NPWS An tSeirbhís Páirceanna Náisiúnta agus Fiadhúlra National Parks and Wildlife Service

Derogation Number
DER-BAT-2026-23

EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) REGULATIONS, 2011 (S.I. No 477 of 2011)

DEROGATION

Granted under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011, hereinafter referred to as "the Habitats Regulations".

The Minister for Housing, Local Government & Heritage, in exercise of the powers conferred on him by Regulation 54 of the Habitats Regulations hereby grants to **Ned O'Shea** of **Ned O'Shea & Sons Construction, Rock Business Centre, Rock Street, Tralee, County Kerry, V92 WEV6** a derogation. It is stated that this derogation is issued:

A. In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
B. As there is no satisfactory alternative, and the action authorised by this derogation will not be detrimental to the maintenance of the population of **bats** referred to below at a favourable conservation status in their natural range.

This derogation authorises the following:
1. Roost disturbance
2. Actions authorised within the derogation

The derogation is issued in respect of the following **bat species**:

- **Common Pipistrelle** **Pipistrellus Pipistrellus**

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **10 Basin Road, Traless, County Kerry, V92 WV04** for **Ned O'Shea**
2. All activities authorised by this derogation, and all equipment used in connection herewith, shall be carried out, constructed and maintained (as the case may be) so as to avoid unnecessary injury or distress to any species of **BAT**. Anything done other than in accordance with the terms of this derogation may constitute an offence
3. This derogation may be modified or revoked, for stated reasons, at any time.
4. The mitigation measures outlined in the application report **(Supporting Information – Permitted Development at No. 10 Basin Road, Tralee, Co. Kerry (Planning No. 22523))** together with any changes or clarification agreed in correspondence between NPWS and the agent or applicant, are to be carried out. Strict adherence must be paid to all the proposed measures in the application.
5. The actions which this derogation authorise shall be completed between **12th January – 18th December 2026, inclusive.**
6. The works will be supervised by bat ecologist(s): **Rob Beer**
7. The derogation does not provide consent to proceed with any works that may also be subject to another approval (for example, planning permission).
8. The derogation is based upon information provided in the application. Where this information may cease to be accurate due to the passage of time or changes to the circumstances giving rise to the need for the derogation, the derogation holder is responsible for notifying the NPWS.
9. If this derogation expires prior to works permitted under this derogation commencing, a new application must be sought in advance, including the provision of any updated data or reports.
10. This derogation shall be produced for inspection on a request being made on that behalf by a member of An Garda Síochána or an authorised NPWS officer appointed under Regulation 4 of the Habitats Regulations.
11. The local **NPWS District Conservation Officer – William Hunt,** william.hunt@npws.gov.ie**,** must be contacted prior to the commencement of any activity, and if bats are detected on site during the course of the work, under the terms of this derogation.
12. On completion of the actions which this derogation authorises, all recordings of bat species affected will be made using the standardised Returns Form and must be submitted to the NPWS within **four weeks of the expiry of the derogation or the 31st January each year**, should the derogation run for longer than one calendar year. Additionally a report will also be submitted detailing results of works and success of mitigation. **Both documents must be submitted to constitute a derogation return** and should be submitted to wildlife.reports@npws.gov.ie

For the Minister for Housing, Local Government & Heritage

(an officer authorised by the Minister to sign on his behalf)

18 December 2025

Any query in relation to this derogation should be sent to reg54derogations@npws.gov.ie

Derogation Assessment

Name of Applicant: Ned O'Shea

Location/Name of Project: 10 Basin Road, Tralee, County Kerry, V92 WEV6

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	☐
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	☐
(c) Deliberately take or destroy eggs of the relevant species in the wild	☐
(d) Damage or destroy a breeding or resting place of such an animal, or	☒
(e) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of the relevant species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.	☐
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	☐
(b) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 13(1)(b) of the Habitats Directive.	☐

Test 1: A reason(s) listed in Regulation 54 (a)-(e) applies to the proposed activity

i. Tick which reason <u>the applicant claims</u> should be applied to the derogation

(a) In the interests of protecting wild flora and fauna and conserving natural habitats,	☐
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	☐
(c) In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,	☒
(d) For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants, or	☐
(e) To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.	☐

ii. Test 1: Conclusion

Please tick the following where it applies:

There is a valid reason(s) listed in Regulation 54 (a)-(e) which applies to the proposed activity:	Yes	☒
	No	☐

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion:

The application form and associated documentation provided by the applicant has been reviewed in full. The application relies on regulation 54(2)(c) '*in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment*' as the reason chosen for a derogation that they believe applies to the proposed activity.

In the detail provided, it is clear that the applicants are relying on the imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C.
As outlined on page four of the accompanying report, the derogation is required to assist with proposed works at No. 10 Basin Road, Tralee, Co. Kerry approximately 500 from the town centre. The objective of the works is to redevelop a current derelict two-storey structure on the site to enable the construction of new residential apartments.

The report further outlines that the site is zoned for residential use under the Tralee Local Area Plan and will help to address issues of vacancy and dereliction within the town centre. The proposed works will also address local housing demand and deliver economic and social benefits to the town.

The applicants have provided evidence as to the nature and scale of the public interest including those of a social or economic nature for the proposed works and the proposed activity is necessary to achieve these overall objectives. Based on the above this application has passed Test 1 and can now proceed to Test 2

Test 2: Absence of a satisfactory alternative

Please tick the following where it applies and add a comment below to support the recommendation:

The applicant has provided satisfactory evidence that alternative solutions have been considered and have given reasons why the proposed approach is the only satisfactory alternative:	Yes	☒
	No	☐

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion (If you wish to add additional conditions please complete pg. 6):

The documentation submitted by the applicant has been reviewed, including the evidence for alternative solutions.

The purpose of the derogation is to allow the following activity to take place: the applicant wishes to redevelop a long-derelict residential building within the town centre of Tralee, Co. Kerry in order to make it fit for dwelling.

The specific situation that needs to be addressed is the proposed works include the partial demolition, refurbishment, and extension of the existing two-storey structure to form new residential apartments. This will involve the destruction of roof and soffit features which have been used as a day roost by the common pipistrelle bat (*Pipistrellus pipistrellus*).

The alternative solutions suggested by the applicant are

1. "Do-Nothing" scenario:

   The existing structure is derelict and continues to deteriorate, presenting safety and visual amenity issues within Tralee town centre. Leaving the site undeveloped would fail to deliver urgently needed housing, would not address public safety concerns, and would allow further degradation of the building fabric. The bat roosting features would also be lost naturally over time through structural collapse without any mitigation or replacement. The "do-nothing" scenario is therefore unsatisfactory both socially and environmentally.

Failure to address the continued degradation of the derelict structure will lead to the loss of suitable bat roost features.

2. Alternative 1: Retain Building Without Redevelopment

   Retaining the existing structure in its current condition is not feasible due to poor structural integrity, substandard energy performance, and non-compliance with current building regulations. Partial refurbishment alone would not meet planning or safety standards, and the same roof and soffit elements that hosted previous roost features must be replaced for structural reasons.

Replacing the building like for like, or partial restoration, will not meet current building and planning regulations. It is therefore not possible to do so without replacing the features used as a bat roost.

3. Alternative 2: Alternative Site / Off-Site Development

   Relocating the development to an alternative site would not meet the project objective of regenerating a derelict brownfield plot in the town centre. It would also increase land-take pressure on greenfield or semi-natural sites elsewhere, contrary to local and national planning policy promoting compact urban growth.

Moving the project off-site will not address the degradation of the roost features.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on pages 5 & 6 of the accompanying report a number of alternative solutions have been proposed, including the "Do-Nothing" approach.

Based on the assessment of the application documentation, it is regarded that the applicant has considered all available alternative solutions and at this time no other alternative solutions are apparent. Monitoring of the roost indicates it does not support high numbers, particularly for the species in question, nor is it used for maternity roosting. Therefore, it likely ranks low in roost suitability for this species and is thus of low conservation value.

Having weighed the possible solutions to solve the applicant's problem against the effects of a derogation on the species concerned, it is concluded that the application has passed Test 2 and can proceed to Test 3.

By redeveloping the site and following the mitigation measures outlined in the application, there will be sufficient roosting opportunities (bat access features; external bat boxes) made available to this species, which will be secured into the long-term. In addition, the measures outlined during the demolition/construction phases (supervised soft-strip of existing roof, soffit and fascia) will limit/remove potential for disturbance to the species. The incorporation of bat-sensitive lighting is welcomed

<u>Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.</u>

Test 3: Impact of a derogation on conservation status of the species

Please tick the following where it applies and add a comment below to support the recommendation:

The derogation would NOT be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range.	Yes	☒
	No	☐

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion. (If you wish to add additional conditions please complete pg. 6)

The building was previously recorded as a minor roost for pipistrelle bats. No evidence of bat usage was recorded in the latest report, but minimal survey effort was undertaken. Some occasional use by pipistrelles may still occur but the site appears to be of minor importance. Pipistrelles are widespread and abundant and in favourable conservation status. Providing the mitigation measures outlined in the report are implemented there should be no significant impact on the conservation status of the bats on site as a result of the proposed works.

<u>If the answer above is Yes then the derogation may be granted, providing Tests 1 and 2 have also been met.</u>

<u>Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.</u>

Derogation decision

The application for a derogation under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended, has been assessed by officials in the Department and the following decision has been made:

Tick box where appropriate:

There is no satisfactory alternative	☒
and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range.	☒

Therefore, a derogation may be granted to the applicant, since it is—

(a) in the interests of protecting wild fauna and flora and conserving natural habitats	☐
(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,	☐
(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,	☒
(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or	☐
(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.	☐
OR **This application has been refused as one or more of the conditions set out above have not been met**	☐

The following conditions should be attached to the derogation:

1.
2.
3.
4.

[add additional conditions where required]

Signed: Date: December 18, 2025

Position: Ecologist