliance with this notice and abate the nuisance, recovering from you the necessary expenditure incurred.

Dated 13th August 2021

Signed:

N.S. Barker

Mrs Nesta Barker

Head of Environmental Health Services

[Time copy served _____]

Please address any communication concerning this Notice and quoting Ref: U/005442 to:-
Newcastle under Lyme Borough Council.
Environmental Health Division
Castle House, Barracks Road
Newcastle-Under-Lyme,
Staffordshire ST5 1BL

N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days from the date of service of this notice. See notes attached.

STATUTORY NUISANCE APPEALS REGULATIONS 1995 (SI 1995/2644)

2. APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")

(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case-

- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonably in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates -
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b), of the 1990 Act and the smoke is emitted from a chimney, or
 - (iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, or
 - (iv) is a nuisance falling within section 79(1)(fb) of the 1990 Act and -
 - (aa) the artificial light is emitted from industrial, trade or business premises, or
 - (bb) the artificial light (not being light to which sub-paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 80(8A) of the 1990 Act), that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
- (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
- (i) that the abatement notice might lawfully have been served on some person instead of the appellant being -
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(5) On the hearing of the appeal the court may:-

- (a) quash the abatement notice to which the appeal relates, or
- (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
- (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

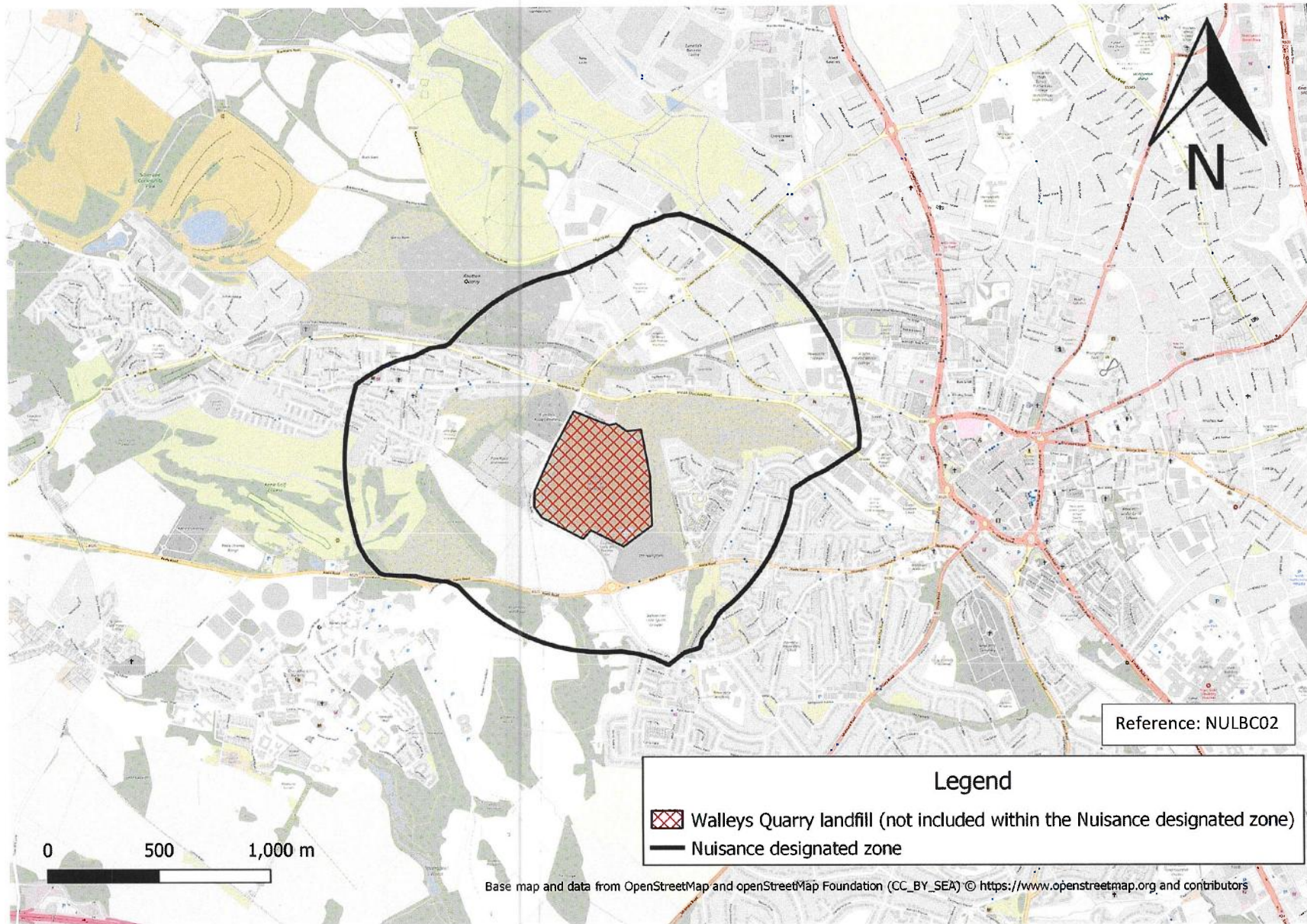
(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person(7) In exercising its powers under paragraph (6) above, the court -
 - (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
 - (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

SUSPENSION OF NOTICE



3. Where:-

- (1)
 - (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and -
 - (b) either - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal, or (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where -
 - (a) the nuisance to which the abatement notice relates -
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
 - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
 - (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
 - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply



Reference: NULBC02

Legend

-  Walleys Quarry landfill (not included within the Nuisance designated zone)
-  Nuisance designated zone

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