



**NPWS**

An tSeirbhís Páircenna  
Náisiúnta agus Fiadhúla  
National Parks and Wildlife  
Service

**Derogation Number  
DER-BAT-2025-361**

**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 **Dermot Custy of Custy Construction Ltd., Block G Riverside, Quin Road Business Park, Ennis, County Clare** 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 **the proposed development site at Ballymaley and Ballycorey, Gort Road, Ennis, County Clare (Planning Ref: P24/60667) for Dermot Custy**
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 (**Proposed Housing Development site at**
5. **Ballymaley and Ballycorey, Gort Road, Ennis, Co Clare**) 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.
6. The actions which this derogation authorise shall be completed between **26<sup>th</sup> November – 31<sup>st</sup> December 2025, inclusive**.
7. The works will be supervised by bat ecologist(s): **Will O'Connor**.
8. 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.
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 – David Lyons**, [davida.lyons@npws.gov.ie](mailto:davida.lyons@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 date of this derogation**. Included with the Returns form, a report will also be submitted to [wildlife.reports@npws.gov.ie](mailto:wildlife.reports@npws.gov.ie) detailing results of works and success of mitigation. **Both documents must be submitted to constitute a derogation return.**



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**For the Minister for Housing, Local Government & Heritage**

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

**26 November 2025**

Any query in relation to this derogation should be sent to [reg54derogations@npws.gov.ie](mailto:reg54derogations@npws.gov.ie)





## Derogation Assessment

**Name of Applicant:** Dermot Custy

**Location/Name of Project:**

**Tick the following prohibition as chosen on the application:**

(a) Deliberately capture or kill any specimen of the relevant species in the wild	<input type="checkbox"/>
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	<input type="checkbox"/>
(c) Deliberately take or destroy eggs of the relevant species in the wild	<input type="checkbox"/>
(d) Damage or destroy a breeding or resting place of such an animal, or	<input checked="" type="checkbox"/>
(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.	<input type="checkbox"/>
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	<input type="checkbox"/>
(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.	<input type="checkbox"/>

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

i. Tick which reason the applicant claims should be applied to the derogation

(a) In the interests of protecting wild flora and fauna and conserving natural habitats,	<input type="checkbox"/>
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	<input type="checkbox"/>
(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,	<input checked="" type="checkbox"/>
(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	<input type="checkbox"/>
(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.	<input type="checkbox"/>



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	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**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 in the summary of the proposed works and mitigation section of the accompanying report, the derogation is required to assist with proposed works at Ballymaley and Ballycorey, Gort Road, Ennis, Co Clare.

The objective of the proposed works is to remove an existing structure on the site and to construct a new housing development and associated site works. The report further outlines how the proposed development supports the delivery of new housing in Ennis and will help to address local housing need, while providing social and economic benefits through employment and community investment. The project also aligns with the Clare County Development Plan 2023–2029 and the National Planning Framework (Project Ireland 2040).

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	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**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 destruction of a farm shed to facilitate a housing development.**

The specific situation that needs to be addressed is that the shed is used by a small number of Lesser Horseshoe Bats as a night roost and the works will result in its destruction

The alternative solutions suggested by the applicant are:

1. “Do-Nothing” scenario – *“The “do nothing” option would not deliver the permitted housing or meet policy objectives for sustainable development in Ennis. The existing shed is suboptimal for bats and lies adjacent to a public road and one-off housing. It is already at risk from agricultural use and deterioration, and it is likely that bats would cease using it in the near future. No long-term conservation benefit would result, while the social and economic benefits of the project would be lost”* - This assessment is accepted.

Alternative 2 - *“Retain the existing farm building in situ within the development layout - The structure lies within the footprint of proposed housing plots and essential infrastructure. Retention would sterilise potential development lands. The building is structurally poor and unsuitable for inclusion in a residential scheme. Also, Lesser Horseshoe bats would be very unlikely to continue to use the building if the surrounding area was further developed”* – This assessment is accepted

Alternative 3 – *“Exclude the building from the development boundary and fence it off as a retained roost. Exclusion would create an isolated, unmanaged parcel of land within the housing estate, and again bats would be very unlikely to continue to use the building if the surrounding area was further developed”* – The assessment is accepted.

Alternative 4 – *“Retain and retrofit the existing shed as a permanent bat roost. The structure is already used by livestock. It is already affected by light spill and is near a road and one-off houses. It is suboptimal for Lesser*

*Horseshoe Bats and can’t really be improved. Any further development is likely to result in the bats stopping using this roost, and there is already disturbance”* – This assessment is accepted.

Alternative 5 – *“Relocate the housing layout elsewhere within the site - Physical constraints, existing boundaries, and servicing limits prevent reconfiguration without undermining the viability of the scheme and compromising ecological buffers elsewhere”* – This assessment is accepted.

Alternative 6 – *“Delay demolition until after construction. Retaining the shed during construction would result in unavoidable disturbance to bats, and loss of the roost. The new bat house will be built prior to works commencing on the site”* – This assessment is accepted.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 3 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. |

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	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**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)**

A small shed on this site is due for demolition as part of a housing development proposal. The shed acts as a night roost for a small number of lesser horseshoe bats. The shed is in poor condition and is unlikely to provide shelter for the bats for much longer. As part of the proposed development a purpose built bat house will be constructed to the south of the development adjacent to good quality foraging habitats. Providing the proposed mitigation measures outlined in the bat report are implemented in full there should be no significant negative impact on the conservation status of the bats on site

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

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





### **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**

☐



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The following conditions should be attached to the derogation:

Kate Greaney

Signed: .

Date: November 26, 2025

Position: Ecologist