

Smoke and mirrors

Matthew Knight of Knights Solicitors looks at the necessary steps and timing for getting a licence to control pest birds.



Much was made of the power to grant a Licence under Section 16(1) of the Wildlife & Countryside Act 1981 when Defra caved in to pressure and scrapped the previously satisfactory framework of General Licences to control pest species of birds on 23 April 2019.

Since then it has become clear that unless Defra and Natural England (NE) change their approach, the power is illusory because it is almost never going to be exercised.

As a result there is going to be great difficulty in mounting a Judicial Review (JR) challenge to NE in respect of any decision to refuse a licence under Section 16(1) (c) of the Wildlife & Countryside Act 1981 (the WCA) for the control of rooks, jackdaws, lesser black-backed gulls and other pest birds.

There are also issues surrounding timing that mean that a claim needs to be issued and expedited if it is to have any hope of success – given that come spring we are going to be in the period during which a number of species of birds and livestock are most at risk of predation. If a JR claim is not issued with some haste then the Court may well refuse permission on the basis that the claim was not brought “promptly” or, if the claim is successful, refuse to grant the

relief sought on the basis it would serve no useful purpose due to the passage of time.

There is no harm in sending a Letter of Claim to test the water, but a better approach is to make good on the evidential deficiencies from any earlier application and apply again – without further delay – for the same period next year, ie. March to August 2022.

NE will rely on the lack of any evidence that the predation by rooks, jackdaws, lesser black-backed gulls and other pest birds had been the cause of a decline in breeding and productivity of ground-nesting and other birds. There must be evidence of instances of predation but these are not enough – there also needs to be evidence of the effect that it is having. It may seem to be common sense that such predation would have an effect, but unless there is evidence NE is within its rights to refuse the licence. The evidence needs to be of a significant population decline, linked to predation by these particular pest species to the decline, for a licence to be issued.

Indeed, if you look at the criteria required to obtain a licence:

“Natural England will only issue you with a licence if you can show that:

- *Actual damage or a problem is occurring, or likely to occur – and the target species is causing it.*
- *You have tried non-lethal solutions, or you can show that they would not be effective or practical.*
- *There are no suitable alternative methods of control.*
- *Action you take under the licence will contribute to preventing damage or resolving the problem.*
- *Action you take under the licence will not negatively affect the conservation status of the wild bird.*

If your application does not meet all these criteria, NE will reject it.”

The evidence must both show that the problem *is* occurring or *is likely to occur* and is being caused by by rooks, jackdaws, lesser black-backed gulls and other pest birds.

The previous NGO case of *R(McMorn) v NE* [2015] EWHC3297(Admin) is instructive. In that case, NE refused to grant a licence to kill buzzards. It became apparent that it was refusing licences of this nature as a matter of course and, as came out in the claim for JR, NE was operating



You need a licence to control lesser black-backed gulls.

a policy of not granting licences to kill buzzards on the basis of the perceived public perception of killing such birds. In effect, it was impossible to obtain a licence to kill buzzards.

The revised NE policy is to make a case where the application is missing some key evidence in support of a grant of licences for any of the pest species for which a gamekeeper has applied.

The JR (CPR54.5(1)(a)) requires a claim to be brought "promptly" and "in any event not later than three months after the grounds to make the claim first arose". There are a large number of JR claims that are refused every year because they were not brought promptly – on the basis that even though they were brought within three months, the JR claim served little purpose – by the time it had been issued and/or heard, the damage complained of due to the decision under challenge had already occurred.

Gamekeepers needing licences need to gather evidence to strengthen the application and make a fresh licence application for March to July 2022, but within sufficient time to allow the JR to be dealt with well before 1 March 2022.

KNIGHTS SOLICITORS

Matthew Knight is the Senior Partner of Knights Solicitors. He has been giving legal advice to gamekeepers via the National Gamekeepers' Organisation's Legal Helpline since 2011. Knights Solicitors is a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level. Knights Solicitors provides the NGO with a legal helpline service (see below). Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Jonathan Manser.

NGO free legal Helpline

NGO members in need of emergency legal advice relating to gamekeeping and fieldsports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Jonathan Manser, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:


Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460. •



If, upon submitting a fresh licence application, including the evidence NE has indicated that it needs to grant a licence, and NE then refuses that application there may be good grounds to bring a JR.

The Court will be looking to see if based

on that information NE has somehow fallen into error in refusing to grant the licence, has failed to follow through on a promise to grant a licence, or has not followed its own guidance. •




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