Derogation Number
DER-BAT-2025-325

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 **Aidan Crowley** of **Killaha East, Kenmare, County Kerry** 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**:

- **Lesser Horseshoe Bat** **Rhinolophus Hipposideros**

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **Killaha East, Kenmare, County Kerry** for **Aidan Crowley**
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 Survey and Assessment Killaha East Kenmare Co. Kerry**), 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 **8th October – 31st December 2025, inclusive**
6. The works will be supervised by bat ecologist(s): **Karen Banks.**
7. **Local NPWS staff should be consulted on the design of the dedicated bat roost.**
8. **Local NPWS staff should be accommodated in follow-up monitoring of bat usage of the new dedicated bat house**
9. 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.
10. 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.
11. 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.
12. The local **NPWS District Conservation Officer – Daniel Buckley,** daniel.buckley@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.
13. 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)

08 October 2025

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

Derogation Assessment

Name of Applicant: Aidan Crowley

Location/Name of Project: Killaha East, Kenmare, County Kerry

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 the applicant is relying on the imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences aspect of Reason C. The applicant has outlined in the submitted survey and assessment document, the reason for the derogation is due to the proposed demolition of an existing single storey dwelling house and a single storey former restaurant building to facilitate the construction of a new 2 storey dwelling house. It is also noted the former restaurant building has not been used for a number of years and is falling into disrepair. The provision of housing in Ireland is at a critical juncture and the public interest of same can be balanced against the conservation aims of the Directive.

The applicants have provided evidence as to the nature and scale of the social and economic 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: [*demolition of an old restaurant to facilitate the construction of a dwelling house*]

The specific situation that needs to be addressed is *that the old restaurant has been identified as a roost for a small number of lesser horseshoe bats and the demolition will result in the loss of this roost.*

The alternative solutions suggested by the applicant are

1. "Do-Nothing" scenario [*not demolishing the old restaurant. NPWS Regional staff are in agreement with the applicant as to why this alternative is not satisfactory, as outlined in their bat report on page 17*]

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 17 of the accompanying report.

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.

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

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):

One of the buildings due for demolition has been identified as a roost for lesser horseshoe bats. Although this is an important Annex II species and the site is within 2.5km of an SAC listed for the bat, the numbers using the building appear to be small indicating that this is not a maternity or hibernation site. The site is likely to be used occasionally and opportunistically by small numbers of individuals.
Mitigation proposed includes the re-purposing of an adjacent outbuilding as a dedicated bat roost. There is good evidence that such buildings can be adopted by lesser horseshoe bat when they are sited and designed well. This would be in keeping with the advice included in NPWS's Mitigation Guidelines.

On this basis I am satisfied that the proposed works should have no significant negative impact on the conservation status of the bats on site, providing the proposed mitigation measures are implemented.

<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. The mitigation measures outlined in the bat report accompanying the application are implemented in full.

2. Local NPWS staff should be consulted on the design of the dedicated bat roost.

3. Local NPWS staff should be accommodated in follow-up monitoring of bat usage of the new dedicated bat house

[add additional conditions where required]

Signed: Date: October 8, 2025

Position: Ecologist