



An
Bord
Pleanála

Inspector's Addendum Report

ABP-321053-24

Development	Renovation and restoration of six existing stone buildings including construction of single storey, flat green roof extensions and associated site works
Location	Kilcatherine, Eyeries, Beara, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	241
Applicant(s)	Thorsten Krause & Birgit Seibt-Krause
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John Collins Friends of the Irish Environment
Observer(s)	None
Date of Site Inspection	March 24 th , 2025

Inspector

Lorraine Dockery

1.0 Introduction

- 1.1 This report has been prepared pursuant to An Coimisiún's Direction (reference number BD-019845-25) dated 04/06/2025. It is an addendum report to the Inspector's Report in respect of ABP-321053-24, dated 29th April, 2025.
- 1.2 Following a meeting of the An Coimisiún held on 03/06/2025, they wished, under Section 137 of the Planning and Development Act 2000, (as amended), to take the following matter into consideration in determining the appeal:
- To consider whether a derogation licence should have been submitted by the applicants in support of their planning application, as it has been confirmed, in the submitted Bat Survey that bats are roosting on the proposed development site situated c.560m from the Kenmare River SAC.
- 1.3 As this was considered by An Coimisiún to constitute a new matter in the context of the appeal, An Coimisiún decided to issue a Section 137 notice to all parties inviting submissions from all parties regarding the issue. Further public notification was not required.
- 1.4 This report considers the submissions made on foot of the above.

2.0 Response of Relevant Parties/Observers to An Coimisiún's Decision to Request Further Information

First Party Response

- Following engagement with the competent authority at pre-application stage, it was reasonably assumed that a derogation licence under the European Communities (Bird and Natural Habitats) Regulations 2011 would not be required, given the nature and limited scale of the proposed works. No physical disturbance of a known bat roost was envisaged
- Suggests that a condition attached to a grant of permission requiring such a licence prior to the commencement of works would be entirely appropriate and in line with Irish planning practice
- Well established under section 34 of the Planning and Development Act 2000 that a planning authority or An Coimisiún Pleanála may impose conditions to

ensure compliance with other statutory regimes. Numerous precedents exist for approvals subject to a pre-commencement condition requiring the applicant to obtain a derogation licence before any site works take place.

- Any derogation licence application must include a specific proposed start date for works to commence. As no final grant of permission has issued, no definitive construction timeline/implementation schedule has been set. This information could not reasonably be provided in the absence of a planning decision.
- Should a derogation licence be deemed necessary, the applicants fully undertake to apply for such licence in good time prior to the commencement of any works and comply with any mitigation/timing conditions that may be imposed.

3.0 Further Submissions

Third party appellant (John Collins)

- Submitted Bat Survey confirmed that bats were roosting on proposed development site. Applicants chose not to apply for a derogation licence despite being fully aware that a bat colony had been identified on the proposed development site
- Common knowledge that there are bats roosting in the derelict structures and are often seen flying to/from their habitat in the derelict structures at dusk
- Bat colony on this site will be affected by the proposed works
- Concerns regarding impacts on Lesser Horseshoe Bats (LHB), which were recorded 1.25km from this site. Notes planning history on site 1.25km distant where permission was refused due to LHB roosting in the building
- Sets out information relating to LHB, which are considered to be of international importance; dramatic decline in their numbers and have become extinct in many other parts of Europe; protected by NPWS

4.0 Applicant's Response to the Submissions

4.1 None

5.0 Assessment

- 5.1 The matters raised as a consequence of the An Coimisiún's decision relate to their consideration of whether a derogation licence should have been submitted by the applicants in support of their application, in relation to the disturbance of a known bat roost at the site having regard to Annex IV of the EU Habitats Directive, European Communities (Birds and Natural Habitats) Regulations 2011 (as amended). An Coimisiún further referenced the judgement of the Court of Justice of the European Union in relation to Case C-166/22, in particular paragraph 36 which states that *'in the specific case where, first, the execution of a project that is subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed in the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, second, a Member State confers power to grant such a derogation on an authority other than the one on which it confers power to give development consent for the project, that potential derogation must necessarily be adopted before development consent is given. If it were otherwise, that development consent would be given on an incomplete basis and would not, therefore, meet the applicable requirements'*.
- 5.2 All bat species found in Ireland are listed under Annex IV of the EU Habitats Directive, European Communities (Birds and Natural Habitats) Regulations 2011 (as amended). Works which would capture or kill bats, damage or destroy their roosts or disturb them at important parts of their lifecycle cannot take place without first obtaining a Regulation 54 Derogation (previously known as a derogation licence) and strict criteria must be met before such a derogation can be approved.
- 5.3 I refer the Coimisiún to NPWS publication 'Applications for Regulation 54 Derogations for Annex IV species Guidance for Applicants' (July 2025). Section 5 of this document notes that in July 2023, the Court of Justice of the European Union High Court issued a judgment relating to the relationship between the systems of development consent and the provision of derogations regarding the strict protection

of species under the EU Habitats Directive (Case C-166/22). On the basis of this judgment, it is the Department's opinion that where a proposed activity requires consent from another statutory authority, and it appears that such an activity, if permitted, by that appropriate public authority, will also require a derogation from the Minister, then it is necessary that the derogation should be granted before the approval of the consent to the proposed activity. The NPWS (2025) are therefore currently advising that when considering applications for development consent, public authorities should ensure that such applications include copies of the derogation (s) that the applicant has considered it is necessary to acquire. They further state that the responsibility of avoiding disturbance or damage to Annex IV species, or of obtaining an appropriate derogation, rests with the applicant. The submitted Bat Survey confirms that a derogation licence will be required. No such derogation has been submitted as part of the appeal documentation/

- 5.4 I refer An Coimisiún to section 7.18 of the Inspector's Report dated 29th April 2025. It notes that a Bat Survey was submitted to the planning authority, as part of their response for Further Information. Results contained therein revealed that bats are present on the site and that there is a minor satellite roost of Common Pipistrelle present. The most frequently detected species was Common Pipistrelle and the overall number of bat passes recorded was considered at the lower end. It is acknowledged in the Bat Survey report that the proposed development will result in increased noise and human activity on the proposed development site and that the proposed works may disturb/displace bats that are roosting on the proposed development site. Mitigation measures are outlined including for the provision of artificial roosts, no development at Building No.s 3 and 4 and minimisation of light spill. It is indicated that a derogation licence from the NPWS will be sought.
- 5.5 The submission received from John Collins (third-party appellant) to the section 137 notice raises concerns in relation to impacts on bat species utilising the subject site, together with particular concerns with regards to impacts on Lesser Horseshoe Bats. The Lesser Horseshoe Bat is a Qualifying Interest of the Kenmare River SAC (Site Code 002158), which is located approximately 560m from the subject site. I highlight to An Coimisiún that no Lesser Horseshoe Bats were recorded on site during the site surveys. There are records for Lesser Horseshoe Bat within 5km of the site (as

stated in AA Screening Report), however the habitat of the subject site is considered to be unsuitable for this species.

5.6 The submission received from the first party in relation to the section 137 notice notes that there is precedent for such a licence to be obtained post planning condition. While I would agree with this assertion, I note the judgement of the Court of Justice of the European Union in relation to Case C-166/22 (July 2023), in particular paragraph 36 referenced above. I also note the guidance, referenced above, from the NPWS in relation to this matter, dated July 2025. Based on all of the above, it is my opinion that An Coimisiún may be precluded from deciding on the proposed development until a Derogation for Bats has issued from the National Parks and Wildlife Service and confirming documentation copied to the Coimisiún. The submitted Bat Survey, dated 23rd June 2024, received by the planning authority as part of the applicant's Further Information response, confirms that there are roosting bats, a protected species, on the proposed development site. Having regard to Annex IV of the EU Habitats Directive, European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and the fact that a Regulation 54 Derogation (previously known as a bat derogation licence) from the National Parks and Wildlife Service (NPWS) has not been submitted with the application documentation, it is considered that the applicant has failed to submit adequate information in relation to roosting sites for bats within the subject site to demonstrate that the proposed development would not lead to their disturbance or destruction. The proposal is therefore considered to be inconsistent with the proper planning and sustainable development of the area.

5.6 My recommendation is unchanged from that contained in Inspector's Report, dated 29th April 2025, in relation to the concerns raised in the two no. recommended reasons for refusal.

6.0 Recommendation

6.1 I refer to my previous Inspector's Report and recommendation on this appeal dated 29th April, 2025. Having regard to the information currently before me, I conclude that, if An Coimisiún is so minded, it may attach an additional reason for refusal, as set out below.

7.0 Reasons and Considerations

1. The submitted Bat Survey, dated 23rd June 2024, received by the planning authority as part of the applicant's Further Information response, confirms that there are roosting bats, a protected species, on the proposed development site. Having regard to Annex IV of the EU Habitats Directive, European Communities (Birds and Natural Habitats) Regulations 2011 (as amended), to the Judgement of the Court of Justice of the European Union in relation to Case C-166/22 and the fact that a Regulation 54 Derogation (previously known as a bat derogation licence) from the National Parks and Wildlife Service (NPWS) has not been submitted with the application documentation, it is considered that the applicant has failed to submit adequate information in relation to roosting sites for bats within the subject site to demonstrate that the proposed development would not lead to their disturbance or destruction. The proposal is therefore considered to be inconsistent with the proper planning and sustainable development of the area.
2. The proposal incorporating an uninhabitable, derelict dwelling is located a coastal 'High Value Landscape' area, to the north of Scenic Route S116, as set out in the Cork County Development Plan 2022-2028. Having regard to the provisions in the operative County Development Plan for the protection of vernacular heritage in such areas, it is considered that works to facilitate the proposed development including those to the access track and the creation of a parking area would alter an intrinsic feature of interest, urbanise the area and therefore have a negative impact on the heritage of the site, its local character and sense of place. The proposal would therefore contravene Objective HE 16-19 which seeks 'to protect, maintain and enhance the established character, forms, features and setting of vernacular buildings' and would therefore be inconsistent with the proper planning and sustainable development of the area.
3. Having regard to its remote location and the substandard road network serving the site, it is considered that the proposed development would, by itself and the precedent it would set for the generation of traffic reliant on a constrained road network at this location, be prejudicial to public safety by reason of traffic hazard. The proposed development, accordingly, is not considered to comply with the criteria set out in Objective RP5-30 of the Cork County Development Plan 2022-2028 in

respect of redevelopment or replacement of an uninhabitable or ruinous dwellings that can allow for the sensitive renovation and conservation of a derelict dwelling subject to normal proper planning and sustainable development considerations. The proposed development would therefore materially contravene policy Objective RP5-30 of the Cork County Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Lorraine Dockery

Senior Planning Inspector

16th September 2025