

Council Bird Control Policy

1.0 EXECUTIVE SUMMARY

1.1 **Purpose:** This report considers options for the Council to adopt a Policy in respect of the Control of Bird Nuisance within Argyll and Bute. The requirement for this report has arisen from concerns which have been expressed by elected members and the public at the inadequacy of the Council current response.

1.2 The Council does not currently provide any service for the control of feral birds (e.g. gulls and pigeons). There have been reports relating to the behavior of gulls and pigeons in some of our towns and concerns at the lack of any formal action being taken by the Council to alleviate the problems of birds nesting on or in properties, deposits of bird faeces, and during the nesting season, of gulls "harassing" members of the public.

1.3 The Council does not have a statutory duty to provide any bird control service, and the responsibility rests with property owners or the general public in discouraging the birds into areas. However, some local authorities provide a service, and it is essential that the Council develops its own Bird Control Policy, so we have a consistent and considered Council position.

1.4 There are financial implications to the Council in developing a service as there is currently no budget for this work. It is noted that these could be offset by charging for such services.

1.5 Recommendations

1.5.1 Members are asked to determine the best model for Argyll and Bute Council and to consider the following options:

Option 1 Provide an advisory service only, principally through on-line guidance, to property owners and the public on measures they can take to deal with bird nuisance affecting their own property or area.

Option 2 Provide an enhanced service regarding the control of birds (either in respect to all or a limited range of species). Such a service may range from full provision to a very limited provision dependent on the availability of expertise or resources.

It is recommended that Members agree Option 1 (having regard to the absence of any statutory duties, and the impact detailed in this report) and to make recommendation to Council to adopt this as policy.

1.5.2 Subject to the decision of Council, that the implementation plan for the Councils' Bird Control Policy be subject of a further report to PPSL for the information of members.

Council Bird Control Policy

2.0 INTRODUCTION

2.1 The Council does not currently provide any service for the control of feral birds (e.g. gulls and pigeons). There have been complaints made relating to the behavior of gulls and pigeons in some of our towns and concerns at the lack of any formal action being taken by the Council to alleviate the problems of birds nesting on or in properties, deposits of bird faeces, and of gulls “harassing” members of the public during the nesting season,.

2.2 Following a number of high profile local issues in relation to alleged nuisance caused by various species of birds and an expectation by members of the public that “the Council” should provide greater assistance in such matters a review of existing legislation and options has been carried out to allow the Council to consider whether a Bird Control Strategy would be appropriate and if so what shape it should take. This paper considers the options available to the Council and seeks to develop this Policy.

2.3 The Council does not have a statutory responsibility to duty to provide any bird control services, although it is appropriate that it has an agreed position

3.0 RECOMMENDATIONS

3.1 Members are asked to determine the best model for Argyll and Bute Council and to consider the following options:

Option 1 Provide an advisory service only, principally through on-line guidance, to property owners and the public on measures they can take to deal with bird nuisance affecting their own property or area.

Option 2 Provide an enhanced service regarding the control of birds (either in respect to all or a limited range of species). Such a service may range from full provision to a very limited provision dependent on the availability of expertise or resources.

It is recommended that Members agree Option 1 (having regard to the absence of any statutory duties, and the impact detailed in this report) and to make recommendation to Council to adopt this as policy.

3.2 Subject to the decision of Council, that the implementation plan for the Councils’ Bird Control Policy be subject of a further report to PPSL for the information of members.

4.0 DETAIL

- 4.1 The presence of feral birds, particularly gulls and pigeons, in urban areas has increased in recent years for a number of reasons such as the availability of good nest sites and discarded food. Most of the gulls and pigeons that live near us, cause no problems, however, in a small number of cases these birds are causing annoyance to local residents.
- 4.2 Within Argyll and Bute, two general groups of birds appear to cause most complaints: pigeons and roof nesting gulls. These birds can cause considerable problems including noise, mess from droppings fouling roofs, walls, windows, gardens, people and domestic washing. They may also cause damage to property by picking at roofing materials and by blocking gutters and down pipes with nesting materials. Blockage of gas flues from similar materials can also cause serious problems. Gulls in particular, are also known to dive and swoop on people and pets, causing distress, alarm and on occasion physical injury among the public.
- 4.3 The Council does not currently provide any service for the control of feral birds (e.g. gulls and pigeons), although we do offer advice to those affected and to property owners who may have birds on or in their properties. However there are differing approaches across local authorities and some who offer bird control services. The differing characteristics of the birds influence the most effective bird control measures and Appendix I details the ecological factors for gulls and pigeons.

4.4 LEGAL POSITION

- 4.4.1 The Council have responsibilities as a property owner, to take measures to control feral birds and the associated problems at properties **owned by** the Council, and also, under the Environmental Protection Act 1990 and the Public Health (Scotland) Act 2008, to investigate complaints of nuisance. These responsibilities are undertaken by its Property and Environmental Health teams.
- 4.4.2 In determining a policy, it is important to consider what the Council is required to do by statute and a review of such legislation has been undertaken., This has identified the following:
- (a) **The Environmental Protection Act 1990** places a duty on local authorities to investigate complaints of nuisance but these powers are not intended or designed to respond to issues relating to feral birds (i.e. swooping would not come within the definition of a statutory nuisance). Any action taken under this provision would require the establishment of nuisance and a responsible person, in this case, the owner of the building. Case law however suggests that the owner of the building may not be liable for the actions of wild birds if the owner had done nothing to encourage the wild birds and that any notice served on the owner of the building are likely to be successfully appealed.

With respect to pigeons it may be possible to show nuisance if the birds were nesting in the loft space, however the action would be taken against the householder who is also likely to be the complainant and therefore the powers would be of limited use unless the occupiers and owners were different parties' e.g. private lets.

- (b) **Prevention of Damage by Pests Act 1949**
Under the Prevention of Damage by Pests Act 1949 it is the duty of the Local Authority to take steps to secure as far as practicable that its district is kept

free from rats and mice. Apart from this statutory duty the provision of the pest control service is discretionary. There is no statutory duty placed on the Council to take similar measures to control seagulls or pigeons

(c) Local Government (Scotland) Act 1973

The Local Government (Scotland) Act 1973 empowers a local authority to make byelaws “*for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein*”. In drafting a byelaw, the Council would require to be clear as to what behaviour it is seeking to prohibit, e.g. common byelaws include the prohibition of drinking alcohol in outside areas which is straightforward to regulate - it is less straightforward to identify what a byelaw would do to prevent seagulls causing a nuisance and how it could be enforced.

(d) Wildlife and Countryside Act 1981

The principal legislation dealing with the control of birds is the Wildlife and Countryside Act 1981. It is illegal to capture, injure and destroy any wild bird or interfere with its nest or eggs. The penalties for disregarding the law can be severe (up to 6 months imprisonment and/or Level 5 fine), however General Licences issued by Scottish Natural Heritage (SNH) allow measures to be taken against certain common species of birds on grounds which include the preservation of public health or public safety. Any action taken must be humane and the use of an inhumane method which could cause suffering would be illegal. The use of poisons or drugs to take or kill any bird is specifically prohibited except under very special circumstances and with a specific licence issued by SNH. In practice there are very few humane methods to kill gulls or pigeons and skill and experience is needed to deploy them. Shooting of roof nesting gulls is considered neither humane nor safe.

- 4.5** In conclusion, the Council has no statutory duty to take action against gulls or pigeons. The Council also in most cases has no legal powers to force owners or occupiers of buildings to carry out works to their buildings to prevent birds from nesting, nor can the Council make them take any action against birds that have nested even if they are causing problems. It therefore remains a completely discretionary option to take action in the majority of cases where complaints regarding bird nuisance arise.
- 4.6** It should be noted that there are common law actions which may be appropriate. There are Common Law Action in Nuisance allows an action to be raised where a nuisance has arisen which is affecting someone else's enjoyment of their property or land to stop the offending conduct. In this case it is the neighbouring proprietors who have been affected however, unless the Council owns a neighbouring property which has been affected, it would not have title and interest to raise an action under common law. Any action would have to be raised privately by the neighbours affected.

5 Current arrangements within Argyll and Bute Council

- 5.1** In preparing this report attempts were made to quantify the issue. Figures were sought from Environmental Health and Pest Control. To date actual figures have been unavailable from Pest Control – largely as action is not routinely taken for birds and therefore the figures are not kept. However, anecdotally the author officers were not aware of many requests.

The number of bird complaints received by the Environmental Health Section in the last nine years is as follows;

YEAR	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of Complaints	3	6	2	1	4	3	7	7	11
Notes: The areas breakdown is Bute and Cowal 26; Helensburgh and Lomond (8), Mid Argyll, Kintyre and Islay (9); Oban, Lorn and the Isles (1)									

Officers are sympathetic to residents' concerns about gull/pigeon nuisance in the area although our ability to provide a solution is limited to providing advice to homeowners. **The Council is not responsible for gulls/pigeons on private properties.**

- 5.2 Members will be aware that the Council is responsible for the delivery of a number of Conservation Area Regeneration Schemes (CARS) and Townscape Heritage Initiatives (THI) across the area. CARS, funded by Historic Scotland, and THI, funded by Heritage Lottery Fund, seek to deliver heritage led regeneration in our towns mainly through the provision of grant funding to private owners to secure investment into the built heritage fabric of the towns. The grants are often focused on tenemental properties with multiple owners which are often in a poor state of repair. The condition of these properties is often as a consequence of a lack of ongoing investment in their maintenance over a long period of time. However in some locations the condition can be exacerbated as a consequence of the impact from feral birds roosting and from bird guano blocking rainwater goods. This has been evident in both the Rothesay and Campbeltown CARS/THI.

The largest impact from feral birds is on properties that have become vacant. Once feral birds gain access to these buildings there can be a significant deterioration in both the internal and external fabric over a relatively short period of time. This can result in the buildings becoming dangerous and can often place a requirement on the Council to undertake emergency works or in the worst case scenario to demolish the property.

Through the CARS and THI private owners are made aware of the importance of their commitment to ongoing maintenance and to investment in their buildings and where applicable owners do consider preventative measures to reduce the impact from feral birds roosting to ensure that the maximum benefit is secured from the CARS/THI investment.

- 5.3 Work is undertaken through the Area Property Groups, where Council services discuss specific issues relating to properties and agree a collective Council response, on what actions can be taken. The types of properties discussed include those which may be empty or vacant; have structural or other issues, and have included discussions on feral birds and in particular to the issue of fouling, nesting or dead birds. These groups will continue to do so and to take forward issues with property owners either formally or informally to secure improvements. In the case of birds, this may include the advice to property owners on bird proofing measures, and planned property maintenance. As appropriate, THI/CATS officers will continue to work closely with the other services and property owners to raise awareness, and examine options as part of the proposed maintenance works .

Through this proactive approach, it is hoped that we may resolve potential issues before they arise, although this is dependent on the cooperation of private owners, unless the Council can initiate formal statutory action.

5.4. Other Scottish Local Authority arrangements

All 31 other Scottish Local Authorities were contacted in order to ascertain what level of service was provided and their opinion with regard to the success (or otherwise) of the service, along with costs, advantages and disadvantages of the service. A number of Scottish Local Authorities offer various levels of service in relation to gull and /or pigeon control.

- a. Most Local Authorities make reference to Bird Control in the Pest Control section of their websites. Information ranges from detailing the services they provide, to offering advice regarding what actions property owners have available to them as they provide no service for bird control, or simply stating no service is offered.
- b. Few Local Authorities have formalised policies or strategies for dealing with bird nuisance, however a small number have draft unpublished policies that may be considered for publication in the future. Approximately 20 Authorities do not deal with bird nuisance other than to offer advice, most of which is posted on their websites. Four LA's did not respond to the email seeking information and had nothing on their website to indicate the level of service they provided. A summary of the responses follows:
 - i. Two LA's indicated either directly or on their website that they do take proactive action against pigeons. One implements occasional culls in the main Town Centre, the other mentions non-specific feral pigeon control. Further information on this has been sought directly but has not yet been provided. No other Local Authorities routinely dealt with pigeons,
 - ii. Seven LA's carried out some form of gull control. This was most usually egg replacement/oiling. Other methods included, use of falconry and also use of spikes on worse affected buildings. One LA suggested they had tried various methods of control, none of which were particularly effective, but the roll out of wheelie bins had seen a considerable decreased in gulls in the urban areas
 - iii. Notably some of the larger coastal authorities in Scotland e.g. North Ayrshire, South Ayrshire, Highland, Aberdeen City, and Fife do not provide services for gull control work apart from offering advice. Also the larger City Authorities such as Glasgow, Aberdeen City have no specific pigeon control policies, although Dundee states they do carry out pigeon control no details are given beyond not feeding them and minimizing litter.

6 Options and estimated costs for a future bird control strategy.

- 6.1 There are three options available to the council in developing its bird control policy, and these are detailed for members consideration

		Impact	Financial
Option 1: Status Quo	This option will however not fulfil either public or Member expectations.	Negative	Operational costs only in responding to requests/ complaints
Option 2: Provide advice only	To develop guidance and information on means of minimising the impact of feral birds and to publish this widely. This is already the favored approach is adopted by the majority of Scottish authorities	Improved awareness	Minimal costs but may reduce operational costs in responding to service requests
Option 3: Carry out a bird control service	The scope of this service requires to be developed but the Council would provide a range of bird control measures	New service but will not eliminate the problem. Short-term improvements	High cost and no existing budget

Note: For information, Appendix 4 provided an outline of the types of service which could be provided through a limited or full bird control service.

6.2 Control measures. In 2006 the Scottish Executive commissioned a review into urban Gulls and their Management in Scotland. The review considered existing methods of control and provided guidance for Local Authorities on mitigation techniques. However, this guidance was accompanied by the caveat that there appeared little scientific evidence to substantiate (or otherwise) the effectiveness of these methods in a particular location. Appendix 3 provides details of the different control measures which can be taken.

6.3 There are inherent costs in doing so. It is recognised that these can be offset through income from charging for such a service, but the Council current pest control service could does not have the necessary skills or resources to undertake this work, although there are private specialist contractors who provide such services.

6.4 **As there is no statutory responsibility on the Council to provide a bird control service, option 1 is the preferred option, and is recommended to Members. This is consistent with the approach taken by the majority of local authorities**

7 CONCLUSION

7.1 The Council does not have a statutory responsibility to duty to provide any bird control services. It is appropriate that it has an agreed position to provide clarity to Councils officers and members; property owners and the general public.

8.0 IMPLICATIONS

8.1 Policy Supports the Councils strategic priority of improving the well-being of communities and protecting the welfare of vulnerable people.

8.2 Financial Given the current position in Argyll and Bute is not to offer treatment any actions other than (i) or (ii) would require further budget identification, which currently is unquantified and could be substantial. Therefore if the decision is taken to increase service provision then the desired level and type of service will need to be agreed before likely costs will be able to be accurately estimated.

- 8.3 Legal The Council do not have a statutory duty to provide bird control services, and this work is available from private pest control companies
- 8.4 HR Any proposed extension to the services presently being provided by either the Pest Control or Environmental Health Section is unlikely to be able to be absorbed by the current workforce as the gull breeding season clashes with the busiest period for the Councils Pest Control and Environmental Health Teams.
- 8.5 Equalities No issues identified through assessment
- 8.6 Risk Adverse publicity to Council
- 8.7 Customer Service The development of a policy will provide clarity to customers on what the Councils remit in respect of feral bird control

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APPENDICES

- Appendix 1 Ecology of Birds and Bird Control Measures
Appendix 2 Range of Bird Control measures
Appendix 3 Limited or full service options

Appendix 1 ECOLOGY OF BIRDS AND BIRD CONTROL MEASURES.

Roof Nesting Gulls – (*Laridae sp.*)

- i. The species that appear to cause most problems are Herring Gulls and Lesser Black-backed Gulls (although further investigations as to the accuracy of this information is required). Both species begin mating in April and commence nest building, often on flat roofed buildings, from early May onwards.
- ii. Eggs are laid from May with two or three being the usual number. The eggs can take about three weeks to hatch so the first chicks are generally seen about the beginning of June.
- iii. The chicks grow quickly but generally do not leave the nest for 5-6 weeks and are quite active. They often fall from the nest and in towns this will almost certainly mean they cannot return to the nest. Small chicks will die but larger chicks will be protected and fed by their parents on the ground. Parent birds protecting fallen chicks are often the ones which dive and swoop on people and animals.
- iv. Chicks generally begin to fly in late July, early August and then take normally four years to reach maturity and breed.
- v. Lesser Black- backed and Herring Gulls tend to nest in colonies and once roof nesting birds gain footholds other gulls nest on adjacent buildings. If left unchecked, a colony can start to develop.
- vi. Multiple food sources are exploited including waste food e.g. fast food refuse, waste on landfill sites, deliberate feeding by the public, fishery waste products and natural foods such as fish, invertebrates and molluscs etc.

Pigeons (*Columba livia*)

- i. Feral pigeons are widely distributed and large flocks can grow in in built up areas. Most of the damage is caused by infestation of buildings, leading to heavy fouling with acidic droppings.
 - ii. Pigeons breed all year round. Nests are usually built roughly of twigs, in or on buildings (often in roof voids or attics) and never in trees. Around two eggs are laid, taking 18/19 days to hatch and chicks fledge between 25 to 45 days after hatching (dependant on season).
 - iii. Pigeons are seed eaters but they will exploit multiple food sources including waste food in urban areas and deliberate feeding by the public.
- a. **Local Government (Scotland)Act 1973**
- i. The Local Government (Scotland) Act 1973 empowers a local authority to make byelaws “for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein”.
 - ii. In drafting a byelaw, the Council would require to be clear as to what behaviour it is seeking to prohibit, e.g. common byelaws include the prohibition of drinking alcohol in outside areas which is straightforward to regulate - it is less straightforward to identify what a byelaw would do to prevent seagulls causing a nuisance and how it could be enforced.
 - iii. Before a byelaw can be enacted, consultation must take place and objections can be made to the proposed draft. Scottish Government guidance dictates that where a byelaw will introduce a criminal sanction against a form of behaviour, agreement must be sought from the Police and the Procurator Fiscal. This process is usually

undertaken by the community council local to the nuisance affected area, which requests a byelaw and discusses the matter with relevant parties.

- iv. The byelaw must be confirmed and agreed by the Scottish Ministers who will consider its content and whether there is agreement from interested parties, including the prosecuting authorities. As the “confirming authority”, the Scottish Ministers could take the view that there are other enactments which could be used to tackle the offending behaviour such as the Environmental Protection Act 1990 or a private action for nuisance under common law by affected neighbours.
- v. As a general point, if behaviour is not sufficiently serious to merit action under existing legal provisions then the Scottish Government are unlikely to support byelaws which criminalise that behaviour.

APPENDIX 2 THE RANGE OF BIRD CONTROL MEASURES

A summary of the various control measures available includes;

i. Culling of gulls/pigeons

There is not a universal opinion that a large scale cull of birds would be effective. This is a highly emotive subject and there are various organisations as well as members of the public who would be totally against culling. Some organisations even suggest that culling increases population numbers by “rejuvenating” flocks as more, younger birds reach adulthood and are more successful breeders.

ii. Egg removal, egg replacement, oiling/pricking

There are a number of methods including the removal of eggs, the replacement of eggs with fake decoy eggs, the oiling of eggs or the pricking of eggs. All of these methods have the same result in that chicks don't hatch and therefore gulls do not display aggressive behaviour. Eggs may have to be removed a number of times in the breeding season as they may be replaced once they are found not to be viable by the parent bird. The option is not likely to be viable for pigeons due to year round breeding. Some Local Authorities use this method and suggest that whilst total numbers of gull do not greatly reduce, aggressive behaviour can be reduced considerably.

iii. Removal of nests

The removal of nests would prevent breeding birds from laying eggs which when hatched results in the parent birds displaying aggressive behaviour. Removal, however, would be required on a number of occasions to be successful as gulls will quickly rebuild another nest at the same location. The removal of nests in housing areas *may* be justified on the basis of preserving public safety in respect of gulls, however aggression is not usually an issue with pigeon populations and year round breeding could mean considerable resources if used alone.

iv. Disturbance of birds

There are a variety of methods of disturbing or discouraging birds from particular locations including the use of birds of prey and bird scarers, including both sonic and electric devices.

v. Proofing of buildings

Proofing can be done by a number of methods including spikes, wires or nets.

Gulls

In the case of domestic properties gulls normally nest on either chimney heads or the ledge between the chimneystack and the pitch of the roof. In both cases simple netting or spikes can be fitted which would prevent or discourage birds from nesting on these locations. Flat roofs and larger roofs of commercial and domestic buildings can present difficulties depending on their structure.

Pigeons

Pigeons, often gain access to the roof spaces, attics and/or other voids of properties. As pigeons breed all year round there is never likely to be a safe time to exclude birds when there will not be pigeon squabs(chicks) or flightless birds in situ. Blocking access/egress holes will likely result in birds becoming trapped and dying. This will have legal implications for the property owner who may be prosecuted for causing unnecessary suffering. Any decomposing carcasses may also become maggot

infested and lead to issues of smell. There is also evidence that birds will move to an adjoining property that has not been proofed. Proofing therefore should be used in conjunction with other control methods to prevent recurrence.

vi. **Denying access to food**

Some members of the public encourage gulls and pigeons into the area by feeding them. Indiscriminate dumping of food waste is also attractive to gulls particularly and they will quickly colonise an area where there is a good food source. Proper waste storage, public awareness and effective enforcement of litter/fly tipping provisions will help reduce the availability of food sources.

vii **Education**

Education of the public is vital to the success of reducing the impact of the gull/pigeon population. Included within an education programme could be the provision of signs in strategic locations to discourage bird feeding as well as the use of social media and the internet.

APPENDIX 3: LIMITED OR FULL SERVICE OPTIONS

Carry out a limited bird control service

- a. Carry out a limited service focused number of target buildings based on previous issues in defined areas of the authority. The costs associated with any form of bird control will be dependent on the approach taken and the options of charges being levied. However, as success is dependent on reaching as many nest sites (gulls) as possible of those LA's who carry out a service most do not charge or charge only nominal sums. Few LA's provided details of costs but one LA who has stopped using a falconer due to limited levels of success suggested a figure of around £10K. Costs will depend on levels of staff available and suitably trained and availability of appropriate equipment for sites to be treated. This will commonly require the use of a large Cherry picker capable of providing access to often inaccessible and fragile flat roof areas. Some LA's just provide treatment for their own properties, whilst others employ a contractor to come in and carry out the works.
- b. Pigeon control is unlikely to focus on nest removal due to year round breeding; a non-lethal approach has been used apparently successfully in other areas of the UK that utilises man-made pigeon's lofts to "relocate" birds from problem areas to ones more acceptable. However the long term success as with many methods has not been proven scientifically and its use has been limited.

Provide a full bird control service

- a. In addition to (ii) and (iii). above provide a widely available commercial service for the removal of nests, eggs and in some cases chicks where it can be justified that such action would comply with the appropriate general licence conditions where public safety is compromised.
- b. The use of predator birds could also form part of this service to act as an additional deterrent measure particularly in the run up to the breeding season to encourage gulls to move out of urban areas to make their nests.
- c. In regard to pigeons this option along with the option of culling, would likely be the only option available (along with proofing once sites are known to be clear) given the nature of the birds breeding cycle.
- d. The fundamental question which arises from this option is whether the Council should be involved in killing birds even if public safety is compromised. This could be restricted to those occasions where young chicks have fallen from the nest and adult gulls are swooping to protect them. In addition when removing nests young chicks may already have hatched and therefore a decision would have to be taken on whether to dispatch them or not at this time.
- e. This service could either be provided for a charge to private homeowners in line with current council charging policy on pest control services or alternatively provide a free service to domestic home owners to ensure full up-take of the services on offer and hence a better chance of reducing the local gull population.
- f. Proofing work on private domestic properties could also be offered either for a charge or for free at the same time as nests/eggs are removed to prevent gulls/pigeons from returning to the site.

- g. These services could also be offered to commercial premises which are impacting on the local community.
- h. A full education/promotion scheme would also be required to promote such a service.
- i. Given the specialised equipment/training that would be required for such a service it would be recommended that the provision of this service be put out to tender.
- j. Option (iii) would require a commitment for a period of years and not on a one off basis to be effective.