

Dear Ms Wilson

I write in relation to your application for a derogation under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011. As noted, the purpose of the derogation is to allow the following activity to take place: ***Construction and renovation to the Cistern House Extension and the stabilisation/restoration of the boundary wall of the Upper and Lower Walled Gardens in the Ward River Regional Park at Brackenstown, Swords, Co. Dublin.***

I wish to inform you that following an assessment of your derogation application, it has been refused for the following reason:

- application has failed to pass test 2 in relation to consideration of suitable satisfactory alternatives

As outlined in the NPWS Guidance for Applicants, Page 13, Section 3(2)

- *“The applicant must show that they have considered the full range of alternative solutions; reasons why such alternative solutions are not deemed satisfactory; and that the only satisfactory solution requires a derogation for it to be undertaken legally.”*
- *“The types of alternative solutions that must be presented by the applicant must include the option of ‘do-nothing’. The ‘do-nothing’ option involves not carrying out the proposed activity, to not address the proposed objective or to not try to solve the problem being faced.”*
- *“Other alternative solutions must also be presented and compared, unless there are exceptional circumstances that limits the range of solutions that can be considered.*
There is no limitation as to the number or types of alternative solutions that may be considered”

As outlined in the European Communities Guidance, page 62, paragraph 3-55:

- *“Only when it is sufficiently demonstrated that potential alternatives are not satisfactory, either because they are not able to solve the specific problem or are technically unfeasible, and when the other conditions are also met, can the use of the derogation be justified”*

Your application only put forward a ‘do nothing’ scenario and no other alternative solutions have been submitted for consideration. Proposed mitigation measures are set out in the accompanying report but no alternatives to disturbance of the bat roosts are offered. It should be clear from your application that any possible alternatives were considered, what they were and why they were not satisfactory. You have not provided sufficient evidence to demonstrate a lack of other satisfactory alternatives, or evidence to show that any analysis of other alternatives was undertaken. Based on the assessment of the application documentation, it is regarded that you have not considered all available alternative solutions.

You may, if you wish, submit another derogation application taking the above into consideration. Please find the European Commission’s [Guidance](#) and the NPWS [Guidance](#) links for your convenience.

Yours sincerely,

Derogation Administration Team
Wildlife Licensing Unit
National Parks and Wildlife Services