Derogation Report - for Application for Derogation Licence

Under the European Communities (Birds and Natural Habitats) Regulations 2011 – 2021

For Donna Mullen

I, Donna Mullen, am applying for renewal of a derogation to allow disturbance to bat roosts. As I require a derogation to survey potential bat roosts throughout the country, I am an ecological consultant with almost 40 years of experience with bats and bat roosts. I am a trustee of BatLife Europe and am a founder member of Bat Conservation Ireland and the Irish Environmental Network.

I Include information (in blue italics) from the ***Guidance document on the strict protection of animal species of Community interest under the Habitats Directive***

Preventive measures anticipate and address the threats and risks a species may face. Consequently, for some species, preventive measures should also form part of the 'requisite measures' to establish the system of strict protection.

This view is supported by cases C-103/00, C-518/04, C-183/05 and C-383/09, where the Court stressed the importance of the preventive character of the measures taken

Such a system of strict protection must therefore enable the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species listed in Annex IV(a) to the Habitats Directive (see, to that effect, Case C-103/00, Commission v Greece, European Court Reports2002, I-1147, paragraph 39).

5 – Further guidance: examples of preventive measures that support effective implementation "on the ground" of the prohibitions in Article 12

> *The identification of particularly damaging activities that need to be subject to specific permits or local control.*
> *·The identification of potentially damaging activities that need to be subject to monitoring.*
> *·The integration into environmental impact assessment and strategic environmental assessment procedures of requirements to assess impacts of projects and plans on Annex IV species and their breeding sites and resting places.*
> *·Inspections and the use of rangers for surveillance.*
> *·Preparation of national conservation plans, which could set out in detail the measures mentioned above and provide practical guidance to local/regional authorities, affected interest groups, etc. on effectively implementing these provisions for specific species.*

An appropriate preventive approach could avoid conflicts with the prohibitions in Article 12 if it excluded any damaging forestry practices when the species is at its most vulnerable, e.g. when breeding.

The CJEU has clarified that forestry work should be based on a preventive approach taking account of the conservation needs of the species concerned and be planned and carried out so as not to infringe the prohibitions arising from Article 12(1)(a) to (c) of the Habitats Directive, while taking into consideration, as is apparent from Article 2(3) of the directive, the economic, social, cultural, regional and local requirements 47

(2-27) Another example of recurring activities is the maintenance of public infrastructure. Maintenance measures can be designed in a way to help preserve and connect habitats for strictly protected species, such as the sand lizard (Lacerta agilis) on railway lines (e.g. careful maintenance of roadside greenery, railway ballast and riverine vegetation). Member States can draw up good practice guidance for such maintenance measures to help ensure compliance with the requirements of the Habitats Directive.

Explanation as to why the derogation licence sought is the only available option for works and no suitable alternative exists as per Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations.

The nature of our work is to determine the bat fauna of a site to ensure that the bat fauna is taken fully into consideration for any proposed changes to the site or to evaluate any existing processes that may place protected bat species at risk. This preventative measure protects bats and their roosts. Bats are secretive and nocturnal and in addition to this are a volant species. This limits the ability of an observer to identify beyond doubt the species of bat under examination. Ultrasonic signals overlap and may not confirm to species level the identity of a bat noted within any site. Ultrasonic studies also include bat movement through a site and the bat concerned may not be resident within the site. This is one circumstance where to confirm the presence of a particular species access to the roost is essential.
Much of the work of WSI is the determination of bat usage of sites that are not known to have bats prior to the study. The sites or structures are proposed for major modification or development and it is vital that the presence of bats is determined by entry to the roost. In particular, where a roost is approved for destruction or alteration, it is essential to enter the roost to exclude or extract bats to prevent injury or death.

All roost entry is targeted at protecting the bats within the roost.

An alternative to entering the roost for the surveys undertaken would be to remain outside of the building and observe bats emerging. This is suitable for determining the presence of bats, the number of bats present and the species of bat present in many roosts. It does not allow the determination of the current status of a roost building or of a building under examination as a bat roost if the bats do not emerge on the night of survey. This may occur for a number of climatic reasons including

heavy rain, high atmospheric pressure, a mild night following several cold nights etc. It also does not confirm where in a building the bats are actually roosting. This may be close to the roost exit or it may be several metres away or even tens of metres away for species such as brown long-eared bat or lesser horseshoe bat. Knowing the activity location within a building and tracking any signs through the building also allows for the detection or confirmation of the exit points of most significance for a building and therefore ensure an accurate count of emerging bats.

Repairs to a building (bridge etc) may focus on particular aspects of a building (or bridge etc) and this may or may not be affected by any proposed works. Knowing where bats are roosting, how they emerge from the roost and the overall use of the bat of a building or other structure allows a full consideration of the risk that bats face from any changes to a building. Knowing only where bats emerge may not allow an understanding of how modifications to the building will affect the bats. (E.g. Work at the presbytery of a church may appear unrelated to bats leaving by the bell tower but the bats may be roosting within the roof of the presbytery and emerging via the bell tower. Simply observing the bell tower would lead to an assumption that the presbytery repair work would not affect bats).

Evidence that actions permitted by a derogation licence will not be 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 as is required under Section 54(2) of the European Communities (Birds and Natural Habitats) Regulations.

All our work is undertaken to protect bats and their roosts.

In order to protect the bats, it is essential to identify the presence of bat roosts, to identify the species concerned and to establish the relative size of the population within a site. This is typically undertaken by means of a bat activity survey using ultrasonic receivers. Further to this, it may be necessary in some sites to undertake an examination of a structure (building, bridge, tree, cave etc.) for the presence of bats using head or hand torches and / or fiberscopes. We undertake environmental assessments throughout Ireland.

3.3.2.Impact assessment for plans/projects and species protection
(3-78) The specific provisions and procedures under Article 16 need to be complied also in case of a plan or project, that might affect a EU protected species and is subject to the assessment procedures under Article 6(3) of the Habitats Directive or under the EIA or SEA Directives. In this case, the impact assessment procedures carried out for plans and projects can be used to assess the impact on the requirements under Article 12 and to verify whether the conditions for a derogation under Article 16 are fulfilled. This would be relevant, for example, when the construction and/or operation of a project is likely to cause the deterioration or destruction of breeding sites or resting places or the disturbance of any species listed in Annex IV(a) and occurring in the project area.

In those circumstances, it is necessary to assess:
- if any of the species listed in Annex IV(a) to the Habitats Directive is present in the project area;
- if any of the breeding sites or resting places of the species listed in Annex IV(a) to the Habitats Directive are present in the project area;
- if any of these species and/or their breeding sites or resting places will be 'impacted' (killed, disturbed, damaged, etc.) by the construction and/or operation of the project and, if so;
- if the conditions set out in Article 16 are fulfilled.
(3-79) Only after the above checks are carried out may a derogation under Article 16 be granted and project be lawfully carried out (after having obtained development consent). If, for example, a breeding site of an Annex IV(a) species is present and will be destroyed by the project construction or operation, authorisation of the project would constitute a breach of Article 12, unless a derogation under Article 16 is granted and that the conditions for issuing a derogation are fulfilled.
(3-80) When projects are likely to have a significant effects on Natura 2000 sites, either individually or in combination with other plans or projects, they are subject to an appropriate assessment under Article 6(3) of the Directive, which would also carry out the checks in the above-mentioned list and follow up as appropriate.
For projects that are not subject to Article 6(3) because they are not likely to have a significant effects on Natura 2000 sites, either individually or in combination with other plans or projects, Member States can adapt existing procedures to meet the requirements of Article 12 and 16. This means that the checks in the list above can be built into the appraisals that form part of the decision-making processes at various levels in a Member State, including land-use planning decisions or environmental assessment procedures for programmes, plans and projects.
The underlying purpose is to correctly and promptly identify the impacts of a project, including the impact on protected species listed in Annex IV(a) to the Habitats Directive and their habitats, before the project is carried out. The EIA procedure is a possible vehicle for this.
(3-81) Coordinating legal procedures may avoid legal complications. Ideally, after receipt of the request for development consent on a project falling within the scope of the EIA Directive, an EIA (at least the screening stage) is started so that all potential impacts can be identified. Thus, the need for derogation can be identified without delay and it can be assessed whether the requirements of Article 16 Habitats Directive can be met. If so, the development consent could then be given together with the derogation. If the project needs to be modified due to the findings of the EIA, the derogation can be based on the modified project.
Ideally, the EIA carried out following the application for the single permit will cover all relevant impacts on the environment (including the impact on species listed in Annex IV(a) to the Habitats Directive and their breeding sites or resting places) which can be dealt with when granting the permit. For example, this can be done by setting conditions mitigating the negative impacts and/or by granting derogations to certain prohibitions set in law, if they fulfil the conditions for the derogations.
(3-82) Although it is not obligatory under Articles 12 and 16 of the Habitats Directive to carry out the above-mentioned checks within an appropriate assessment under Article 6(3) of the Habitats Directive or as part of the EIA procedure, this is the best way to ensure compliance with Articles 12 and 16 of the Habitats Directive. The EIA procedure can identify the impact on species listed in Annex IV to the Habitats Directive associated to a project as well as the potential consequences of the project

in terms of breaching any of the prohibitions in Article 12 of the Habitats Directive. Carrying out the impact assessment including the multiple consultations required before issuing a derogation and the development is the best way forward as it facilitates coordination in decision-making.
Ideally, compensation measures would:

I)compensate for the negative impact of the activity on the species' breeding sites and resting places, under the specific circumstances (at local population level);
II)have a good chance of success and be based on best practice;
III)improve a species' prospects of achieving favourable conservation status;
IV)be effective before or at the latest when the deterioration or destruction of a breeding site or resting place starts to take place.

In very unusual circumstances, it may be necessary to capture a bat to confirm its identity, where visual examination and ultrasonic evaluation has not ruled out alternative species identifications.

Overall, the prime element of disturbance to a roost is the initial discovery of the roost where bats had not been known to be present previously. Determining the roost presence, species present and size is important to allow protection of individual *bats,* the roost and the ecological functionality of the site.

(2-67) Measures used to ensure continued ecological functionality (hereinafter referred to as 'CEF measures') are preventive measures aimed at minimising or even eliminating the negative impact of an activity on breeding sites or resting places of protected species. However, they may also go beyond this and include actions that actively improve a certain breeding site or resting place so that it does not suffer – at any time - a reduction or loss of ecological functionality. This could include, for example, enlarging the site or creating new habitats in, or in direct functional relation to, a breeding site or resting place, in order to maintain its functionality.

On occasion, it is necessary to enter and disturb known roosts where there are proposals that may affect the bats either through alteration or demolition. In these circumstances, bats may be disturbed to protect them from immediate injury or under a derogation where the roost is being altered or demolished / rendered unusable.

All entry to roosts is undertaken to monitor the bats to ensure that bats are protected.

Wildlife Surveys Ireland Ltd. have undertaken surveys for many state agencies and semi-state bodies in addition to private individuals and developers. Our work is to ensure the appropriate protection for bats and as an Ecologist and Director, I am engaged in identifying the presence of bats, highlighting their legal protection to building and land owners and creating a pathway to ensure their protection.

Bat captures are very rare and involve the use of hand (where bats are still partially torpid or sluggish), hand net (the main means other than by hand), exclusion valve (a

one-way system of ensuring that bats are excluded from a roost under licence), harp trap and mist net (extremely rarely required).

Data on the bats encountered are logged with Bat Conservation Ireland for additional understanding of distribution and protection measures.

Details of any mitigation measures planned for the species affected by the derogation at the location, along with evidence that such mitigation has been successful elsewhere.

Mitigation for any roost entered or disturbed includes minimal time within a roost site and departure from the roost once it is known how many bats are present and the likely species (or actual species where this is essential).

For exclusions to date, mitigation has ranged from continued access to the original structure, to bat boxes, to purpose-built buildings for species such as lesser horseshoe bat. Mitigation is tested on our own nature reserve, Golashane Nature Reserve in Meath.

Donna Mullen Wildlife Surveys Ireland 14/03/2025