Derogation Number
DER-OTTER-2027-04

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 **Gerald Curley** of **Fingal County Council, Main Street, Swords Demesne, Swords, County Dublin K67 X8Y2** 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 **Royal Canal Greenway between Confey Slipway, County Kildare and 12th Lock, Old Navan Road, County Dublin**, for **Gerald Curley.**
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 **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 the Royal Canal Urban Greenway**), 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 **1st January – 31st December 2027, inclusive**.
6. The works will be supervised by an ecologist(s): **William Mulville**
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. 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.
9. Works are to comply with **NRA's Guidelines for the Treatment of Otters Prior to the Construction of National Road Scheme.**
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 Conservation Ranger – Mairéad Stack,** mairead.stack@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.
12. 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)

27 October 2026

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

National Parks & Wildlife Service LICENCE

Derogation Assessment

Name of Applicant: Gerald Curley
Location/Name of Project: Royal Canal Greenway between Confey Slip, County Kildare & 12th Lock, Old Navan Road, Couty 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 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 the Royal Canal Urban Greenway" a derogation is required to facilitate proposed works adjacent to the Royal Canal towpath, extending from the Kildare County Council boundary in the west at Confey slipway to Talbot Bridge. The report notes the proposed scheme will "will provide the missing link between the urban and rural sections of the Greenway already completed."

The report further outlines the proposed scheme will "will provide a high-quality, safe, attractive and environmentally sensitive walking and cycling corridor" for communities in Dublin 15, the wider Dublin area and East Kildare. The report also notes on page 20 and 21 several key objectives for the scheme including;

- To deliver a high-quality active travel corridor and welcoming public space.
- To improve connectivity and permeability between communities while promoting walking and cycling as attractive transport choices.
- To support tourism, local economic activity and community wellbeing.
- To protect and enhance the environmental, ecological, heritage and landscape value of the Royal Canal corridor.

The report highlights that significant population growth along the corridor both current and planned requires "parallel provision of high-quality active travel, recreation and green infrastructure in order to support sustainable communities" which is provided by the proposed scheme while also contributing to "the climate agenda, economic benefits including for tourism, and as quality-of-life enablers".

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: Otter population within the Royal Canal, most particularly at the breeding holt near Confey Slipway are at risk of impacts from noise, and disturbance, and entrapment should excavations be left unprotected. Indirect impacts on water quality may impact Otter health and prey items. The breeding site located at the westernmost section of the Scheme is at risk of disturbance and / or damage throughout the construction phase if the necessary monitoring and mitigations are not adhered to. Therefore, mitigation measures are required for the construction phase of the site. Inactive Badger setts potentially used by Otter temporarily blocked to prevent potential occupation by Otter during the construction works.
The specific situation that needs to be addressed is the inactive holt at Confey slipway which is at risk from impacts of noise, disturbance and entrapment during works.
The alternative solutions suggested by the applicant are:

1. “Do-Nothing” scenario : The ‘do nothing’ scenario for the Royal Canal Urban Greenway (Proposed Scheme) is that pedestrians and cyclists will continue to walk and cycle along the existing narrow and substantially unsurfaced towpath. The towpath along the ‘Deep Sinking’ section is very dangerous at present. This section typically consists of a 2-3m wide track, with local pinch points of approx. 1.3m, flanked by a deep cutting of 1.0-9.0m to the canal. Also, tree roots cross the towpath at a number of locations, creating trip hazards. Accessibility to the greenway on the southern embankment is restricted between Kennan Bridge (Porterstown Road) and Kirkpatrick Bridge (Coolmine Road) (approx. 900m) and between Kirkpatrick Bridge (Coolmine Road) and Granard Bridge (Castleknock Road) (approx. 1.5km) due to the railway line on the southern side of the towpath, thereby preventing permeability and linkages from residential catchments, resulting in less passive surveillance and security for users. The existing towpath results in an environment that is not safe, not comfortable and not attractive for pedestrians and cyclists. The latent commuter and recreational user demand will continue to be supressed by the existing poor walking and cycling environment along the towpath (particularly within the ‘Deep Sinking’ section. Based on the reasons outlined above, the ‘do nothing’ scenario will essentially result in a In the context of human health, the benefits of walking and cycling are well documented and include improved cardiovascular fitness, chronic disease prevention, improved mental health wellbeing, strengthened immune system and a reduced risk of cancer, obesity and coronary heart disease. These benefits will not be realised in the ‘do nothing’If the proposed greenway is not constructed, the additional economic

benefit which could be derived from the project will not be realised. This benefit can be estimated in basic terms by reference to the Department of Public Expenditure and Reforms 'Public Capital programme 2021 – 2030: Labour Intensity of Public Investment'. The paper estimates that for a €1 million increase in construction expenditure, direct and indirect employment will increase by approximately 8 job years. The analysis, also have estimated, that on average, approximately 80,742 construction jobs will be sustained per year as a result of public investment over the period of 2021 and 2030. In the 'do nothing' scenario, the long-standing objectives of the Fingal County Development Plan to deliver the proposed development will not be realised. Based on the reasons outlined above, the 'do nothing' scenario will essentially result in alost opportunity, and it would leave a section of the strategic Dublin–Galway cycle corridor (266 km) incomplete.

2. Alternative 1: As part of the EIAR, a range of route and design alternatives was considered for the Proposed development. The scheme was developed iteratively, informed by feasibility and constraints assessment, public consultation, stakeholder engagement, ground investigations, independent technical review and environmental surveys. In relation to the identified otter breeding holt near the Fingal–Kildare county boundary, the wider route alternatives did not provide a materially different alignment at this location. The scope for local realignment is constrained by the existing towpath, the Royal Canal and adjoining lands. The proposed route is located on the opposite side of the Royal Canal from the holt. At the location of the identified otter breeding holt, no practicable alternative alignment is available along the Royal Canal that would have a lesser impact on the otter holt due to the physical constraints of the existing towpath, the Royal Canal and adjoining lands. The proposed route is located on the opposite side of the Royal Canal from the holt. The proposed route is located on the north side of the Royal Canal to facilitate the continued user of the Greenway by recreational users along the Canal at this location. The selected design reduces the route to a minimum width of 2 m at this location, retains a 1 m verge between the route and the canal and uses an unbound quarry-dust surface. These measures reduce the construction footprint and intensity of the works. The selected approach is considered the least-impacting practicable solution, with potential effects principally comprising temporary construction-related noise, vibration, lighting and visual disturbance, subject to the proposed mitigation, supervision and monitoring measures.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 22 of the accompanying report *a number of alternative solutions, including the "do-nothing alternative" were examined by the applicant and none was considered to be appropriate.*
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)

A comprehensive otter survey has been completed and a number of otter resting places identified. No otter holt will be lost as a result of the planned works, but some minimal noise disturbance is possible.

The otter is in favourable conservation status. Several alternatives resting sites are available along the stretch of canal, and one side of the canal will be left wild and undisturbed.

A suite of mitigation measures are proposed and providing these are implemented 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

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**	☐

The following conditions should be attached to the derogation:

1.
2.
3.
4.

[add additional conditions where required]

Signed: Date: October 27, 2026

Position: Ecologist