Derogation Number
DER-BAT-2025-316

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 **Leo Delaney** of **Cairn Homes PLC, 45 Mespil Road, Dublin 4, D04 W2F1** 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**
- **Soprano Pipistrelle** **Pipistrellus Pygmaeus**
- **Leisler's Bat** **Nycatalus Leisler**

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **Coolevally, Shankill, Dublin 18** for **Leo Delaney**
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 (**Bat Conservation Plan and Supporting Information for Bat Derogation Licence Extension August 2025 for the Consented Strategic Housing Development, Coolevally, Shankill, Dublin 18**), 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.
1. The actions which this derogation authorise shall be completed between **26th September – 30th November 2025, inclusive.**
2. The works will be supervised by bat ecologist: **Cathal O'Brien & Wayne Daly**
    i. **With Alison Burke, Carla Deane, Simon O'Carrol, Gregor Wood & Bea Jackson under supervision**
3. If this derogation addresses works that are subject of a planning application, no such works permitted under this derogation can occur until planning permission is granted.
4. 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.
5. 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.
6. The local **NPWS Conservation Ranger – Sean Meehan,** sean.meehan@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.
7. 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 date of this derogation**. Included with the Returns form, a report will also be submitted to wildlife.reports@npws.gov.ie detailing results of works and success of mitigation. **Both documents must be submitted to constitute a derogation return.**

For the Minister for Housing, Local Government & Heritage

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

26 September 2025

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

Derogation Assessment

Name of Applicant: Leo Delaney

Location/Name of Project: Coolevally, Shankill, County Dublin

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 have 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 applicant is relying on the Public health and public safety aspect of Reason C to facilitate the proposed works at the Coolevally housing development at Shankill, Dublin 18 comprising 193 apartments. The applicant has outlined in the accompanying report on pages 18 and 19, the proposed works involving the pruning of two mature trees and the introduction of flexible support bracing are necessary to provide safe access to the development site and to reduce strike risk for personnel associated with the project.

The applicants have provided evidence as to the nature and scale of the public health and public safety reasoning and the proposed activity is necessary to achieve the overall objective. 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 maintenance (pruning and remedial works) of two trees, CRT1 & CRT2, both of which contain confirmed bat roosts and are in a dangerous condition.*

The specific situation that needs to be addressed is to *undertake these tree maintenance works to facilitate safe passage of machinery and workers and the erection of scaffolding during the construction stage of the project, whilst ensuring that any bats using both trees are mitigated for.*

The alternative solutions suggested by the applicant are:

1. **"Do-Nothing" scenario**

   Do nothing (no pruning or bracing); This would involve retaining CRT1 and CRT2 in their current state. However, both trees present documented structural defects that create unacceptable health and safety risks. In particular, CRT2 (T113 Monterey cypress) sustained major branch failure during Storm Eowyn in 2025, with a large branch landing across the footpath. Further unstable limbs, identified in the Tree Schedule Report and Tree Survey & Works Plan (Charles McCorkell Arboricultural Consultancy, May 2025), require canopy reduction and removal to prevent hazard. CRT1 (T111 – Monterey pine) requires targeted pruning of overhanging branches and installation of flexible bracing to address a cracked heavy lateral limb and to reduce the risk of limb failure. Not undertaking pruning and bracing is not a satisfactory alternative as it would leave these hazards unaddressed, placing site operatives, the public, and property at risk.

   CR's assessment – Both trees in their current state are in a dangerous condition and there is a risk to the safety of site workers, the public and property. To leave the trees in their current dangerous state is not a solution and remedial works are required to remedy the situation.

2. **Alternative 1 – Project amendment**

   Amend project design to avoid works to CRT1 and CRT2; Retaining the trees untouched would require a redesign of the consented development, amendment to planning permission, and demolition of partially constructed buildings. This would compromise the project objective to deliver housing at the approved scale and density and is therefore not a satisfactory alternative.

   CR's assessment – The bat roosts confirmed in both trees contain small numbers of bats and are comprised of species that are of a favourable conservation status (least concern and near threatened). Any amendment to the project design at this stage would result in significant economic costs and also delays in delivering this housing scheme. Amending the project to facilitate two small bat roosts would be an excessive and disproportionate action and could not be seen as a satisfactory alternative to the proposed tree maintenance works.

3. **Alternative 2 – change the scaffolding configuration**

   Alter scaffold configuration to avoid CRT1; Adjusting or omitting scaffolding in this location would avoid the necessity for pruning, but would prevent safe access to the exterior of the building for construction works. This would present unacceptable health and safety risks for construction personnel and compromise the delivery of the project.

   CR's assessment – Both trees in their current state are in a dangerous condition and there is a risk to the safety of site workers, the public and property. To leave the trees in their current dangerous state is not a solution and remedial works are required to rectify the situation. The proposed scaffolding configuration is necessary and cannot be altered at this stage.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 16 of the accompanying report a number of alternative solutions, including the "do-nothing alternative" were examined by the applicant. 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.

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.

<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 trees in question support small numbers of pipistrelles and Leisler's bats. These species are widespread and abundant and are assessed as least concern. The proposed operations, with the implementation of the planned mitigation measures, will have no impact on the conservation status of these bat species.

<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**	☐

Signed: 

Date: September 26, 2025

Position: Ecologist