Report on a licence issued under the Wildlife and Countryside Act 1981 to preserve public health and public safety

Case Ref: WLM / 2004 / 0917

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Glossary

NWMT National Wildlife Management Team
RDS Rural Development Service
PMC The anonymous identified used for the pest management company that provided advice to Wyevale Garden Centres and which was licensed to kill the robins (see ‘Statement on disclosure’).

Wildlife Administration Unit The unit responsible for determining and issuing licences for the NWMT
Wildlife advisers Wildlife specialists providing advice on wildlife management matters to the NWMT
Wildlife Adviser A The adviser who undertook the original application assessment.
Wildlife Adviser B The adviser who undertook the follow-up compliance enquiries. Wildlife Adviser A and B are based at different regional offices.

Statement on disclosure of information

In line with the guidance in the Code of Practice on Access to Government Information (www.dca.gov.uk/foi/ogcode983.htm) the identity of individuals involved in this case and that of the organisation which received the licence will not be disclosed. Confidentiality is justified under exemptions 4, 12 and 14 of Part II of the Code.

Details of the site where licensed action took place (the Wyevale Garden Centre) are identified as this information has been published in the national media and this is therefore already widely available.
Purpose of report
1. The purpose of this report is to determine if the Department acted properly in issuing a licence to kill robins to preserve public health and public safety at a garden centre.
2. Following from this investigation the report makes recommendations pertinent to the resolution of similar cases in the future.

Synopsis of case
3. This case concerns a garden centre in Gloucestershire. A small number of robins were foraging and depositing faeces in a restaurant located within a garden centre building. Such activities are considered to pose a risk to public health.
4. The garden centre took advice from a pest management company on resolving the problem. It was concluded that proofing was either impractical or too costly, and Defra was approached for a licence to kill the problem birds.
5. Defra subsequently issued a licence to shoot 4 robins. In the event, 3 birds were killed.
6. The sequence of events is summarised in Annex A.

Is it legal to kill robins to preserve public health and safety?
7. All wild birds and their eggs and nests are protected under the Wildlife and Countryside Act 1981 (“the Act”); under this Act wild birds cannot be taken or killed, nor can their eggs or nests (when in use or being built) be taken or destroyed. The Wildlife and Countryside Act provides for the protection of all wild birds and is the means by which the Government meets its various obligations under European Community and international conventions.
8. Although all wild birds are protected, it is recognised that certain birds can cause problems and the Act makes provision for a system of licensing. This allows action against birds which would otherwise be illegal.
9. Section 16(1)(i) of the Act gives powers to grant licences for the purpose of preserving public health or public or air safety.
10. The Act does not allow action against birds for the purposes of preventing damage to property or preventing nuisance problems (e.g. alarms being triggered).
11. Pursuant to section 16(1A) of the Act, a licence may not be issued unless the Department is satisfied that there is no other satisfactory solution.
12. The robins at the Wyevale garden centre were killed under the authority of a licence properly issued under Section 16(1)(i) of the Act and were therefore, lawfully killed.

What is the Department’s policy on this type of case?
13. The Department interprets the provisions of Section 16(1)(i) as permitting the issue of licences to allow for the killing or taking of birds in food production
premises or situations where the birds or their faeces are likely to come into contact with foodstuffs or food preparation areas. This includes restaurants and kitchens of commercial businesses.

14. Under section 16(1A) of the Act, the Department may only issues licences in cases where there is no other satisfactory solution. It will normally be expected that all other legal methods of control\(^1\) and non-lethal methods of removal (or exclusion) will have been tried and failed or will have been shown to be ineffective at resolving the problem. It also has to be shown that there is a clear hazard to human health posed by the bird(s) contaminating food or the food preparation areas.

15. This requirement is encapsulated in the following criteria which are used to judge applications for public health and safety licences:

\(a\). There is clear evidence that the bird in question is causing, or is likely to cause, a risk to public health or safety;

\(b\). In the case of licences to permit shooting, non-lethal methods of control have been tried and found to be ineffective or the methods are impracticable at the site;

\(c\). The proposed action will contribute to preventing the problem;

\(d\). For birds on Schedule 2 Part 1 of the Wildlife and Countryside Act 1981 only, there are good reasons why control action could not be taken in the open season (\textit{this criterion is not applicable to the robin});

\(e\). There is no other satisfactory solution.

16. Licence applications are processed on behalf of the Department by the National Wildlife Management Team of the Rural Development Service. Licensing decisions are made by the Team's Wildlife Administration Unit. The Unit receives technical advice on applications from regionally based teams of specialist wildlife advisers. The Citizen's Charter target for determining applications is 30 working days.

17. All licence applications (except certain repeat licence requests) are referred to a wildlife adviser for a technical assessment prior to licence determination. This assessment involves a visit to the site where the problem is reported to be occurring.

18. There is an exception, and this applies to urgent applications involving birds in food premises. In view of the immediate (and on-going) risk posed to public health the Department aims to determine these cases within 48 hours. Strict adherence to agreed processing deadlines could leave the public exposed to a continuing health risk, which would be unacceptable. To allow applications to be determined within this time frame site visits are not normally possible. In 2003, 16% of licence applications relating robins were subject to a pre-licence visit. In the remainder, the technical assessment is based on the information provided in the licence application and a telephone interview with the applicant. The Wyevale robin case falls into this category of licence application.

\(^1\) This applies to species which have an open season or which are covered by a general licences. Neither of these situations apply to robins.
19. All licensees are required to submit a report of actions carried out under a licence. This report is used to assess the success of licensed operations and is one of the means of checking that licence conditions are complied with. More thorough compliance checks are also carried out by telephone interview or by site visit. This occurs in cases where concerns are identified (this may be based on information provided by a member of the public) or as part of routine random checks, which form part of the Department's stewardship of licensing. In 2003, 5% of cases of this type were subject to post-licence compliance checks. For some categories of licence (e.g. licences for cormorants) 100% of cases are subject to compliance checks.

20. A summary of Defra's licensing policy, along with guidance on licensing procedures and advice on resolving bird problems is given on the Defra website at:

www.defra.gov.uk/wildlife-countryside/vertebrates/other-bird.htm

Was a licence justified?

21. This can be judged by reference to the criteria for determining licences listed above.

Was there clear evidence that the birds in question were causing, or were likely to cause, a risk to public health or safety?

22. Yes. The robins were feeding and defecating in the restaurant area of the garden centre. The presence of faecal matter in a food serving (or preparation) area poses a recognised public health risk. Of particular concern is contamination of food with bacteria such as *Escherichia coli* which can cause serious, and potentially fatal, food poisoning.

23. The Food Safety Act 1990 requires that action is taken to prevent such health risks.

Had non-lethal methods of control been tried and found to be ineffective or impracticable at the site?

24. Yes (but see following paragraphs):

25. This is the most difficult aspect of the licensing criteria to judge, especially as in this type of case the licensing decision is based primarily on information provided in the application form and during a telephone interview between the applicant and a wildlife adviser. It was to enable alternative (and especially non-lethal) options to be properly assessed that the principle of visiting problem sites prior to the licensing decision was adopted for new licence applications. Visits are not normally possible for bird in food premise applications because of the immediate risk to public health and the need to assess the application within 24-48 hours.

26. When the robin problem was first identified the Wyevale Garden Centre sought professional advice from its pest management contractor. This company carried out a series of visits to the garden centre to advise on solutions, which included a visit by a bird specialist. In its licence application the company stated that improved hygiene measures and physical deterrents were employed over some
months without success. Hygiene measures included clearing food waste and discouraging people from feeding the birds. Proofing the building against bird entry was considered but had been rejected as impractical and too costly to due to the size and design of the garden centre building. Notably, proofing installed at the Wyevale Garden Centre at Swansea to prevent similar bird problems had only been partially successful.

27. Following accepted practice where concerns are raised about the execution of a licence, a compliance check by a NWMT wildlife adviser was commissioned. The visit confirmed the difficulties of effectively proofing the main structure against bird entry. However, in the adviser’s opinion there was potential to proof the restaurant alone. The restaurant is a self-contained unit within the building and is only vulnerable to bird entry via its entrances.

28. It is unfortunate that neither the garden centre management nor their pest management contractor identified this option before applying for a licence. It is also regrettable that potential bird problems were not given greater consideration in the design of the restaurant, which was only refurbished recently and after bird problems had been identified at this site and the Swansea store.

29. Re-designing the entrances to the restaurant is likely to prove a substantial undertaking. Even if this option had been identified at the time of the application, a licence may still have been necessary, as the risk to public health was immediate and on-going. The alternative would have been to close the restaurant while work was undertaken. Reasonable consideration of the economic consequences of closure would be taken in the decision process.

30. In conclusion, this criterion was satisfied based on information available to the licensing unit at the time the application was considered. Only during a subsequent compliance check by a NWMT wildlife adviser was the option of proofing access to the restaurant identified. This option will need to be implemented (or shown to be ineffective or unreasonable) before any future licences can be issued. It will also be necessary to stop the feeding of birds by customers.

**Was the proposed action likely to contribute to the resolution of the problem?**

31. Yes. The case involved a small number of birds that had clearly established a territory encompassing the garden centre building and which had become habituated to human presence and disturbance. Removal of these birds and a determined campaign of deterrence (even in the absence of improved proofing) were reasonably expected to prevent a recurrence of the problem.

**Was there any other satisfactory solution?**

32. No. A number of alternative solutions have been proposed retrospectively, but none are preferable to the approach taken.

   a. Moving the nest outside the building: It is almost certain that the parent birds would have abandoned the nest and the young would have starved to death. This is unacceptable on welfare grounds. This option would not have prevented the adult birds using and defecating in the restaurant (nor
is it likely that it would have reduced the extent of their use of the restaurant).

b. **Hand-rearing the nestlings**: There are welfare consequences associated with taking any wild animal into captivity and from a purely animal welfare perspective humane dispatch must be considered preferable. It is also an unreasonable burden to impose on a licensee for a common species, although it would be sanctioned if requested and if suitable facilities could be identified. This option would not have prevented the adult birds using and defecating in the restaurant.

c. **Waiting until the young fledged**: It was accepted that there was a public health risk, and in view of this delaying action would not have been acceptable. This option would not have prevented the adult birds (or the fledged juveniles) using and defecating in the restaurant.

33. Based on the evidence available to the Wildlife Administration Unit at the time of the decision it is evident that the licensing criteria were satisfied and that the issue of a licence to shoot four robins in this case was justified.

34. The alleged nuisance problems caused by the robins triggering building alarms were irrelevant to the decision of whether or not to issue a licence.

**Were correct licensing procedures followed?**

35. The Wildlife Administration Unit, who determine licence applications, and the wildlife advisers, who provide technical assessments, both work to detailed procedural instructions which set down how applications should be determined (these instructions are available on request). The chronology of events in this case are summarised in Annex A.

36. Having reviewed the case I can confirm that correct procedures for determining the licence application were followed.

**Was the licensed operation carried out in accordance with the licence conditions?**

37. The licence authorised the shooting of up to four robins by an experienced marksman using a .22 air rifle at the specified Wyevale Garden Centre.

38. To monitor licence compliance all licensees are required to submit a report of activities carried out under the licence. Where problems are identified (and in randomly selected cases), further detailed enquiries are carried out (see paragraph 18).

39. The licence return submitted by the pest management company states that 1 adult robin and 2 nestlings were shot. Enquiries by the NWMT have confirmed that these birds were dispatched by a qualified marksman using an air rifle, and supported by a safety person (to ensure public safety). The licence return also states that a nest was removed.

40. The manager of the garden centre has confirmed that 2 nestlings and a nest were removed. In addition to the nestlings, he said that there was an egg in the
The licensee's report makes no reference to this. The manager also doubted that the adult robin had been shot.

41. The licence report and follow-up enquiries indicate that the key conditions of the licence (i.e. those that relate to the species and number killed/taken, and to animal welfare) were adhered to. Nevertheless, certain actions of the pest management company are a matter of concern.

a. **Nest removal**: Nests under construction or in use are protected by law and their destruction or removal is illegal except under licence. There was no provision in the licence for nest removal, as the presence of a nest had not been disclosed to Defra by the pest management company. As the young and one of the adults had been dispatched it could be argued that the nest was no longer in use, and therefore a licence was not required to remove it. However, this is not a satisfactory manner in which to deal with problem nests.

b. **Egg removal**: One witness claims that there was an egg in the nest when it was removed. This has not been independently verified, and it is unknown whether this egg (if present) was viable or not. The destruction of bird eggs is only legal under licence. As the existence of the nest was not disclosed the licence did not include suitable provisions to permit this action. However, even if a viable egg was removed, the total number of robins killed (including eggs) did not exceed the four stipulated in the licence.

42. Procedures for dealing with cases where it is suspected that licence conditions have been breached are outlined in Defra's operating procedures for licensing (these are available on request). In this particular case, the key aspects of the licence were met and the welfare of the birds was not adversely affected. In view of this, a written warning to the pest management company is recommended.

**Does this case raise any animal welfare concerns?**

43. Defra requires that birds killed under licence in food premises or other buildings are killed humanely and that they are only shot by an experienced marksman. This is a condition stipulated in the licence.

44. The pest management company have confirmed that the robins were shot with a .22 air rifle by a qualified marksman.

45. Based on available evidence, there are no animal welfare concerns raised by this case.

**Does this case raise any conservation concerns?**

46. Robins have a widespread distribution and are common throughout Great Britain, except on uplands and on lowland areas without tree cover.

47. The robin population is increasing gradually and is considered secure.

48. The number of robin breeding territories is estimated at 4.2 million\(^2\), which represents approximately 8.4 million adult robins. From this it is possible to

estimate the post-breeding population, which is roughly 31.5 million birds. As the population is increasingly only gradually approximately 23 million robins will die each year from all causes of mortality, which is on average 63,000 every day.

49. The destruction of 3 robins under this licence, and even the 6-7 killed on average each year under all licences issued by Defra, clearly poses no threat to the conservation status of the robin in Britain.

50. English Nature, the Government's nature conservation adviser, has confirmed that this licence will have had no impact on the conservation status of the species (see Annex B).

Conclusions

51. The purpose of this report is to determine whether the issue of the licence to shoot robins at the Wyevale garden centre was justified both under law and according to the Department’s current policy on licensing such cases.

52. Having reviewed the evidence it is clear that both the law and the procedural requirements have been satisfied. The number of birds licensed and actually killed will not have had an impact on the favourable conservation status of the robin.

53. A follow-up visit to the site by a Defra wildlife adviser identified a series of shortcomings in the approach of the garden centre and of their pest management contractor to resolve bird problems.

54. Enquiries also identified possible breaches of the Wildlife and Countryside Act and of licence conditions. Nevertheless, key elements of the licence were met and breaches are unlikely to have adversely affected the welfare of the birds.

Lessons learnt

For Defra licensing policy

55. This case illustrates the difficulties faced by the licensing unit in balancing the need to respond quickly to wildlife problems affecting public health and safety, and the need to ensure that licences are issued only where there is no other satisfactory solution. It also emphasises the value of Defra wildlife advisers carrying out pre-licence site visits to assess remedial options (which is the approach taken for all new, non-urgent licence applications).

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3 Estimating the post-breeding robin population:

4.2M breeding territories x 2 = 8.4M adults (robins are mostly monogamous.)

Clutch size (average) = 5.0 (n=1091); Number of broods per year (av.) = 2.0

Hatching rate (av.) = 71% (n=1426); Fledging rate of those hatched (av.) = 77%

Thus, the percentage of eggs that result in a fledged bird = 55%

The number of fledged young produced each year is calculated as follows:

55% x 5 (eggs) x 2 (broods) = 5.5 fledged yng per territory = 4.2M x 5.5 = 23.1M yng

This gives an estimated total GB post-breeding robin population of

23.1M fledged young + 8.4M adults = 31.5M birds

56. Although desirable, in practice it is not feasible for pre-licence visits to be carried out in most food premise cases. For example, to allow a bird to continue contaminating food processing facilitates or to require that a factory close while a site visit is scheduled is a disproportionate response to a problem caused by one or a small number of common birds. However, there are cases (for example, where temporary measures can be taken to alleviate a problem) where the problem is less immediate and a visit could be undertaken. The scope for increasing the proportion of cases subject to a pre-licence visit (which stood at 16% in 2003) needs to be examined. However, the importance of public health and safety is such that in the final analysis, this must take precedence in licensing decisions.

57. Advice on resolving bird problems is given in existing advisory material produced by the Department (e.g. leaflet TAN 13, "Birds and their control in non-agricultural environments" 4). Further specific guidance on robins and other species causing occasional problems (e.g. blackbirds and wagtails) should be included in the advisory material.

For Wyevale Garden Centres

58. Wyevale Garden Centres need to reassess their approach to wildlife problems. At present, it appears that too much responsibility has been passed to their pest management contractor, whose response is often unavoidably reactive rather than preventative. Two areas need particular attention. These are:
   a. the design of premises, and
   b. the training / advice provided to staff. For example, had action been taken when staff first became aware of the nest it might have been possible to remove the nest before the eggs were laid (or at least hatched).

59. Further action is required to prevent or discourage members of the public (and possibly staff) from feeding birds in or close to the building.

For the pest management company

60. The pest control company must take appropriate action (e.g. through training) to make sure that its staff:
   a. fully understand the legislation governing their area of work, and
   b. comply with the conditions of licences issued by Defra. If circumstances change then the licensee must contact Defra for guidance before proceeding. If necessary, the Department will issue an amended licence and advice.

61. It is also incumbent upon the company to impress on its customers the importance of taking account of wildlife problems in the design of buildings.

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4 Leaflet TAN 13 "Birds and their control in non-agricultural environments" is available from the Defra website at [www.defra.gov.uk/wildlife-countryside/vertebrates/leaflets.htm](http://www.defra.gov.uk/wildlife-countryside/vertebrates/leaflets.htm) or by contacting the Wildlife Administration Unit on 0845 6014523 (local rate).
## Annex A - Chronology of events for licence case WLM/2004/0917

<table>
<thead>
<tr>
<th>Date(s) (all 2004)</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>JANUARY</strong></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>A technician from the <em>pest management company</em> (PMC) contracted to Wyevale Garden Centres visited the garden centre. Robins were observed in building. Site subsequently inspected by a PMC bird specialist. Proofing options discussed with Wyevale management.</td>
</tr>
<tr>
<td><strong>MARCH</strong></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>The PMC review situation at garden centre.</td>
</tr>
<tr>
<td><strong>APRIL</strong></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Garden centre re-opens to the public after major refurbishment.</td>
</tr>
<tr>
<td><strong>MAY</strong></td>
<td></td>
</tr>
<tr>
<td>“early”</td>
<td>Garden centre management become aware of robins nest in house plant care section near restaurant.</td>
</tr>
<tr>
<td>5</td>
<td>PMC review situation at garden centre.</td>
</tr>
<tr>
<td>6 or 7</td>
<td>Wyevale Garden Centre HQ contact PMC concerning robins</td>
</tr>
<tr>
<td>7</td>
<td>PMC contact NWMT Wildlife Administration Unit regarding robin problem at Wyevale Garden Centre.</td>
</tr>
<tr>
<td>7 and 10</td>
<td>NWMT wildlife adviser A attempts (unsuccessfully) to contact PMC to discuss case.</td>
</tr>
<tr>
<td>11</td>
<td>NWMT wildlife adviser A contacts PMC and discusses situation at garden centre. Application form faxed to company.</td>
</tr>
<tr>
<td>11</td>
<td>NWMT wildlife A adviser sends recommendations to Wildlife Administration Unit.</td>
</tr>
<tr>
<td>12</td>
<td>Completed application received by Wildlife Administration Unit (16.29 h).</td>
</tr>
<tr>
<td>13</td>
<td>Wildlife Administration Unit make decision to issue a licence. Licence issued and faxed to PMC (10.30 h)</td>
</tr>
<tr>
<td>13 – 20</td>
<td>Period of permitted action under the licence</td>
</tr>
<tr>
<td>17</td>
<td>PMC staff visit Wyevale Garden Centre and remove and dispatch two robins in the nest and shoot 1 adult bird.</td>
</tr>
<tr>
<td>21</td>
<td>Licence return completed.</td>
</tr>
<tr>
<td>26</td>
<td>Garden centre visited by NWMT wildlife adviser B.</td>
</tr>
<tr>
<td>27</td>
<td>Licence return received by Wildlife Administration Unit.</td>
</tr>
</tbody>
</table>

### Glossary

- **NWMT**: National Wildlife Management Team
- **PMC**: Pest management company (anonymous identifier for company contracted to provide such services to Wyevale Garden Centres).
Annex B - English Nature: Advice on the conservation impact of a licence to kill four robins

I reply to your request for English Nature's views on the likely conservation impact of the issuing of a licence by Defra to kill 4 Robins at a Gloucestershire garden centre.

Recent assessments of the population status of the UK's birds have concluded that the Robin has a favourable conservation status and is of low conservation concern - it does not appear on the lists of declining/threatened species identified in the UK Biodiversity Action Plan and appears on the 'green list' (low conservation concern) of The population status of birds in the UK. Birds of conservation concern:2002-2007. The Robin breeding population has been reasonably stable since the mid-1960s, though the BTO's Common Birds Census (CBC) suggests that it may have increased significantly since the late 1980s. The early years of the Breeding Bird Survey (the CBC's successor) has charted a similar increase in numbers, by 16% between 1994 and 2002. Based on densities on CBC plots and the bird's distribution in 1988-91 atlas, the BTO estimated that there were 4.2 million Robin territories in Britain at the time * given recent trends, the Robin breeding population is now likely to be significantly larger than this.

The licence effectively involved killing individuals from one nest (territory) so the impact on the Robin breeding population will be undetectable, involving the take of 0.0000238% of the estimated population. In conclusion, the issuing of this licence will have had no impact on the conservation status of the species.

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