

National Parks and Wildlife Service (NPWS)  
Department of Housing, Local Government and Heritage  
Public Consultation Process (PCP)  
Wild Birds Derogations Declaration for 2021.22

Emailed to : [WildBirdDeclarations@chg.gov.ie](mailto:WildBirdDeclarations@chg.gov.ie)

Sunday 14 February 2021

**Joint Submission**  
**Hampton Cove (HCRA) and Fancourt Heights (FHRA) Residents' Associations**

**1. Introduction.**

Four committee members of HCRA and FHRA serve on the wider Balbriggan Community Committee (BCC) on urban seagulls established in May 2016, and two of our members serve on the Consultative Committee (CC) on urban seagulls established by former Minister Madigan in June 2019. We are fully briefed on the status of the urban seagull issue and we were notified of this PCP by our CC members. Both of our estates took part in the cross-community petition on seagull issues (700 approx. signatures across eight housing estates, businesses and schools) submitted to NPWS in the Dept. of Culture and Heritage in October 2016. We also wrote to the Dept./NPWS and to former Ministers Humphreys and Madigan on the issue and we received and retain to date full cross-party political support (TDs, Councillors and MEP) for our position based on the evidence of serious issues being caused by urban seagull colonies in our community.

**2. Observations on Dept./NPWS' handling of the urban seagull in the period 2016 to date:**

We acknowledge the granting and retention of the partial Balbriggan derogation since 2017 and refer further to this in section 3 below. Notwithstanding the derogation, having being advised by the Dept./NPWS in September 2016 that a Major Review of the Derogations Process in 2018 would "address all perceived threats", and then in 2018 that a Steering Committee (subsequently the CC) was to be established to address the urban seagull issue, we are very disappointed and very concerned about the fact that a proper and proportionate solution to the issue has still not been implemented five years on, as breeding of urban seagull colonies continues unmanaged.

Our community collaborated with Fingal County Council's (FCC) Drone study in July 2018 that showed large seagull colonies in housing estates and on three schools that were filmed. Our County Councillors lobbied FCC to produce and deliver 9,000 leaflets on non-feeding of seagulls and food-waste management into homes and businesses across Balbriggan – this is still posted online by FCC. Both of these collaborative FCC initiatives were 'firsts' in Ireland on the urban seagull issue. Also, our community has engaged fully with the Minister's CC since it was formed in June 2019. Our members have attended all CC meetings and completed all tasks commissioned by both former Chairs of the CC. We contributed to its First Interim Report (FIR) and its recommendations and we wrote the Minority Report (MR), both Reports as submitted to the Dept./NPWS in mid-April 2020. We note with increasing concern that neither Report has been published by the Dept./NPWS, recommendations for 2020 Declarations were not implemented and remain to be implemented this year, and that minutes of the four CC meetings to date have not been published.

Furthermore, the fact remains that our country remains alone when compared to all of our neighbours in NI/GB and Northern Europe in that a) the Dept./NPWS is still not providing proactive legal protection to negatively impacted communities, and importantly, b) persisting with an apposite position to all neighbouring jurisdictions, the Dept./NPWS continues to refuse to acknowledge the public health dimension of the urban seagull problem – despite incontrovertible and overwhelming evidence in its possession for a number of years now.

The failure/refusal of the Dept./NPWS to recognise the ‘public health’ dimension constitutes a serious public policy lacuna in our view given the fact that the Dept./NPWS has been derogating for public health and safety reasons since 1986 for several other wild bird species, while at the same time has been using an apparently arbitrary and materially higher decision threshold (since 1986) for its derogation decisions than the legal threshold that is prescribed in the 1979 Birds Directive. The Dept./NPWS only claimed non-competence in matters of public health and safety on/since 1<sup>st</sup> July 2016, and in subsequent PQ responses, when our TDs raised the urban seagull issue with them.

BCC has been making the point about the illegal 1986 decision threshold since 2016, as repeatedly did our five TDs (legislators) and our MEP. The public policy lacuna exists since 2016 when the Dept./NPWS declared non-competence in public health and safety because, as the Dept./NPWS is officially aware, the former Ministers for Health and for Local Government stated in writing in 2018 that this ‘wildlife/seagull’ issue is primarily a matter for the Minister of the Dept./NPWS.

Communities impacted by the problem are, therefore, helpless victims of this policy lacuna – which was created in 2016 by the Dept./NPWS, but only in relation to urban seagull colonies, because health and safety Declarations are still being made by the Dept./NPWS for several other wild bird species – despite its declared non-competence to do so. In our view, this is clearly a nonsensical position that is untenable and needs to be changed to fully reflect the correct legal and materially lower derogation decision threshold “in the interests of public health and safety” as was/is catered for in the Birds Directive since 1979 – a full 7 years prior to the “1986 Regulations”.

In its work with the CC’s Legal Module (Jul – Aug 2020 et seq. to Dec 2020) we believe that BCC has exposed that the Dept./NPWS’ claimed legal basis for its ‘no intervention’ policy on urban seagulls has been unfounded since 1986, and that further responses from the Legal Module on several other important issues raised by BCC are still awaited after more than three months since legitimate questions were raised by BCC. BCC has circulated us with the legal opinion that was provided by the Barrister hired by the Dept./NPWS regarding our questions to the CC Legal Module (e.g. regarding the “1986 Regulations” being in contravention of the Birds Directive) and we are also apprised of the “noise” and “Antimicrobial Resistance” legal opinion and expert medical/health advice - all of which we had first raised in our December 2017 Community Report as submitted to both the Dept./NPWS and to the 2018 Derogations Review. We note that the Review Report’s Section 2.5.1 claims compliance by the Dept./NPWS with EU law up to and including the 2011 Regulations – a claim that clearly seems to be refuted in the expert legal opinion which states that 2011 Regulations have not been implemented. We also note the intentions of the provisions in the Wildlife 2000 Act (Amended) Section 59 regarding the Minister’s authority over these matters and preservation of public health and safety being an overriding priority notwithstanding the provisions of the 1976 Act on which the 1986 Regulations were/are based – said Regulations also exceeding the legal threshold for derogations in the 1979 Birds Directive.

It is just 42 miles from Balbriggan to the border with Northern Ireland where a General Licence has existed since the enactment of the UK Wildlife and Countryside act 1981 was implemented to comply with the Birds Directive in order to “to preserve public health and safety” – i.e. the identical legal text as is specified in our most recent primary legislation the Wildlife 2000 Act (Amended) section 59. BCC is contacted every spring since 2017 to go onto Louth/Meath Radio LMFm to advise listeners in Drogheda on urban seagull issues. What possible justification can the Dept./NPWS offer for its continued refusal to protect impacted communities?

In the round therefore, we simply cannot understand how or see any justification as to why the Dept./NPWS has failed – coming up to five years now - to provide a proper, reasonable and proportionate derogation to protect both public health and public safety in communities impacted by urban seagulls, and we urge the Dept./NPWS to address this fully in the 2021.22 Declaration by delivering a standard of protection to Irish citizens consistent with the protections given to citizens in every neighbouring jurisdiction. We have set out our proposals in Section 4 below.

### 3. Comments on the existing derogation – as invited by the PCP:

- i.) We believe that it is necessary for us to restate here that at no stage has BCC sought or advocated any harm measures to be taken against urban seagulls. The nest/egg removal derogation we seek – **on both public health and on public safety** grounds is universally acknowledged in all neighbouring jurisdictions to be a non-harm measure, and the minimum such measure required to influence the birds to nest and breed away from people, as is the case with all other controlled species of wild birds acknowledged to pose public health and safety risks. We do not accept the Dept./NPWS previous claim on this point that “once a reason is given, no other reason is needed” – because a materially different public administration response is necessary when ‘public health’ is involved, and the general public also pay more attention to such categorisation of an issue. As a case in point, FCC is already on the record in this regard. Therefore, the higher ranked and more important reason needs to be acknowledged.
- ii.) The Balbriggan derogation needs to be improved as set out below and it is required in perpetuity because homes, schools and other buildings such as creches, medical centres, supermarkets are just not suitable - and never will be suitable - to permit seagull colonies to nest and breed in large close-knit groups as their ecology dictates. Such a derogation is necessary and justified “in the interests of public health and safety”. We acknowledge that the existing partial derogation has been helpful in several situations in housing estates, on business premises and in some of our schools, however considerably more is needed.
- iii.) Seagull colonies continue to cause serious noise issues (sleep deprivation) from April through September, serious property damage to homes costing thousands of euro e.g. destroyed solar panels and serious roof leaks, likewise to schools and to businesses, and in many places depositing disgusting amounts of health-threatening faecal contamination for months on living and children’s play areas.
- iv.) The manner of the 2020.21 derogation caused considerable confusion – i.e. its delayed publication and errors in the initial publications of it on the NPWS website. The only actual change to the previous year was the date. People did not know the legal position regarding the removal of nests until 21<sup>st</sup> May, 3 weeks late. Many calls/and texts were made/sent to committee members. We alerted the Secretary General to this problem and only then were attempts made to fix it. No explanation was forthcoming from NPWS, and people were left to keep checking the site every day - unsure whether it was still legal or not to remove nests.
- v.) The existing derogation excludes parts of Balbriggan that also need to remove nests, including a very large school. As we have advised each year since, NPWS used an out of date Map in 2017 – the houses across the road from the school may legally remove nests but the school may not. This is a silly and unnecessary problem in our view. It is never going to be right to have large seagull colonies nesting on our schools anywhere – for health and for safety reasons.
- vi.) Seagulls start laying eggs well before the 1<sup>st</sup> of May. We believe that the derogation should be declared in perpetuity for specified types of buildings and that it needs to be announced at the beginning of April. It also needs to be advertised as a public health and safety measure.
- vii.) As has been decided upon and acted upon for years by all neighbouring jurisdictions, there is clearly no conservation value in allowing urban seagull colonies to proliferate unmanaged wherever they choose to go. We have seen the expert opinion of UK expert Peter Rock on this to the CC a year ago – and we had quoted him extensively in our December 2017 Report. We are reliably aware that a major company in Dublin were given a licence by NPWS to address issues with seagulls around a ‘food section’ of their main plant and spent €0.34m to try to deal with the issue – and that this was a complete failure. Communities being compelled by Dept./NPWS policy to live with urban seagull colonies do not need any such expert opinion on the futility of so called ‘alternative solutions’ – we know the precise truth of the matter.
- viii.) What possible justification does the Dept./NPWS have for its continued failure to act on this issue now five years and six breeding seasons since our first requests for assistance?

#### 4. Proposals for 2021.22 and future derogation Declarations:

- 1) In our view, all impacted urban communities need **proactive** protection from urban seagull colonies in the interests of public health and safety as fully catered for in the law and in accordance with precedents in all neighbouring jurisdictions. Considerations of ‘conditions of risk’ and ‘absence of viable alternative solutions’ specified in Articles of the Birds Directive have already been fully addressed for several years with abundant evidence.
- 2) In our view, it is not feasible and will not be successful to provide urban derogations as needed State-wide by drawing zoned maps of all impacted areas; this approach is certain to fail in our view. Also seagulls range for hundreds of miles so precisely delineated urban maps will just not work.
- 3) In the conservation context Article 4 of the Habitats Directive states that  
“On the basis of the criteria set out in Annex III ( Stage 1 ) and relevant scientific information , ***each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host .*** For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. ***For aquatic species which range over wide areas , such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction .***

Clearly, urban areas have never been thus mapped or registered under Natura 2000 as protected areas/sites or as specific sites delineated for “aquatic species”, and clearly it is not essential that seagulls be permitted to colonise our homes, schools, hospitals and supermarkets. BCC sought legal opinion from the Barrister advising the CC module on this and several other points last Nov/Dec and replies are still awaited.

- 4) An effective, proportionate and manageable approach for scoping a derogation in our view would be to list types of buildings/premises that are not suitable, for reasons of public health and safety, to permit seagull colonies to establish and breed i.e. people’s homes, schools, creches, B&Bs, Hotels, hospitals and other medical facilities, and shops, restaurants, pubs and supermarkets – anywhere food is stored, sold or consumed. We believe that our proposal is a relatively simple, logical and proportionate solution which does no harm whatsoever to seagull species that will quickly learn to nest and breed away from people’s core habitat.
- 5) Under our proposal, people would be reasonably protected in their living locations. Buildings other than those listed at 3) above can then be left available for urban seagull colonies if that is in fact desirable all things considered, and any such premises experiencing issues from colonies can apply for an NPWS licence if necessary. Our core position is that public health and safety is and must be preserved as an overriding priority of public administration policy – The Wildlife Act 2000 (Amended) – Section 59 refers.
- 6) We believe that Local Authorities should provide assistance to communities on this issue, especially to schools, immune-compromised people, and elderly people who may be living alone and need help and protection from attack and injury by seagulls. Policy and practices in all neighbouring UK and EU jurisdictions – in high density colony situations – refer. Clearly, if Local Authorities provided a managed service, this would ensure compliance with the law and would also gather accurate statistical data for conservation purposes. FCC has stated to us since 2016 that they would consider their position on the matter when national policy and resource issues are addressed. In the meantime, in our view, people must be given a derogation to protect themselves and their children – as in our neighbouring jurisdictions.
- 7) It is also necessary, in our view, to re-inforce and promote widely the advice issued by FCC in 2018 on non-feeding of seagulls and on food waste management; it may now be necessary to

signal pertinent laws to people who breach these guidelines and the risk of fines and prosecution for non-compliance – as has already happened last year in Dublin and Limerick residential areas at the instigation of their Local Authorities. We specifically advise and indeed request that Environmental Health Officers/Inspectors raise this issue with all premises dealing with human food – as we believe was undertaken in Balbriggan in 2018 by FCC.

- 8) In our view there is no justification for allowing this issue to drag on any longer and any research that is necessary into urban seagulls can be conducted in parallel with the provision of essential protection to people – anything less than this approach at this stage will continue to rank the legitimate interests of people’s health and safety below the interests of urban seagulls – contrary to proper and effective public administration and inimical to the legitimate interests of impacted communities.
- 9) As mentioned earlier - the declarations need to be made much earlier than 1<sup>st</sup> May and they need to be properly advertised as being “in the interests of public health and safety” thus ensuring that essential and correct advice is provided to communities impacted by the urban seagull problem, and people know exactly where they stand legally speaking.

In this regard, we refer the Dept./NPWS to the Aniar Ecology Report of the Major Review of Derogations in October 2018 that was cited to us in September 2016 by the Dept./NPWS as the means by which “all perceived threats” were to be addressed – i.e. the progenitor of the current CC, Recommendation 7.13 viz.

***“Updated declarations should be published before existing Declarations expire. This would require any prior consultation to have been completed by at least February each year to provide sufficient time for NPWS to review responses and act accordingly.”***

Clearly, if this recommendation had been implemented in 2019, we would not have had the debacle with the 2020 Declaration.

In summary, therefore, we request that proportionate and reasonable derogations – as we have proposed above - are declared in the 2021.22 Declarations, ***in the interests of public health and safety*** as catered for in Article 9.1 a) of the Birds Directive, and in the 2011 Wildlife Regulations SI 477 Section 55.2 a), and under the provisions of the Wildlife Act 2000 (Amended) Section 59 wherein the authority of the Minister to issue licences to preserve public health and safety is enshrined. In making our submission, we refer the Dept./NPWS to the CC’s agreed First Interim Report Section 8 recommendation as submitted to the Dept./NPWS on 17<sup>th</sup> April 2020 that other impacted areas be given a licence under the public health and safety provisions in EU law.

In conclusion, we make our above submission in good faith and we would appreciate an acknowledgement that it has been received by the Dept./NPWS by return email.

Yours sincerely,

c/o the above address

Peadar O’Kelly, Chairperson  
Bridie O’Reilly, Committee member  
Hampton Cove Residents’ Association  
Balbriggan

Colette Brangan, Chairperson  
Anne Cullen, Committee Member  
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