



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

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CL 5232 29/08/21

**Gerard Madden
I.M Properties
Greengate House
Carr Street
Limerick**

24th August 2021

Section 5 referral Reference R21-45 – Gerard Madden

Whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co Clare considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 28th July, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach**
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R21-45



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R21-45

Whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co Clare considered development and if so, is it exempted development.

AND WHEREAS, Gerard Madden has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3, and 4 of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer, received by the Planning Authority on 28th July 2021.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended), in particular *Part 3, Schedule 2, Class 6- 'Agricultural Structures*.
- (d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).
- (e) The Planning History of the site

And whereas Clare County Council has concluded:

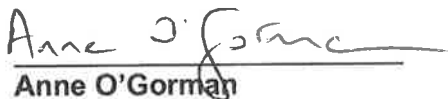
- i. The stated works represent development as defined at Section 3 of the Planning and Development Act 2000, as amended).
- ii. The structure would generally comply within the description, conditions and limitations of Class 6 of part 3, Schedule 2 of the Planning & development Regulations 2001, as amended. However having regard to:
 - The planning history of the site, and the designation of the lands as open space, it is considered that the proposal would contravene condition no. 1 of Pl. Refs 99/2505, 02/700 and 02/2035, and therefore the subject development by virtue of the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, does not come within the scope of the

exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001

- The proposal involves a new means of access onto a public road, the surfaced carriageway of which exceeds 4m and therefore the subject development, by virtue of the provisions of Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
- The proposal involves the provision of a new access, within a residential area, and it is considered that the traffic and turning movements generated would endanger public safety by reason of traffic hazard or obstruction of road users and therefore by virtue of the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
- Having regard to the proximity of the site to the Lower River Shannon SAC and in the absence of an Appropriate Assessment Screening report, it is considered that by virtue of the provisions of Article 9(1)(a)(ViiB) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare **constitutes development** which is **not exempted development** by reason of the restrictions on exempted development as set out under Article 9 of the Planning and Development Regulations 2001 (as amended).



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

24th August 2021

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

78261

Reference Number:

R21-45

Date Referral Received:

28th July, 2021

Name of Applicant:

Gerard Madden

Location of works in question:

Riverdale, Westbury, Co Clare

Section 5 referral Reference R21-45 – Gerard Madden

Whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co Clare considered development and if so, is it exempted development.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3, and 4 of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer, received by the Planning Authority on 28th July 2021.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended), in particular *Part 3, Schedule 2, Class 6- 'Agricultural Structures*.
- (d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).
- (e) The Planning History of the site

AND WHEREAS Clare County Council has concluded:

- i. The stated works represent development as defined at Section 3 of the Planning and Development Act 2000, as amended).
- ii. The structure would generally comply within the description, conditions and limitations of Class 6 of part 3, Schedule 2 of the Planning & development Regulations 2001, as amended. However having regard to:
 - The planning history of the site, and the designation of the lands as open space, it is considered that the proposal would contravene condition no. 1 of Pl. Refs 99/2505, 02/700 and 02/2035, and therefore the subject development by virtue of the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, does not come within the scope of the

exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001

- The proposal involves a new means of access onto a public road, the surfaced carriageway of which exceeds 4m and therefore the subject development, by virtue of the provisions of Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
- The proposal involves the provision of a new access, within a residential area, and it is considered that the traffic and turning movements generated would endanger public safety by reason of traffic hazard or obstruction of road users and therefore by virtue of the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
- Having regard to the proximity of the site to the Lower River Shannon SAC and in the absence of an Appropriate Assessment Screening report, it is considered that by virtue of the provisions of Article 9(1)(a)(ViiB) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Garreth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, Senior Executive Planner, hereby declare that the stated development of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare is development as defined by the Planning and Development Act 2000 (as amended) and is not exempted development by reason of the restrictions as set out under Article 9 of the Planning and Development Regulations 2001, as amended.

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER

A-6

Date:

24th August 2021

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

FILE REF:	R21/45
APPLICANT(S):	Gerard Madden
REFERENCE:	Whether the erection of a farm building (200m ²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare considered development and if so, is it exempted development.
LOCATION:	Riverdale, Westbury County Clare
DUE DATE:	24 th August 2021

Site Location

The subject site is located to the east of the Westbury housing development and to the east of the part of Westbury known as Riverdale Avenue. As per the details submitted, the site is accessed through the existing Westbury estate and via an existing cul de sac in Riverdale Avenue. The site forms part of a larger green field which contains a number of young trees and informal pathways.

Designations

As per the Clare County Development Plan 2017-2023 (as varied) this site is located outside of any settlement and is on lands designated as being under Strong Urban generated pressure for development, as a Working landscape and are within an area designated as a Flood Zone A.

Planning History

At this site;

- 04-1467

Applicant Name: Greenband Investments

Development Description: for the construction of 166 no. houses and associated works, permission is also being sought for the repositioning of house numbers 27, 28, 43, 44, 111, 112, 113 and 114 and associated site works under previously approved planning P02/2035

Development Address: Westbury, Athlunkard, Co. Clare

This application was withdrawn.

- 04-1301- This was an incomplete application.
- 07-2235- This was an incomplete application

In adjacent housing development to the west:

03-222- This was an incomplete application

- 07-2318

Name: Greenband Investments

Development Description: for the construction of 103 no. houses, access roads and all associated site works together with alterations to previously approved planning ref: no.'s P02-2035 & P02-700

Development Address: Westbury, Athlunkard, Co. Clare

FI was requested by the Planning Authority and this application was subsequently withdrawn by the applicants.

- 02-2035

Name: McInerney Construction Ltd

Development Description: for a change of house design on site numbers 1 to 169 under previously approved planning permission No. P99/2505 to be replaced with 51 terraced houses and 168 semi-detached houses and associated siteworks

Development Address: Westbury,, Athlunkard

Permission was granted subject to conditions.

- 02-700

Applicant Name: McInerney Construction Ltd.,

Development Description: for a change of house design on site numbers 170 to 238 under previously approved planning permission no. P99/2505 to be replaced with 90 number semi-detached houses and associated site works

Development Address: Westbury,, Athlunkard,, Co. Clare.

Permission was granted subject to conditions.

- 99-2505

Applicant Name: McInerney Construction Ltd

Development Description: to construct 237 dwelling houses 8 no. garden apartments with 8 no duplex houses units over a central block consisting of creche/doctors' surgery/dental surgery on the ground floor with 10 apartments overhead on the first floor and associated site wo

Development Address: Westbury, Athlunkard

Permission was granted subject to conditions.

- 98-1064

Applicant Name:	McInerney Construction Ltd	
Development Description:	alteration to amenity area layout and the programme for its provision	
Development Address:	Westbury, Athlunkard, Co. Clare	
Architect Name:	John Thompson Architects	Location Key: WESTBURY

Further Information was sought from the applicant, this was not responded to.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Mr. Gerard Madden. The applicant is seeking a Section 5 Declaration as to the following development.

"Is the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare considered development and if so, is it exempted development".

The referrer provides additional details, as follows.

- The proposed stable (accommodating no more than 5 equines) will be 7.5m high and have a floor area of 200m².
- Effluent will be stored on a dry manure pad with wall surrounds and will meet Department of Agriculture requirements.
- The structure and manure will be more than 100m from any house.
- A pathway (blinding on Hardcore) will lead from the layby of the cul-de-sac to the farm building.
- The roof will be dark green painted metal sheets.

Statutory Provisions

(1) Planning and Development Act, 2000 (as amended)

To assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

'Works are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

The work as proposed in this case are considered to be development.

Consideration has also been had to the following Sections of the Planning and Development Act 2000 (as amended)

- Section 2; Interpretation
- Section 3 – 'Development'.
- Section 5; 'Declaration and Referral on development and exempted development'

(2) Planning and Development Regulations 2001 (as amended)

In consideration of this referral, consideration has been had to the following.

- Part 3, Schedule 2, Class 6- 'Agricultural Structures' of the Planning and Development Regulations 2001 (as amended)
- Part 2, Article 9 'Restrictions on Exemptions'.
- Article 6 (3)

Subject to article 9, **in areas other than a city, a town or an area specified in section 19(1)(b) of the Act** or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development.

This is the second such application sought on these lands. A previous application under R 21-37 was deemed not to be exempted development by reason of road safety and AA issues.

It is noted in the current application that the stables are specifically stated to cater for 5 only equines and that the access traverses over the zoned open space area onto the lay-by of the cul de sac.

Consideration has been given to

- Part 3, Schedule 2, Class 6- 'Agricultural Structures' of the Planning and Development Regulations 2001 (as amended) which provides for the following form of exempted development.

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

1. No such structure shall be used for any purpose other than the purpose of agriculture.

2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.

3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Having regard to the details as submitted by the Referrer, I am satisfied that the stated development comes within the class of exempted development as set out in Part 3, Schedule 2, Class 6- 'Agricultural Structures' of the Planning and Development Regulations 2001 (as amended).

Consideration is now given to Part 2, Article 9 'Restrictions on Exemptions' of the Planning and Development Regulations 2001 (as amended) which provides for the following restrictions on exempted development.

"**Article 9** of the Regulations sets out that Development to which article 6 (exempted development) relates shall not be exempted development for the purposes of the Act –

(a) *if the carrying out of such development would –*

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000."

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

With regard to article 9 (a) (i), it is noted that part of the area where the works are to take place (in particular the access) are located within an area zoned as open space, an area which from examination of the planning history under 99/2505, 02/700 and 02/2035, was also proposed as open space. It would appear therefore that this proposal would contravene condition no. 1 of these permissions.

It is proposed that the proposed farm building will be accessed through the road network within the Westbury housing development and via the public roadway in Riverdale Avenue. At present the roadway ends at a cul de sac in Riverdale Avenue. As part of the development that the referrer proposes to carry out at this location, it is proposed to create a pathway/ roadway to the farm building, from the layby of the existing cul de sac in Riverdale Avenue, with a width of 4m and to consist of blinding on hardcore.

The public roadway in Riverdale Avenue has a road carriageway width in excess of 4m and also the cul-de-sac has a width in excess of 4m. In this case, as part of the stated development, the referrer proposes to construct a means of access over the public open space area, to facilitate the proposed development. Having regard to this, it is considered that the development as proposed consists or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, and hence the restriction on exempted development as set out under Article 9, part (ii) of the Planning and Development Regulations 2001 (as amended) applies in this case.

Consideration has also been given to the impact that the proposed development with a means of access from the existing road network within the Westbury housing development may have on traffic safety within the Westbury housing development. It is noted that the proposed development is for a stable building with a floor area of 200m² and with 6 stalls to house horses. The only proposed means of vehicular access to the proposed development is through the Westbury Housing development. It is considered that to permit an agricultural development with its sole means of access through a large housing development and to permit vehicles/ traffic associated with the development to access the building solely through the housing development, would endanger public safety by reason of a traffic hazard due to the additional traffic levels that would be generated. In this regard, it is considered that the restriction on exempted development as set out under Article 9, point (iii) applies, as the proposed development has the potential to endanger public safety by reason of a traffic hazard or obstruction of road users.

Consideration has also been given to Section (viiB) of Article 9 which provides for the following restriction on exempted development.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

I have carried out a screening assessment of the proposed development in terms of the potential requirement for Appropriate Assessment (please see attached to this report) and have found that it is not possible to screen out the proposed development in terms of potential impact on the SAC of the Lower River Shannon. Hence it is considered that the restriction on exempted development as set out under Section (viiB) of Article 9 applies in this case.

Conclusion

Having regard to the above, I consider that the stated works, being.

The erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare

Is development within the meaning of Section 3 of the Planning and Development Act 2000 (as amended) and is not exempted development as the restrictions on exempted development as set out under Article 9 (i) (ii) (iii) and (viiB) of the Planning and Development Regulations 2001 (as amended) apply.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare considered to be development and if so, is it exempted development.

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3, and 4 of the Planning and Development Act, 2000, as amended,
- (b) The works as indicated in submitted documents from the referrer, received by the Planning Authority on 28th July 2021.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended), in particular *Part 3, Schedule 2, Class 6- 'Agricultural Structures*.
- (d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).
- (e) The Planning History of the site

And whereas Clare County Council (Planning Authority) has concluded that:

- i. The stated works represent development as defined at Section 3 of the Planning and Development Act 2000, as amended).
- ii. The structure would generally comply within the description, conditions and limitations of Class 6 of part 3, Schedule 2 of the Planning & development Regulations 2001, as amended. However having regard to:
 - The planning history of the site, and the designation of the lands as open space, it is considered that the proposal would contravene condition no. 1 of Pl. Refs 99/2505, 02/700 and 02/2035, and therefore the subject development by virtue of the provisions of Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001
 - The proposal involves a new means of access onto a public road, the surfaced carriageway of which exceeds 4m and therefore the subject development, by virtue of the provisions of Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
 - The proposal involves the provision of a new access, within a residential area, and it is considered that the traffic and turning movements generated would endanger public safety by reason of traffic hazard or obstruction of road users and therefore by virtue of the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.
 - Having regard to the proximity of the site to the Lower River Shannon SAC and in the absence of an Appropriate Assessment Screening report, it is considered that by virtue of the provisions of Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, the proposal does not come within the scope of the exempted development provisions of Schedule 2 of the Planning and Development Regulations, 2001.

NOW Therefore, the Planning Authority concludes, that the stated development of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare is development as defined by the Planning and Development Act 2000 (as amended) and is not exempted development by reason of the restrictions as set out under Article 9 of the Planning and Development Regulations 2001, as amended.



Garreth Ruane

Senior Executive Planner

23/08/2021

Clare County Council
Screening for Appropriate Assessment & Determination

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

Table 1: Project Details

Planning File Reference	R21-45
Applicant Name	Gerard Madden
Development Location	Riverdale, Westbury, County Clare.
Application accompanied by an EIS	No
Application accompanied by an NIS	No
Description of the project	
The erection of a farm building (200m ²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare.	

Table 2: Identification of European sites which may be impacted by the proposed development.

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)¹ is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

Table 2 (a): European Sites within 15km of Applicant Site

European Sites ²	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
Special Area of Conservation: 002165 Lower River Shannon SAC	<p>Annex I habitats:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Sandbanks which are slightly covered by sea water all the time [1110] <input type="checkbox"/> Estuaries [1130] <input type="checkbox"/> Mudflats and sandflats not covered by seawater at low tide [1140] <input type="checkbox"/> *Coastal lagoons [1150] <input type="checkbox"/> Large shallow inlets and bays [1160] <input type="checkbox"/> Reefs [1170] <input type="checkbox"/> Perennial vegetation of stony banks [1220] <input type="checkbox"/> Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] <input type="checkbox"/> <i>Salicornia</i> and other annuals colonizing mud and sand [1310] <input type="checkbox"/> Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330] <input type="checkbox"/> Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] <input type="checkbox"/> Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] <input type="checkbox"/> <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] <input type="checkbox"/> *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] 	.33k

¹ European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

² European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.

European Sites ²		Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on www.npws.ie/protectedsites) or through Intranet.	Distance to Applicant Site (km)
		Annex II species: <input type="checkbox"/> Freshwater Pearl Mussel <i>Margaritifera margaritifera</i> [1029] Sea Lamprey <i>Petromyzon marinus</i> [1095] <input type="checkbox"/> Brook Lamprey <i>Lampetra planeri</i> [1096] <input type="checkbox"/> River Lamprey <i>Lampetra fluviatilis</i> [1099] <input type="checkbox"/> Atlantic Salmon <i>Salmo salar</i> (only in fresh water) [1106] <input type="checkbox"/> Bottlenose Dolphin <i>Tursiops truncatus</i> [1349] Otter <i>Lutra lutra</i> [1355]	
1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	Yes – Lower River Shannon SAC
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	no
3	Impacts on designated marine habitats & species.	Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: <i>Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	Yes- SAC lower river Shannon Mudflats and sandflats not covered by seawater at low tide
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	NO
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site? Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?	NO

Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

Table 3: Identification of potential impacts.

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species. <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown".</i> <i>Does the development involve any of the following:</i>	
1.1	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water-based species	NA
1.2	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surface water or groundwater What is the likely volume of the discharge?	Run off from new stables building and manure pad
1.3	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	NA
1.4	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	NA
1.5	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	NA
1.6	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	NA
1.7	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA
1.8	Construction within a floodplain or within an area liable to flood (See www.floodmaps.ie , internal flood risk maps, County Development Plan SFRA and www.cframes.ie)	Yes- the site is within a designated Flood Zone A

1.9	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	NA
1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	NA
1.12	Consideration of effects in combination with existing development?	NA

2	<p align="center">Impacts on terrestrial habitats and species.</p> <p align="center"><i>Please answer the following if the answer to question 2 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
2a	<p>Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?</p>	NA
2b	<p>Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site</p>	NA
2c	<p>Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?</p>	NA
2d	<p>Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.</p>	NA

Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

Appropriate Assessment Screening Determination	
Planning File Reference	R21-37
Proposed Development	The erection of a farm building (200m ²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development.
Development Location	Riverdale, Westbury, Co. Clare.
European sites within impact zone	SAC Lower River Shannon.
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
<p>Potential for run off of effluents/ soiled surface waters to the SAC of the lower river Shannon.</p> <p>The site is within a designated Flood Zone A.</p>	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Potential for significant impacts.	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of this Section V referral 	
Conclusion of assessment; It is not possible to rule out potential impacts to the SAC of the Lower River Shannon at this time.	
Completed By	Garreth Ruane, SEP
Date	23/08/2021



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Gerard Madden
I.M Properties
Greengate House
Carr Street
Limerick

28th July, 2021

Section 5 referral Reference R21-45 – Gerard Madden

Whether the erection of a farm building (200m²) the provision of a dry manure pad and wall surround and the provision of a pathway from the public road to the farm building, at Riverdale, Westbury, Co Clare considered development and if so, is it exempted development.

A Chara,

I refer to your application received on 28th July, 2021 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Siobhan Mungovan
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare,
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	Gerard Madden I.M. Properties Ltd Greengate House Carr Street Limerick
(b) Telephone No.:	[REDACTED]
(c) Email Address:	[REDACTED]
(d) Agent's Name and address: e-mail	Donal O Byrne Greengate House Carr Street Limerick [REDACTED]

2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
 Note: only works listed and described under this section will be assessed.

Sample Question: Is the construction of a shed at 1 Main St. Ennis development and if so is it exempted development?

Is the erection of a farm Building (200m²) at Riverdale, Westbury, Co. Clare Exempt from Planning Permission

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

A farm building/stable, 200m² and 7.5m high. Effluent will be stored on a dry manure pad and will meet department of Agriculture requirement. The building and manure pad will be more than 100m from any house.

A pathway/track less than 4 metres^{wide} will lead from the farm building to the small lay-by of the Riverdale cul-de-sac, as shown on the site layout.

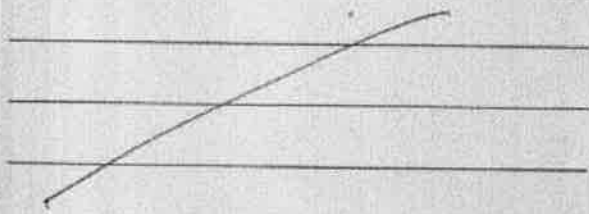
The roof will be dark green painted metal sheets

The farm building will house a maximum of 5 equines

- (c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

Sheet 1 Plan + front Elevation of farm building
 Sheet 2 Section + side Elevation of farm building
 Sheet 3 Site Layout
 Sheet 4 Site Location Map

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Land at. Riverdale Westbury Co. Clare
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	The applicant is the legal owner of this Land
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?	yes
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No
(g) Were there previous planning application/s on this site? If so please supply details:	yes 07/2318, 07/2235 04/1301, 04/1467
(h) Date on which 'works' in question were completed/are likely to take place:	

SIGNED: Donal OByrne
(Agent)

DATE: 28/07/21

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority:

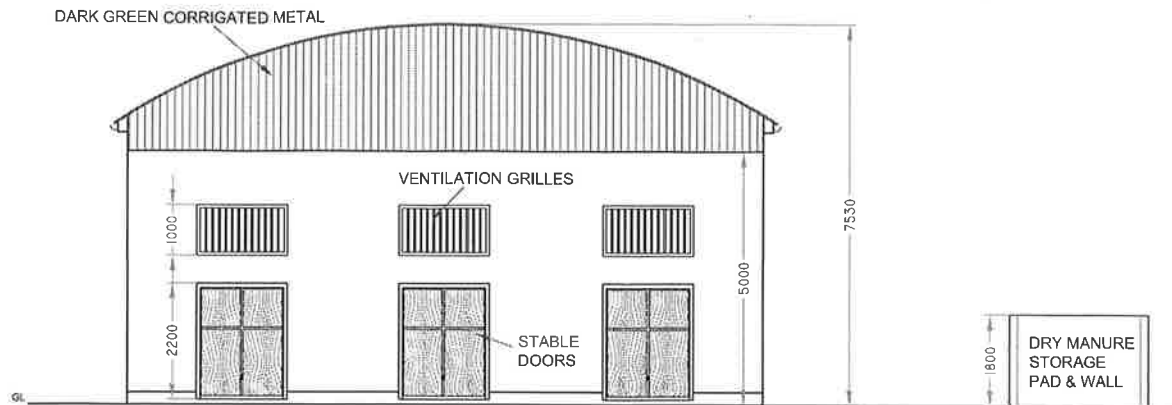
- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

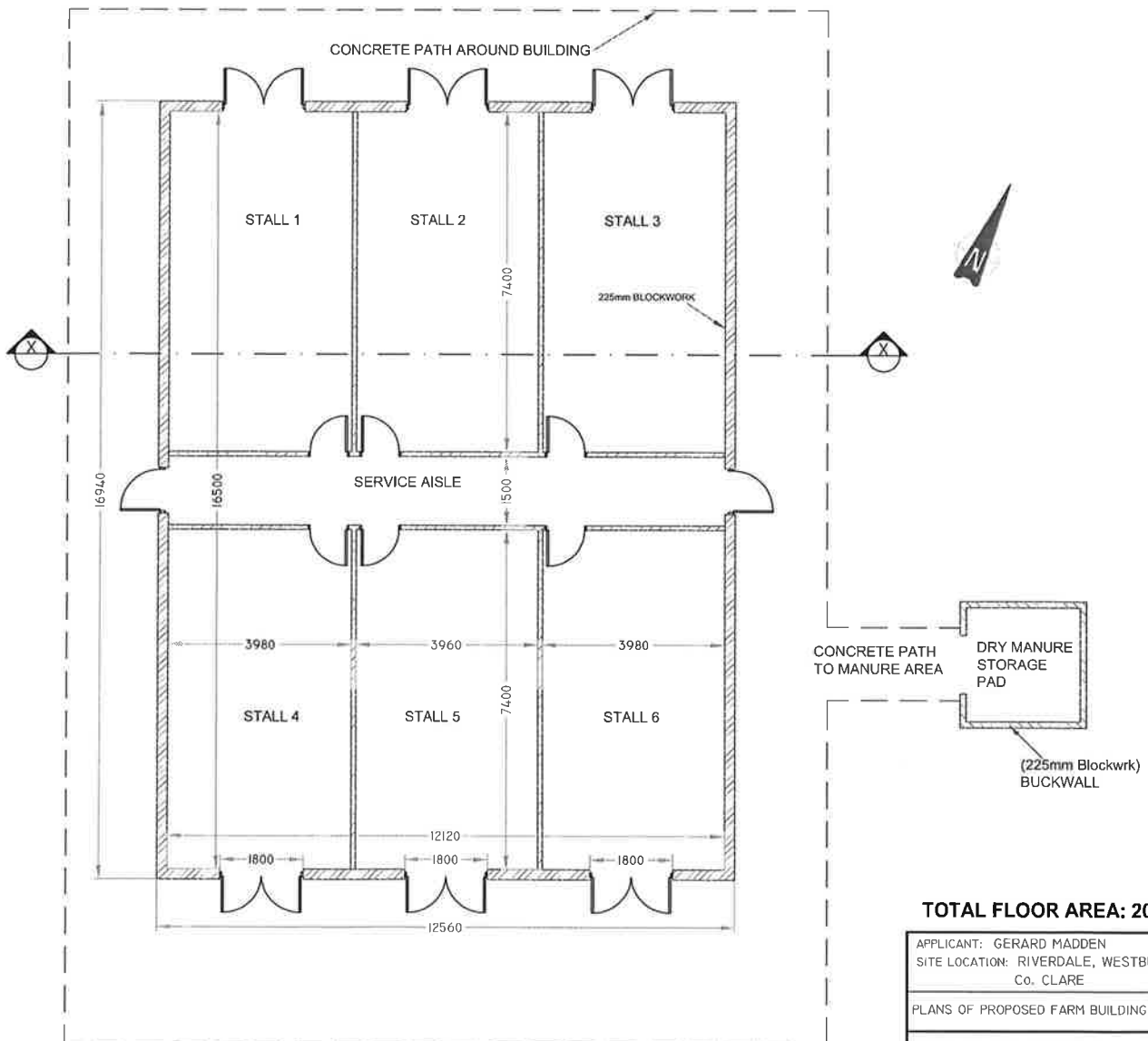
- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:	



FRONT & REAR ELEVATION
(same on both sides)
SCALE 1:100



FLOOR PLAN
SCALE 1:100

TOTAL FLOOR AREA: 200m²

APPLICANT: GERARD MADDEN
SITE LOCATION: RIVERDALE, WESTBURY,
Co. CLARE

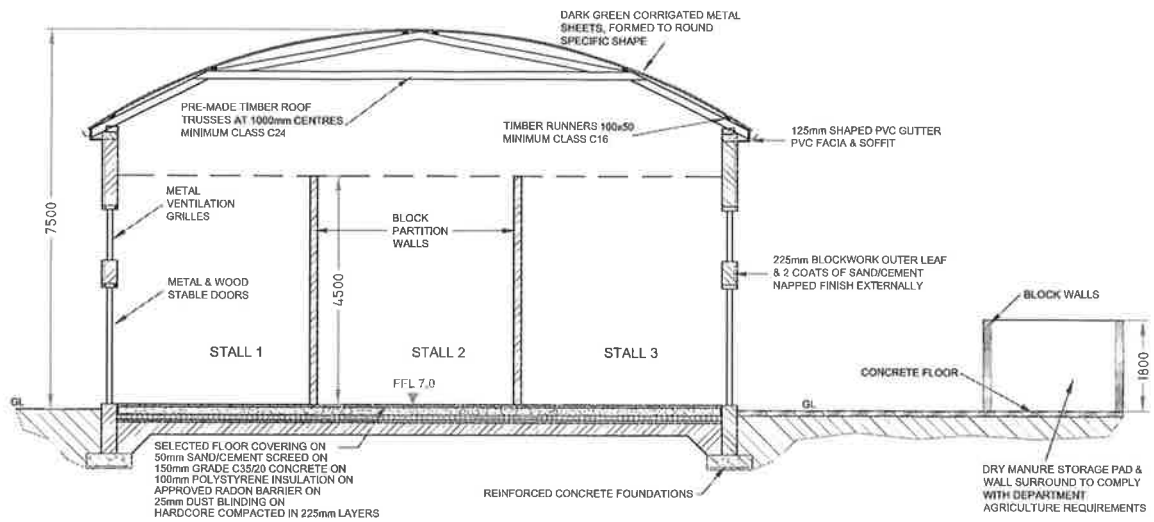
PLANS OF PROPOSED FARM BUILDING

DRAWN BY: DONAL O' BYRNE, B.E.
GREENGATE HOUSE, CARR ST., LIMERICK
PHONE: 087-7845190

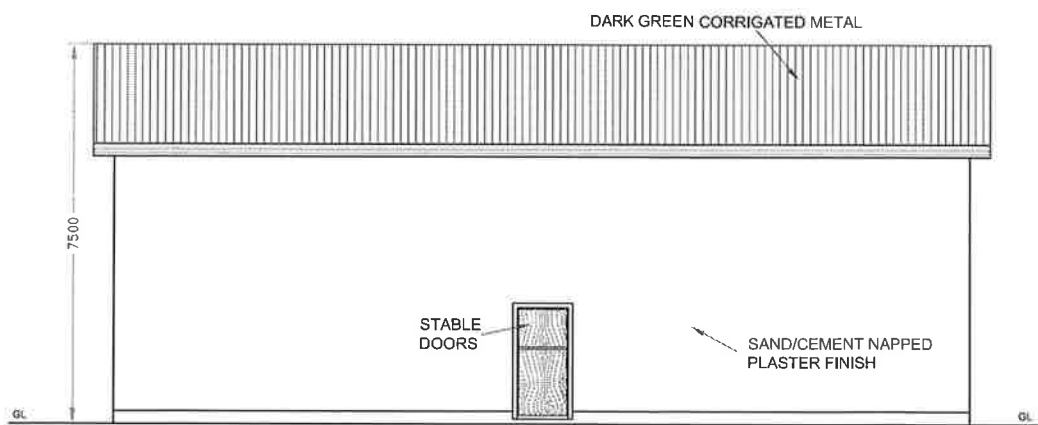
SCALE:
1:100
UNITS:
MILLIMETRES

DATE:
25.06.21

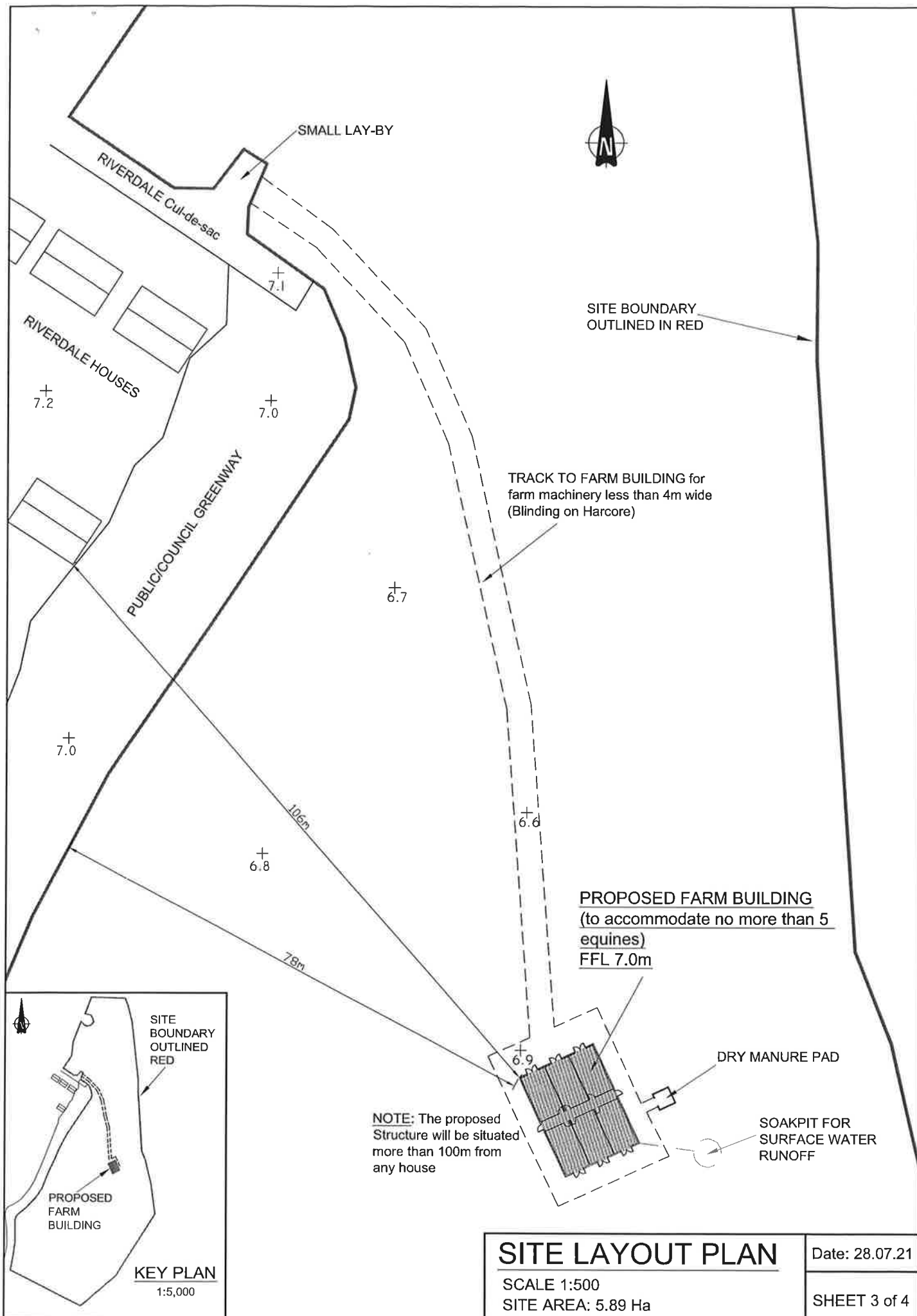
SHEET 1 OF 4



SECTION XX
SCALE 1:100



SIDE 1 & 2 ELEVATION
(same on both sides)
SCALE 1:100



Surveyed 1993-1994
Revised 2015
Levelled 1976

Land Registry Compliant Map



619194

PH CENTRE PT. COBROS
559620, 658868

DESCRIPTION

MAP SHEETS

1:2500
4682-B 4682-D

OSI Authorised Internet Map

Arna thaisce agus arna thaisce an
Súirbhíocht Dúchais Éireann, Páirc
an Fhionnlaigh, Gláir Aha Cluich,
Dún
Compiléid agus foilsíodh ag Ombudsman
Súirbhíocht, Phoenix Park, Dún Éirí,
Éirinn

Súirbhíocht agus gach tuisiúnach
súirbhíocht Súirbhíocht Éireann
Líonra agus tuisiúnach na hÉireann
Líonra agus tuisiúnach na hÉireann
Ombudsman Súirbhíocht agus
Gníomhaireacht na hÉireann

Dúchúil agus tuisiúnach. Ní ceadúil
súirbhíocht Súirbhíocht agus tuisiúnach
súirbhíocht agus tuisiúnach na hÉireann
súirbhíocht agus tuisiúnach na hÉireann
súirbhíocht agus tuisiúnach na hÉireann

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Ní ceadúil agus tuisiúnach. Ní ceadúil
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súirbhíocht agus tuisiúnach na hÉireann

© Súirbhíocht Dúchais Éireann, 2015
© Ombudsman Survey Ireland, 2015

LAND REGISTRY MAP

County Clare

Map No. 4682-B 4682-D

The extent of the site is outlined in RED
marked "A" Clonard

Site Area:
5.89Ha (14.55ac) or thereabouts.

SIGNED: *[Signature]*
(BCM Consulting Engineers Ltd.)
Paul Higgins B.Eng. APML C.Eng.

24/06/2017

Bruschan

Grianan

2.01

Grianan

9.20

ca und. Development Jan. 2009

1.31

0.22

3.61

Land Registry Use Only

Scale: 1:2,500
Scale: 1:2,500

0 20 40 60 80 100 Metres
0 100 200 300 400 500 Feet

Plot Ref. No. 19714321_1_1
Plot Date 12-MAY-2016



Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare

28/07/2021 13:55:08

Receipt No. : LICASH/0319870
REPRINT

GERARD MADDEN
C/O DONAL OBYRNE
GREENGATE HOUSE
CARR STREET
LIMERICK

SECTION 5 REFERENCES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered : 80.00
CREDIT CARDS

Change : 0.00

Issued By : LICASH - Shane Benn