



Report of the Cabinet Member for Environment & Infrastructure Management

Natural Environment Scrutiny Performance Panel – 22 October 2019

Urban Gulls in Mayals

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| Purpose: | To brief/update the Scrutiny Performance Panel on Council response to concerns raised by residents regarding gulls in Mayals |
| Content: | A briefing/update on Local Authority Powers and actions available |
| Councillors are being asked to: | Consider the information provided and to forward views to the Cabinet Member |
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1.0. Introduction

- 1.1. Complaints have been received from the Mayals Friends and Residents Group, Swansea relating to allegations of anti-social behaviour by individuals due to the feeding of seagulls at their home.
- 1.2. On the 31st August 2018, a petition was received by Swansea Council and forwarded to Democratic Services. The petition was responded to by correspondence as it was signed by 22 individuals, which was below the 30 signatures required to register as a petition.
- 1.3. Correspondence continued between the Pollution Control Division and the complainants regarding their concerns. The complainants were advised that all species of gull are protected under the Wildlife and Countryside Act 1981 and so it is illegal to intentionally injure or kill any gull or damage or destroy an active nest or its contents. Confirmation was provided that statutory nuisance provisions within the Environmental Protection Act 1990 (EPA), would not be suitable for use with this type of issue with gulls and so would not be an action that could be considered.

- 1.4. Further advice was given regarding the possibility for the homeowner themselves, whose property was being affected, to investigate 'gull-proofing' measures for their property along with contacting Natural Resources Wales (NRW) regarding the licence requirements to permit the destruction of nest or birds, if there are no non-lethal solutions remaining.
- 1.5. Within the correspondence received there was also reference to issues with rats and so complainants were informed that Swansea Council provides a free service for treatment for rats and that they could contact Pollution Control to arrange a visit if required.
- 1.6. Further correspondence was received from the complainants and via Assembly Members and Local Ward members, which led to an appointment being arranged to visit the occupiers of the property whom the complainants alleged were engaged in anti-social behaviour by feeding birds. This visit took place on the 25th January 2019. During the visit, no evidence was gathered to support the existence of a statutory nuisance. Whilst it is not illegal to feed the birds advice was given that, there can be a link between excessive bird feeding and rodent activity. The complainants were informed of the outcome of the visit and that the Council would be unable to take any further action.

2.0. Powers Available to Swansea Council

- 2.1 Part III Environmental Protection Act 1990.
Section 79 – Statutory Nuisance – Requires person to be the owner/occupier or person responsible for the said nuisance. In the case of noise from seagulls, the premises owner is not the owner of the birds and cannot be held legally responsible for the noise that the birds may create and therefore a statutory nuisance cannot occur.

If the feeding behaviour of the premises owner is deemed to be unreasonable i.e. large quantities left on the ground or flat areas/scattering large quantities of feed on land that is left for long time periods then there is a possibility that, if the person's behaviour is 'unreasonable', a statutory nuisance may exist due to the 'accumulation' at the premises. At this point, an abatement notice may be served.

Injurious to Health – Whilst seagulls are known to carry Salmonella, Campylobacter and E Coli spp there are few documented cases of illness directly attributed to gull excreta and so this action would not be supported.

- 2.2 Prevention of Damage by Pests Act 1949 (PDPA).
If there is an issue with rats at or associated with the condition of the premises, then the Council has powers under section 4 to enable action to be taken to remedy the situation.

In this case, rats have been mentioned in correspondence and advice has been given regarding the free service that the Council offers to treat for rats. To date the complainants have not requested a treatment.

2.3 Informal action

If a complaint is received and information leads to justification for contacting the individual to assess their actions or conditions of their property then the Council could investigate and provide informal advice if there is no evidence to justify further formal action.

2.4 Wildlife and Countryside Act 1981

All species of gull are protected under the Wildlife and Countryside Act 1981 and so it is illegal to intentionally injure or kill any gull or damage or destroy an active nest or its contents. NRW has the authority to grant licences for actions for certain species.

A person may kill or injure a wild bird, other than one included on Schedule 1, if they can show, subject to a number of specific conditions, that their action was necessary to preserve public health or air safety, prevent spread of disease, or prevent serious damage to livestock, crops, vegetables, fruit, growing timber, or fisheries. In this instance, evidence has not been gathered to show that there is a 'public health issue. Complaints regarding noise or droppings are not applicable to public health and whilst on private land it would be the landowner's responsibility to apply for a licence from NRW (potentially via a third party) to carry out works at their expense.

2.5 Community Protection Notices (CPN) – Can be issued by a local authority if there are reasonable grounds to believe the subject's conduct:

- Is having a detrimental effect on the quality of life of those in the locality, and
- Is unreasonable, and
- The behaviour is of a persistent or continuing nature.

CPNs are permissive powers so not a statutory duty.

2.6 Public Space Protection Order (PSPO) – These are not applicable for private properties, for example, alleged feeders. Some English Authorities have used PSPO in seaside locations looking at littering and feeding of birds on promenades.

3.0. Related Actions taken by Swansea Council

3.1. The Council has distributed caddy bins for food waste collection at the kerbside. This enables the removal of a previous food source from black bags, which used to be collected weekly but now fortnightly.

3.2. Within the City Centre, enforcement officers have the ability to issue fixed penalty notices (FPN) for littering offences, which also has an effect

of reducing availability of food source. An evidence base exists in the City Centre for this practice that does not exist in the Mayals area.

- 3.3. A review of actions carried out by other local authorities in Wales provided the following responses:
 - 3.3.1 Carmarthenshire County Council – Do not offer any method of control. They provide advice regarding some methods of control such as netting of buildings, use of spikes and control of food sources by not placing food waste in black bags. They also follow a similar approach as Swansea Council in the use of Statutory Nuisance powers.
 - 3.3.2 Wrexham County Borough Council – Carry out an investigation and if evidence supports unreasonable activity, a written warning is sent. If unreasonable activity persists then a Community Protection Notice (CPN) can be served.
 - 3.3.3 Pembrokeshire County Council – Follows a similar approach to Swansea Council in that an investigation into whether or not a statutory nuisance exists is carried out. If a rodent issue then action under PDPA can be taken. If unreasonable activity is taking place then action can be considered via a CPN. They also send bird feeding advisory leaflets to residents if unable to gather evidence to support formal action.
 - 3.3.4 Shared Regulatory Services – The Pest Control section undertakes an egg replacement service at commercial properties but only provides advice for domestic properties. The Private Sector Housing Team sends advisory letters to properties regarding alleged statutory nuisance from the feeding of birds. However, they advise that alleged nuisance from noise and faecal matter are not subject to control under statutory nuisance provisions.
 - 3.3.5 Denbighshire County Council - Much of their focus has been on raising awareness, publicity and trying to reduce food waste in the area i.e. in the town centres. They do receive complaints about residents feeding seagulls. Their approach has been to send an information/informal letter to the resident, providing advice and guidance and asking them to stop feeding the seagulls if they are having a detrimental effect on their neighbours. If the feeding of seagulls by a resident were found to be excessive and have such an impact on someone's lives then the use of CPNs would be considered.

4.0. Conclusions

- 4.1. In response to complaints received by Swansea Council from individuals representing Mayals Friends and Residents Group, advice has been provided regarding the actions that the council can carry out.

- 4.2. Correspondence has been received and responded to from Assembly Members and Local Ward Members on behalf of Mayals Friends and Residents Group.
- 4.3. Contact was made with the owners of the property named by the Mayals Friends and Residents Group as engaging in anti-social behaviour by the feeding of birds. The outcome of the visit to the owners of this property was that there was no evidence to support the existence of a statutory nuisance from the feeding of birds and their activity was not considered unreasonable.
- 4.4. The Council has acknowledged and responded to the complaint received and advised that it has no evidence to support the instigation of further action against the owners of the property. Furthermore the Council is satisfied that the concerns raised have been properly investigated and responded to.

5.0. Legal Implications

- 5.1. A Summary of powers available to the Council has been outlined within this report.

6.0. Financial Implications

- 6.1 No implications with this report as working within existing powers.

Glossary of terms:

CPN – Community Protection Notice

FPN – Fixed Penalty Notice

NRW – Natural Resources Wales

PDPA – Prevention of Damage by Pest Act 1949

PSPO – Public Space Protection Order

Background papers: *(Either use the word 'none' or list all the Background papers).*

Chartered Institute of Environmental Health. Guidance on the use of Community Protection Notices <https://www.cieh.org/media/1238/guidance-on-the-use-of-community-protection-notice.pdf>

Chartered Institute of Environmental Health. Pest Control Procedures Manual: Urban Gulls <https://www.urbanpestsbook.com/downloads/>

Environmental Protection Act 1990

<http://www.legislation.gov.uk/ukpga/1990/43/contents>

Prevention of Damage by Pests Act 1949

<https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/55/contents>

Appendices:

None