

From: [REDACTED]
To: [REDACTED] <[\[REDACTED\]@lemac.co.uk](mailto:[REDACTED]@lemac.co.uk)>
Subject: General Licence Restriction - Appeal Response - Leadhills Estate
Date: 31 January 2020 09:24:00
Attachments: [2020_01_31 - Appeal Response - Leadhills Estate - SNH FINAL RESPONSE LETTER - 31 January 2020.pdf](#)

To [REDACTED]

Please find attached the SNH response to your appeal against the restriction of the General Licences on Leadhills Estate.

Yours sincerely

[REDACTED]

[REDACTED]
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By email to [REDACTED]@lemac.co.uk

31 January 2020

Dear [REDACTED]

Thank you for your letter of 9 December 2019 by which you appealed against the decision of SNH's Director of Operations, Nick Halfhide, dated 26 November 2019, to restrict the use of General Licences 1-3 (the General Licences) issued by SNH under the Wildlife & Countryside Act 1981 on the area of land known as Leadhills Estate.

Given the terms of the Notice of Appeal, it is appropriate to say at the outset that this appeal process, and the process which led to the Director of Operations' decision of 26 November 2019, are administrative decision making procedures and the level of reasoning and detail provided in explanation for decisions reached is tailored accordingly.

I have considered whether or not a restriction is justified in this case, taking account of the evidence on which the decision was based, the procedure followed in reaching that decision, the content of and enclosures to your letters of 31 October and 21 November 2019, and the grounds of appeal set out in your notice of appeal dated 9 December 2019.

For the reasons set out below, I find that it is appropriate in this case that use of the General Licences is excluded on Leadhills Estate for a period of three years on the basis that SNH has reason to believe that wild birds have been taken or killed on that land, other than in accordance with the General Licences. The appeal is accordingly refused.

Annexed to this determination is the original decision notice, which includes the date and duration of the restriction and further specifies the area to which the

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restriction relates. The decision notice will be published on SNH's website. You will note that the original period of restriction is maintained, notwithstanding the suspension of the restriction pending the outcome of this appeal.

Below I set out my consideration of the basis of your appeal as set as out in the notice, using your own summary points from your letter of 9 December for ease of reference (with a couple of additional points not included in this summary but raised elsewhere).

Section 3.3.4

a. At least two of the incidents appear to have occurred off Leadhills ground altogether and should have been excluded from the decision to restrict.

- We acknowledge that there remains uncertainty as to the exact location where these incidents actually occurred, as opposed to where the dead birds were found. However, given the very close proximity of these two incidents to the boundary of the Estate we consider that it is reasonable to think that there may be some relationship between these incidents and those that occurred on the Estate itself. This has therefore been taken into account in reaching our decision.

b. On the incidents which are alleged to have occurred on Leadhills ground, no individual has been charged, prosecuted or convicted.

- We do not dispute this. However, as previously stated, we highlight the significant difference in the burden of proof required between the evidence required for a criminal case to be pursued and the evidence required for "loss of confidence" sufficient to lead to the withdrawal of a General Licence. Five of these incidents have been given a Crime Reference by the Police, i.e. they consider that in each case a crime has been committed.

Incident A (9.5.17 – [REDACTED])

An unidentified individual was seen to shoot and kill a hen harrier. That individual then left the scene taking the dead bird and spent cartridge cases with them. No evidence was found that allowed the police to identify the perpetrator. It is unclear why you find the lack of forensic evidence "almost beyond comprehension". It is clear that a crime was committed, but unfortunately no significant evidence could be found at the scene. We have no reason to doubt that this crime was committed on the Estate.

Incident B (31.5.17 – [REDACTED])

An unidentified individual was seen to shoot and kill a short-eared owl, the corpse of which was recovered and confirmed as having been shot on the Estate. You state that the individual(s) concerned have an axe to grind with the estate, which suggests that you suspect the identity of the perpetrator(s). We do not know if you have shared this suspicion with the Police, but we are not aware of any named individual having been accused of this crime and therefore cannot give weight to the allegation that the perpetrator(s) committed this crime because they had "an axe to grind with the estate".

Incident C (20.1.18 – [REDACTED])

We are aware of incident C being off (but very close to) the estate ground - this does not negate the crime reported. We cannot discount that the crime took place on the Estate.

Incident D (10.1.19 – [REDACTED])

Your explanation cited for incident D could be plausible, i.e. that the unidentified individual observed simply released the buzzard from the trap. However, the video evidence shows that the trap was not checked within a 24 hour period. This would make the 'taking' of the buzzard under Section 1 1(a) an offence, as the terms of the General Licence had not been complied with, irrespective of whether the bird was released unharmed or not. Police Scotland, as the competent authority, have reported this as a crime. We believe that Police Scotland, through their local Wildlife Crime Officers and the National Wildlife Crime Unit, has sufficient knowledge of the technical and legal aspects of trap use to make this judgement.

Incident E (3.5.19 - [REDACTED])

A container containing an illegal pesticide, Carbosulfan, was found on the Estate and reported to the Police by a researcher conducting fieldwork. No further evidence was obtained in relation to this find although it was noted that the container appeared to have been in situ for "a significant period of time". This is suggestive of poor practice, or perhaps misdemeanour, although it has not been possible to determine how recently this container was last in use.

Incident F [REDACTED]

A hen harrier was discovered trapped in a Fenn trap, located next to a hen harrier nest. The hen harrier was rescued and handed to the SSPCA but subsequently had to be euthanised. A second set Fenn trap was also discovered at the scene. It is not disputed that a crime had been committed on the Estate, although the perpetrator could not be identified. You have suggested that the witnesses, or other unidentified third parties who discovered this trapped hen harrier and second trap, may have interfered with the evidence collected in relation to this crime as they have "an axe to grind with the Estate".

A separate crime reference was raised in respect of interference with traps which was reported to the Police by the Estate at or around the same time as incident E. We have not received any further information from Police Scotland relating to this alleged interference.

Subsequent to this incident, land on Leadhills Estate was searched by the Police on [REDACTED] under the terms of the Wildlife & Countryside Act, Section 19. Traps were seized by the police [REDACTED]

Although this in itself does not establish criminality it certainly adds weight to our "loss of confidence".

Incident G (10.6.19 – [REDACTED])

We are aware of incident G being off (but close to) the estate ground - this does not negate the alleged crime reported. We cannot discount that a crime took place on the Estate.

In addition to the incidents documented above, we have been made aware by Police Scotland of a number of historic cases relating to wildlife crimes having occurred on the Estate:

Historical cases relating to wildlife crimes on the Estate:

The Framework for Implementation of General Licence Restrictions (2014) includes the criteria to assess "Any history of previous, similar instances."

We recognise the length of time since the occurrence of these incidents and the changes that have occurred on the Estate since these dates, and have taken this into account in our assessment.

- In March 2013 poisoned rabbit carcasses were found in a 'game bag' hidden in the undergrowth on the Leadhills Estate. The carcasses were coated in Carbofuran. Staff from the Leadhills Estate were interviewed as part of the investigation but no evidence came to light to identify a suspect.
 - In August 2013, a red kite was discovered shot dead on the outskirts of Leadhills village. This crime remains undetected.
 - Since 2003, there have been two successful convictions of persons employed by Leadhills Estate for Wildlife Offences (2004 – gamekeeper convicted of shooting a short-eared owl; 2009 – gamekeeper convicted of laying out a poisoned rabbit bait).
- c. *SNH do not appear to have taken account of the fact that some of these incidents may have been perpetrated by third parties who have an axe to grind with the Estate (in particular incident F).*
- We acknowledge this allegation. However, this issue does not appear to have been pursued by Police Scotland, presumably due to lack of evidence, and as such we cannot give this allegation substantive weight in our decision making process.
- d. *SNH do not appear to have taken account of, or have taken insufficient account of the fact that those reporting the incidents may not be impartial (incidents A, B, D, F and G).*
- Whilst we acknowledge the potential impartiality of some of the witnesses, we have based our decision making process on the evidence presented to us by Police Scotland. They have not highlighted the partiality of witnesses as a significant factor for concern.
- e. *SNH do not appear to have taken account of, or have taken insufficient account of the full cooperation by the Estate with police inquiries.*

- We note that this cooperation was largely limited to “no comment” interviews with the Police in relation to all the recorded crimes (other than the alleged interference of traps which you directly reported). Any cooperation that did occur does not negate the evidence of crimes and other incidents having occurred.
- f. *SNH do not appear to have taken account of, or have taken insufficient account of the Estate’s systems’ protocols and compliance, which are summarised in paragraph 3 and supported by the supporting documentation.*
- We acknowledge the Estate’s protocols, as presented. However, this does not negate the evidence of crimes and other incidents having occurred.
- g. *Failure to take account of the clear evidence of interference and vandalism on the Estate, suggesting third party nefarious activity and interference.*
- This is a matter for the Police and not SNH. We understand that no further action has been taken in this regard.

3.4.2 SNH appear to have taken no account whatsoever of the conservation or ecological impact either of the alleged activities or of the imposition of the restriction.

- SNH are deeply concerned about the conservation and ecological impact of the crimes reported and alleged, which is why we have taken the decision to withdraw the General Licence. The persecution of raptors in Scotland has a significant effect on the populations of certain species, in particular hen harriers. SNH’s work with Police Scotland and other partners to combat this is well documented.
- The restriction of General Licence still allows the Estate to apply for individual licences which will allow them to meet their land management objectives, including those for waders. We do not therefore consider there to be any negative consequences for conservation or ecological interests as a consequence of the restriction of the General Licence.

4.5 The decision appears to have been prejudged on the basis that the decision was leaked unlawfully online (the Estate still does not know how that information was released, but it appears to be in clear breach of the Data Protection Act).

The fact that there was online discussion of the case before SNH issued the decision letter was unfortunate, but this in no way influenced the decision reached. SNH staff working on this case did not communicate any information about it to any third party. Therefore, no personal data relating to this matter was disclosed by SNH. It is our view that the discussion of this matter on line does not constitute a breach of SNH’s obligations under the Data Protection Act 2018 or General Data Protection Regulation.

Conclusion

I find that SNH's decision was justified in this case. **The restriction, as notified to you on 26 November 2019 and attached to this letter, is re-imposed with immediate effect.**

I take this opportunity to remind your clients that the purpose of SNH imposing restrictions on the use of the General Licences is not to prejudice the owners or operators of the affected areas. Where there is evidence that wild birds have been taken or killed other than in accordance with the terms of the General Licences, it may be the case, as it is here, that the light touch regulation of the General Licences is not sufficient to prevent such wildlife offences in those areas from taking place. That is when restrictions are imposed.

Affected parties can still apply for an individual licence to our Licensing Service by contacting us on 01463725364 or Licensing@nature.scot

Yours sincerely



Sally Thomas
Director of People and Nature
Scottish Natural Heritage

Annex 1

General Licence Restrictions Restriction 01/2019

DECISION NOTICE

In line with Scottish Natural Heritage's (SNH) published General Licence restrictions: Framework for Implementing Restrictions we hereby give notice that a restriction has been applied to the land outlined in red below. This restriction prohibits the use of General Licences 01, 02 and 03 on that land between 26th November 2019 and 26th November 2022.

Please note that this restriction does not infer responsibility for the commission of crimes on any individuals.

General Licence Restriction 01/2019- Restriction Area

