Derogation Number
DER-OTTER-2026-21

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 **Patrick Kennedy** of **Formation Homes Ireland, 6 Hartstonge Street, Limerick City, County Limerick, V94 WY02** 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 **otters** referred to below at a favourable conservation status in their natural range.

This derogation authorises the following:

1. disturbance
2. Actions authorised within the derogation in respect of **otters**

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **Rivers Road, Ballyclough Cross, Annacotty, County Limerick**, for **Patrick Kennedy.**
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 **Otter**. 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 (**Supporting Information Derogation Licence in support of LRD development at Ballyclogh, Annacotty, Limerick**), 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 the **6th September 2026 – 31st December 2027, inclusive**.
6. The works will be supervised by an ecologist(s): **Dominic Tilley**
7. 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.
8. The derogation is based upon information provided in the application. Where this information may cease to be accurate due to the passage of time or changes to the circumstances giving rise to the need for the derogation, the derogation holder is responsible for notifying the NPWS.
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. Works are to comply with **NRA's Guidelines for the Treatment of Otters Prior to the Construction of National Road Scheme.**
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 Regional Manager – Áine Lynch,** aine.lynch@npws.gov.ie**,** must be contacted prior to the commencement of any activity, and if otters are detected on site during the course of the work, under the terms of this derogation.
13. On completion of the activities which this derogation authorises, all recordings of otter affected will be made using the standardised data form provided below and must be submitted to the NPWS **within four weeks of the expiry date** of this derogation. Included with the below returns form, a report must 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

Fiona O' Mahony.

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

06 October 2026

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



Derogation Assessment

Name of Applicant: Patrick Kennedy
Location/Name of Project: Rivers Road, Ballyclough Cross, Annacotty, County Limerick
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 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 on page three of the accompanying report titled "Supporting Information, Derogation Licence in support of LRD" a derogation is required to facilitate proposed works at Ballyclogh, Annacotty, Limerick.
The objective of the works involves the construction of 105 residential units, a creche and associated works. The report further outlines on page 27 the proposed development will contribute to several housing related plans at national and local level including housing for all, Housing delivery action plan 2022-2026 and the Limerick City and County development plan 2022-2028.

The proposed development will deliver housing for the growing population of Limerick, on land zoned for residential use and provide employment opportunities both in construction and the creche facility.

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	☒
	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: Construction of 105 housing units and a creche.

The specific situation that needs to be addressed is the development site overlaps with otter habitat.

The alternative solutions suggested by the applicant are:

1. Do Nothing: Potential for improved habitat. Semi-natural area retained; agricultural use Shortfall in housing target; agricultural use could lead to run off issues. Likelihood of this is Unlikely; the lands are zoned residential, and part of the available landbank in Limerick.
2. Return land to agricultural use: No change in current situation No change in current situation Change in in grazing regime or agricultural practices could result in site runoff. However, Lands are currently zoned residential; lands.
3. Ecological restoration: Potential for improved habitat. Semi natural area restored. No risk of disturbance to Otter. Shortfall in housing target; area along the river likely to still be used at current levels. Unlikely. the lands are zoned residential, and part of the available landbank in Limerick. Whilst restoration programmes are in place, this plot of land is not the most likely candidate site
4. Alternative design 1: 150m buffer: Potential impact from development unlikely due to buffer size. No risk of disturbance to Otter. Site not suitably sized Should these buffers be applied, no building would occur; unlikely to be a reasonable outcome.
5. Alternative design 2: 100m buffer: Potential impact from development unlikely due to buffer size No risk of disturbance to Otter Site not suitably sized. Should these buffers be applied, no building would occur; unlikely to be a reasonable outcome.
6. Alternative design 1: 150m buffer Mulkear only: Potential impact from development unlikely due to buffer size No risk of disturbance to Otter More than 50% of the site becomes unavailable. Unlikely to meet required density targets for housing; unlikely to sufficiently address housing shortfall; project unlikely to be economically viable.
7. Alternative design 1: 100m buffer Mulkear only: Potential impact from development unlikely due to buffer size No risk of disturbance to Otter. More than 30% of the site becomes unavailable Unlikely to

meet required density targets for housing; unlikely to sufficiently address housing shortfall; project unlikely to be economically viable.

8. Alternative layouts: Reduced risk of disturbance Limited risk of disturbance. Unlikely to meet housing and development plan standards with regards to garden sizes, open space, etc. Various iterations of the layout have been considered at the design stage, and discussed with the local authority. The proposed design meets the required density and has been drawn up following consultation at the pre-planning stage. Alternative layouts had similar likelihood of disturbance to otter.
9. Existing Design with mitigation measures: Reduced risk of disturbance / Disturbance unlikely Limited risk of disturbance. Disturbance may still happen. Mitigation measure will be implemented with ecological clerks of work oversight. Monitoring of Otter activity along the river throughout. Liaison with NPWS and update on need for derogation licence. Likelihood of significant disturbance reduced via implementation of mitigation measures.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 29 of the accompanying report, a number of alternative solutions, including the "*do-nothing alternative*" were examined by the applic*ant.*

Based on the assessment of the application documentation, it is regarded that the applicant has considered 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)

A housing development is planned for a green field site along the Mulkear River at Annacotty. As a result of the Proposed Development, no known resting places for otter will be lost (damaged, or destroyed), and none of the habitat currently known to be used by otter will be lost. The Proposed Development will not result in the closure or removal of any otter resting place or holt.

The nearest resting place to the development is on the opposite side of the river from the development. The opposite side of the river is wooded, shows minimal human disturbance and provides good otter habitat. Some otter activity was recorded on camera traps adjacent to the area planned for development, despite the regular presence of humans and dogs. To minimize disturbance arising during construction a suite of mitigation measures will be implemented. In particular, a 20m buffer shall be maintained along the riverbank, the area most typically used by otters. This buffer will be free of works, and not used for storage of materials or vehicles, nor for the setup of any site compounds. It will be fenced off so that no machinery can accidentally track through. The existing vegetation along this riparian buffer will be retained. Additionally further otter surveys will take place before site works commence and ecological supervision of construction will happen to ensure noise and water pollution are controlled.

The otter is widespread across Ireland and in favourable conservation status. Providing the mitigation measures are implemented in full, 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

<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.	☒

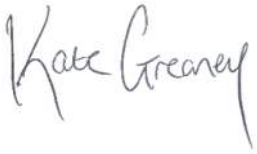
Therefore, a derogation may be granted to the applicant, since it is—

(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.
2.
3.
4.

[add additional conditions where required]



Signed: Date: October 6, 2026

Position: Ecologist