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From: [REDACTED]
Sent: Sunday 13 March 2022 22:36
To: Housing WildBirdDeclarations
Subject: Submission to Public Consultation - Wild Bird derogation Declarations for 2022.23
Attachments: Personal Submission to PCP wild birds derogations - [REDACTED].pdf

Follow Up Flag: Follow up
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To:
Department of Housing, Local Government and Heritage
National Parks and Wildlife Service

The attached PDF is my personal submission to the public consultation on the Wild Bird derogation Declarations for 2022.23.

Subject to the normal GDPR standards on privacy, I consent to my submission being published.

I would appreciate an acknowledgement of my submission from the Department.

Yours sincerely

[REDACTED]

To:
Department of Housing, Local Government and Heritage
National Parks and Wildlife Service (NPWS)
Emailed to: WildBirdDeclarations@housing.gov.ie

13th March 2022

Public Consultation on Wild Birds derogation Declarations 2022.23 - Urban Seagulls


Below is my personal submission, with comments and proposals as invited, to the public consultation which is confined to two issues:

- i.) urban seagull colonies and their escalating negative impacts on communities where high density colonies have been proliferating for several years now, and
- ii.) serious failures to date, in my opinion, on the part of successive Departments/NPWS to meet its legal and public administration responsibilities in relation to the issue.

Extensive evidence of negative impacts has been previously provided to the Department over several years and has been well publicised in national broadcast and print media. I assume the evidence of very high urban seagull numbers is no longer disputed given the results of the National (sic) Survey published last September. In this submission, therefore, I merely list some of the main impacts as a reminder to the Department and as information for anyone reading the submissions. Similarly, evidence of apparent failures on the part of successive Departments (legal, policy and public administration) has been previously presented in detail, including to the Consultative Committee on urban seagulls, and has been accepted in two sets of expert legal advice acquired by the Department via the CC (Aug. 2020 and Feb. 2021).

I would appreciate an acknowledgement of my submission from the Department.

Yours sincerely


concerned private citizen

Submission

Comments:

1. Escalating negative impacts of high density urban seagull colonies on communities:
 - i) intense, anti-social noise for the duration of the breeding/rearing season (May-Sept.) from as early as 3am - sleep deprivation, severe distress, and serious health impacts
 - ii) attacks and serious injuries from seagulls protecting nests/young and from aggressive foraging in public places, in schools, shops, supermarkets and in private gardens
 - iii) exposure to contamination with Antimicrobial Resistance (AMR) - seagulls are so contaminated because they forage e.g. human and animal sewerage and disperse AMR widely in the environment – as specifically and expertly advised to the Consultative Committee (CC) on urban seagulls in Feb. 2020
 - iv) extensive and disgusting (AMR contaminated) fouling over six months every year in our living environment, streets, homes, gardens, schools, playgrounds, toys, vehicles
 - v) serious, expensive and annually recurring damage to property (roofs, solar panels, flashing, vehicles) often causing leaks

vi) prevention of ordinary home maintenance e.g. painting, roof repairs, TV cable repairs, (May-June) - contractors decline such work during the nesting/rearing season.

2. Summary points:

The above escalating impacts are from very high density, expanding colonies – not just from a few seagulls here and there. Cumulatively, they amount to unacceptable, uncivilised and dangerous conditions being imposed on impacted communities for several months every summer with no justification of any kind whatsoever.

In my considered view, based on the extensive evidence available, and the extended timeline (six years) with no action to date in the legitimate interests of impacted communities, this situation exists and is worsening because of a refusal/failure by the responsible State bodies (the Department, NPWS and Local Authorities) to meet statutory responsibilities and public duties with regard to the urban seagull issue.

It seems to me that explicit political direction is required from the Minister, amplifying the original action of Minister Humphreys in February 2017 when she directed the Department/NPWS to implement the Balbriggan derogation (which in my view was subsequently fudged by the Department/NPWS), and that prevarication and delay, and/or a further fudging of the issue by the Department/NPWS will continue otherwise.

Proposals:

1. The urban seagull issue needs to be recognised as the public health and safety issue that it is, and addressed as such.

Local Authorities need to be involved in addressing the issue in impacted areas/regions. The English policy on urban seagulls is worth considering. It gives explicit and overriding priority to the preservation of public health and safety in urban areas, and it provides strict protections to seagulls in their rural/natural habitats. This approach is the product of intense research and pilot exercises in Bath and Worcester. It assures legal compliance with licence conditions, consistent standards, and comprehensive reporting and statistics on all interventions. It also acknowledges the need for nest/egg removal in the many circumstances where so called ‘deterrent measures’ are known to be ineffective and a waste of time, money and effort. It also ensures that work is done professionally by insured contractors. Note that the ‘Organisational Licences’ for Local Authorities (LAs) are being “rolled out” by Natural England, i.e. they do not have to be applied for by the LAs, who will have to address any resourcing issues either within their budgets, or by introducing charging/waiver schemes for services.

<https://www.google.com/search?q=natural+england+urban+gull+policy+december+2021&oq=Natural+&aqs=chrome.1.69i57j35i39j46i175i199i433i512j0i512l2j46i175i199i433i512j46i199i291i512j0i512l3.4244j0j15&sourceid=chrome&ie=UTF-8>

The UK’s 1981 Wildlife and Countryside Act has not been amended since Brexit to facilitate the English approach to “the preservation of public health and safety”. Notably the Irish Wildlife Act 2000 Section 59, primary legislation, provides for the Minister to issue derogation licences, notwithstanding the provisions of the 1976 Wildlife Act (Amended), in order to “preserve public health and safety”, i.e. the identical wording to the British legislation. The most recent relevant Irish secondary legislation - Regulations - is S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011, Section 55.2.a) of which provides for derogations “in the interests of public health and safety” – the precise legal derogation decision threshold as specified in the 1979 Birds

Directive Article 9.1.a) – these Regulations, inexplicably, have never been applied, and have remained exceeded, inexplicably, in a way that is materially “legally invalid” by S.I. No. 254/1986 - European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986.

Specifically, the Department has two expert legal advices in its possession since Aug. 2020 and Feb. 2021, paid for with taxpayers’ money, as part of experts’ advices it sought and received via its own CC on urban seagulls. The advices state that Departments have been misapplying the law, and in breach of the law, since S.I. No. 254/1986 Regulations were implemented –i.e. for 36 years. The advices state that the Department/NPWS has “been wrongly advising Ministers for years”, “submitting legally invalid Regulations for signature”, specifically in the public health and safety context of derogations. They say the Department has been applying a “legally invalid” and “disjunctive rather than conjunctive” derogation decision threshold viz. that species must “represent a threat to public health or safety” for inclusion in derogations, rather than the legally valid, lower derogation decision threshold (“in the interests of public health and safety”) as specified in the still unused 2011 Regulations and in the law, viz. the 1979 EU Birds Directive.

The Department/NPWS ignored the two legal advices (and the 2020 CC recommendations) in the 2021.22 Derogation Declarations. If the Department rejects the two expert legal advices that it sourced and paid for, it has not said so or explained its position to the CC members. If the two expert legal advices are substantively correct, the Department/NPWS has very serious questions to answer at this stage.

2. In the absence of and/or pending the provision of a Local Authority-based managed services solution akin to the English model, a clear and well publicised derogation enabling the removal of seagull nests and eggs needs to be announced “in the interests of public health and safety” under the law, well before the start of the laying season i.e. in early April at the latest.

Such a derogation needs to apply to specified locations and building types where people are clearly at risk from urban seagulls, viz homes, creches, schools, colleges, shops, supermarkets, hospitals, medical facilities. This approach is targeted and proportionate, and will leave plenty of other ‘urban’ locations available to seagulls for breeding purposes – if such is actually desirable and a good idea. The mapped/zoning approach used in the Balbriggan ‘pilot’ derogation is not suitable, and will undoubtedly have confusion and compliance issues at map boundaries as has already happened in Balbriggan.

If the Minister and the Department/NPWS are now seriously intent on addressing the urban seagull issue as was intimated at a meeting on 14th October 2021 in the Custom House, the above proposals are consistent with best practices elsewhere. Also, strong and transparent publicity will be a key part of any effective solution – because the larger part of the general public who may not yet be affected by the negative impacts of urban seagulls as set out above will not understand the need for derogations otherwise.

In my view it will be societally irresponsible for the responsible authorities to continue to procrastinate regarding solutions to this escalating issue, and any decision to do so would consciously continue the serious harms being caused in impacted communities. Ultimately such a decision, if taken, would have to be independently investigated and accountable.

***** End of submission *****