



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

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

RL409662974IE

15th November 2021

**Section 5 referral Reference R21-59 – Gerard Madden**

Is the erection of a fence 1.2m high at Riverdale, Westbury development and if so, is it exempted development?

A Chara,

I refer to your application received on 20th October 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](http://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.: R21-59**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R21-59**

**Is the erection of a fence 1.2m high at Riverdale, Westbury 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 –**

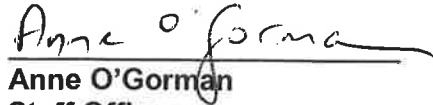
- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- b) Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 as amended.
- c) Articles 6 and 9 of the Planning and Development Regulations 2001 as amended.
- d) The details and particulars as submitted with the referral application
- e) The planning history of the site.

**And whereas Clare County Council has concluded:**

- (i) The erection of a fence constitutes both 'works' and 'development' as set out under Sections 2 and 3 of the Planning and Development Act, 2000, as amended.
- (ii) The erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under article 6(a) of the Planning and Development Regulations, 2001, as amended,
- (iii) By reason of the said fence enclosing land habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, the subject development, by virtue of the provisions of article 9(1)(a)(x) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of the Second Schedule to the Planning and Development Regulations, 2001, as amended.

**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 the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Anne O'Gorman**  
**Staff Officer**

**Planning Department**  
**Economic Development Directorate**

**15th November 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: 78726

Reference Number: R21-59

Date Referral Received: 20th October 2021

Name of Applicant: Gerard Madden

Location of works in question: Riverdale, Westbury, Co. Clare

**Section 5 referral Reference R21-59 – Gerard Madden**

Is the erection of a fence 1.2m high at Riverdale, Westbury 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) Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 as amended.
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001 as amended.
- (d) The details and particulars as submitted with the referral application
- (e) The planning history of the site.

**AND WHEREAS Clare County Council has concluded:**

- (i) The erection of a fence constitutes both 'works' and 'development' as set out under Sections 2 and 3 of the Planning and Development Act, 2000, as amended.
- (ii) The erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under article 6(a) of the Planning and Development Regulations, 2001, as amended,
- (iii) By reason of the said fence enclosing land habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, the subject development, by virtue of the provisions of article 9(1)(a)(x) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of the Second Schedule to the Planning and Development Regulations, 2001, as amended.

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> 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, Gareth Ruane, Senior Executive Planner, hereby declare that the proposed development consisting of the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare constitutes development which is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

**Signed:**

  
\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER** A.S.G.

**Date:**

**15th November 2021**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**

<b>FILE REF:</b>	R21/59
<b>APPLICANT(S):</b>	Gerard Madden
<b>REFERENCE:</b>	Whether the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development.
<b>LOCATION:</b>	Riverdale, Westbury County Clare
<b>DUE DATE:</b>	<b>16<sup>th</sup> November 2021</b>

**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

<b>Name:</b>	Greenband Investments
<b>Development Description:</b>	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
<b>Development Address:</b>	Westbury, Athlunkard, Co. Clare

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

- 02-2035

<b>Name:</b>	McInerney Construction Ltd
<b>Development Description:</b>	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
<b>Development Address:</b>	Westbury,, Athlunkard

Permission was granted subject to conditions.

- 02-700

<b>Applicant Name:</b>	McInerney Construction Ltd.,
<b>Development Description:</b>	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
<b>Development Address:</b>	Westbury,, Athlunkard,, Co. Clare.

Permission was granted subject to conditions.

- 99-2505

<b>Applicant Name:</b>	McInerney Construction Ltd
<b>Development Description:</b>	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
<b>Development Address:</b>	Westbury, Athlunkard

Permission was granted subject to conditions.



- 98-1064

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

*Whether the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development*

The referrer provides additional details, as follows.

- The proposed fence will consist of timber post and steel wire
- It will be 74m in length and located on agricultural lands.

### **Referral Planning History**

#### **Referral 21-45**

Whether the erection of a farm building (200m<sup>2</sup>) 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 Planning Authority determined that the works were development and were not exempted development:

- The stated works represent development as defined at Section 3 of the Planning and Development Act 2000, as amended).
- 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.

#### Referral 21-51

Whether the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development. The Planning Authority deemed same not to be exempted development as follows:

- The erection of a fence constitutes both 'works' and 'development' as set out under Sections 2 and 3 of the Planning and Development Act, 2000, as amended.
- The erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under article 6(a) of the Planning and Development Regulations, 2001, as amended,
- The proposed fence, would not be exempted development as it would contravene conditions of a planning permission, namely, conditions number 1 and 5 of planning permission granted under planning reference number P02/2035, and, therefore, the restriction on exemption under Article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended, applies in this instance.
- By reason of the said fence enclosing land habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, the subject development, by virtue of the provisions of article 9(1)(a)(x) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of the Second Schedule to the Planning and Development Regulations, 2001, as amended.

#### Referral 19-30

Whether the construction of a 1.5m high fence (sheep wire) internally on land at Riverdale, Westbury is or is not development and is or is not exempted development.

The Planning Authority determined that:

- The erection of a fence constitutes both 'works' and development as set out under Section 2 and 3 of the Planning and Development Act 2000, as amended.
- The development does not come within the scope of exemption afforded by Section 4(1)(h) of the Planning and Development Act 2000 as amended.
- The development does not come within the scope of the exemption afforded by Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 as amended, as the height of the fence exceeds 1.2m.
- The proposed fence, which would intersect a permitted area of public open space, would not be exempted development as it would contravene a condition of a planning permission, that is, condition number 5 of planning permission granted under planning register reference number 02/2035, and, therefore, the restriction on exemption under Article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended, applies in this instance.
- Now therefore Clare County Council decides that the proposed erection of a 1.5m high fence internally on land at Riverdale constitutes development which is not exempted development.

#### Referral 20-4

Whether the erection of fence no. 1 and fence no. 2 at Riverdale, Westbury, Co. Clare is or is not development and is or is not exempted development. The Planning Authority ruled that these works were not exempted development. This decision was upheld on appeal to the Board as follows:

- the erection of the proposed fences falls within the definition of works under section 2 of the Planning and Development Act, 2000, as amended, and constitutes development within the meaning of section 3(1) of the Act,

- b) the erection of the proposed fences falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under article 6(a) of the Planning and Development Regulations, 2001, as amended, and
- c) by reason of the said fences enclosing land habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, the subject development, by virtue of the provisions of article 9(1)(a)(x) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of the Second Schedule to the Planning and Development Regulations, 2001, as amended

### **Statutory Provisions**

#### **Planning and Development Act, 2000 (as amended)**

**Section 2** of the Planning & Development Act, 2000, as amended, defines '**works**' as including '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 of a structure'.

**Section 3(1)** of the Act defines "**development**" except where the context otherwise requires as:

"The carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land.

#### **Planning and Development Regulations 2001, as amended**

**Article (6)(1)** of the Planning and Development Regulations 2001, as amended, states that subject to Article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 2.

**SCHEDULE 2 Article 6 PART 1- General – Class 11** describes classes of development which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

#### **Class 11.**

The construction, erection, lowering, repair or replacement other than within or bounding the curtilage of a house of

- (a) any fence ( not being a hoarding or sheet metal fence)
- (b) any wall of brick, stone, blocks with decorative finish other concrete blocks or mass concrete.

#### **Limitations**

1. The height of any new structure shall not exceed 1.2m or the height of the structure being replaced, which ever is the greater, and in any event shall not exceed 2m.

2. Every wall , other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete block ( other than a blocks of decorative finish) which will be visible from any road, path or public area including public open space , shall be rendered or plastered.

**Article 9** of the Regulations sets out that Development to which article 6 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.*

## Assessment

The applicant is seeking a Section 5 declaration as to whether the erection of a fence 1.2m high at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development.

This is the fourth such declaration sought on these lands for the development of a fence. Previous declarations under R21-5, R19-30 and R20-4 were deemed not to be exempted development by the Planning Authority and An Bord Pleanala.

The proposed fence is to be located to the south of the zoned open space area as set out in the Development Plan, OS3 and is similar to that as proposed under R 21-5.

It is noted that under R 19-30, the fence was to be located on the boundary of the zoned open space area and the non-zoned area. Under R20-5, two fences were proposed, one surrounding the turning circle to the north and the other over and to the south of the open space area.

Having inspected the site it is clear that the subject lands are subject to public use consisting of informal pathways throughout the site connecting to the wider open space area (including the zoned open space area). The area is open to the public and is not enclosed, and is contiguous to the wider open space area.

I am satisfied that the proposed fence constitutes both works and development as set out in the Act and also falls within the exemptions as set out under Class 11 of Schedule 2 Part 1 of the Regulations.

The main issue for consideration is the de-exemptions on development as set out under Article 9 of the Regulations.

Article 9 details a number of restrictions on exempted development. That relevant to the current case, and which was referenced by An Bord Pleanala, is Article 9(1)(a)(x) which refers to a development consisting of the fencing or enclosure of any land habitually open to or used by the public during the 10 year preceding such fencing or enclosure for recreational purposes, shall not be exempted development for the purposes of the Act.

The applicants contend that the area has not been used by the public for the past 10 years and makes reference to the Council erecting fencing (as part of the taking in charge process of the estate) and also that the lands are not zoned as open space in the development plan. However the subject area is not enclosed or fenced off to the public. The restrictions on exemptions reference lands that are "habitually open to or used by the public". Given that the site is open to and used by the public, and is contiguous to the wider open space network within the site, I consider that this de-exemption is relevant in this instance and I note the decision from An Bord Pleanala under R 20/4.

On review of the file and the planning history of the site I note and accept to some degree, the applicants assertion with regard to the location of the fencing on lands that are not zoned or formally designated as open space. It should be noted however that under pl. Ref 99/2505 there is reference to this area of land as being a 'public open space' area albeit outside the redline boundary of the site but within the blue line boundary. Similarly under 02/700 there is reference to this area as being a "future public open space (finished levels to be agreed in advance with Clare County Council)". Again this area is outside the red line boundary of the application but within the blue line.

Having regard to the above, I consider that the de-exemptions 9 (1)(a)(x) are still relevant and consider that this reason should be included in the declaration decision.



## Recommendation

**The following questions have been referred to the Planning Authority:**

**Whether the erection of a fence 1.2m high 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) Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 as amended.
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001 as amended.
- (d) The details and particulars as submitted with the referral application
- (e) The planning history of the site.

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

- (i) The erection of a fence constitutes both 'works' and 'development' as set out under Sections 2 and 3 of the Planning and Development Act, 2000, as amended.
- (ii) The erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under article 6(a) of the Planning and Development Regulations, 2001, as amended,
- (iii) By reason of the said fence enclosing land habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, the subject development, by virtue of the provisions of article 9(1)(a)(x) of the Planning and Development Regulations, 2001, does not come within the scope of the exempted development provisions of the Second Schedule to the Planning and Development Regulations, 2001, as amended.

### **Now therefore**

Clare County Council hereby decides that the proposed erection of a fence, 1.2m in height, at Riverdale, Westbury, Co. Clare constitutes development which is not exempted development.

  
\_\_\_\_\_  
Garreth Ruane  
Senior Executive Planner  
15/11/2021



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CONTAE AN CHLÁIR | COUNTY COUNCIL

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

**20/10/2021**

**Section 5 referral Reference R21-59 – Gerard Madden**

**Is the erection of a fence 1.2m high at Riverdale, Westbury development and if so, is it exempted development?**

A Chara,

I refer to your application received on 20th October 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

Tadhg Holmes

**Tadhg Holmes**  
**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**  
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Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2





P07

**CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLAIR**

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

Telephone No. (065) 6821616  
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**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:

Donal O Byrne  
Greengate House  
Carr Street  
Limerick

e-mail

[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 Fence 1.2m high at Riverdale, Westbury exempt from planning Permission

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

The fence will consist of timber post and steel wire. The position of the proposed fence is marked in green on the enclosed site map. The fence will be on the agricultural space outside of the designated 'Open Space'. It will be 74m long.

\* Please see attached document for further Description/Information on the subject

- (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)

- ① Site Layout Plan (shown fence in green)
- ② Site Location Map
- ③ Document with extra description/information
- ④ copy of site layout for P02/2035
- ⑤ copy of site location map for P02/2035<sup>2</sup>
- ⑥ Ordnance Survey marked up showing different parts

### 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 the 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 PD 2235, 07/23/18
(h) Date on which 'works' in question were completed/are likely to take place:	Nov' 2021

**SIGNED:**

SIGNED: Garard Nallas

DATE: \_\_\_\_\_

DATE: 19/10/21



### **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: .....	



Gerard Madden  
IM Properties Ltd  
Greengate House  
Carr Street  
Limerick

19.10.21

**Is the erection of a Fence 1.2m high, at Riverdale, Westbury exempt from planning permission?**

**Extra Description / Information on the subject.**

With reference to our previous correspondence regarding this land, we wish to point out the following facts that seemed to be misinterpreted

1. With reference to conditions 1 and 5 of planning P02/2035, the area in question (our land) is outside the area marked by the red line (area planning applied for) on the site location map of this planning (please see copy of map enclosed).

Condition 5 of P02/2035 states, "*No development shall occur in the designated open space areas including the open space area to the south of the site hatched in blue colour on site layout drawing no. 03-100A.*"

2. The area in question is to the east of the land that planning was applied for (P02/2035).
3. In response to condition 5, none of the area in question is designated as Open Space.
4. The areas marked as open space on the east of the development, marked as A, B, C on the enclosed map were cut off by a fence and bank to the west of our site and to the east of the development site. This enclosure was constructed under supervision of Clare County Council. We believe this was done around 2015.

It is obvious from the planning that the area in question is not subject to condition 5 of planning P02/2035

The land in question is bounded on the east (neighboring farmer) and south (Council land) by a ditch and open dykes. On the west by a fence and bank that cuts the land off from the space that was designated as open space in P02/2035. We believe that this open space was regularized in shape after agreement with the receiver of Greenband Investments Ltd in c. 2015 and Clare County Council supervised a 400-meter fence dividing the public space from our space.



On the north access is restricted by over grown bushes, trees and scrub which acts as a natural barrier.

There is no doubt that this area of land outside the Westbury settlement was not habitually open to or used by the public during the 10 years preceding as indicated by planning act 2001, article 9(1)(a)(x), as it is was basically inaccessible.

Anecdotal evidence of this is that if it was meant to be open space, why would the Council agree to the construction of a 400m fence, cutting the area off from the actual Open Space designated in P02/2035.

All the areas outside the red line (on site layout map of P02/2035) are subject to separate planning permissions for housing. The area to the east in question was subject to a planning application P07/2235. The architect involved had indicated when this planning permission was applied for there was no mention of this area ever been considered as amenity area. The application was withdrawn because of sewage and access problems. This is further anecdotal evidence that this area was not public open space.

Furthermore, Clare County Council removed all this area from the Westbury settlement in the current County development plan.

We understand from conversations with the planning office that the Council has no documentation on file to prove that this area has been habitually occupied for more than years.

Our conclusion is that you have mixed up the contentious area marked OS3 with the area where we propose to construct the fence.

As outlined in our letter, your interpretation of condition 1 and 5 is incorrect and you seem to be mixing up OS3 and the land in question.

Gerard Madden



# SITE LAYOUT PLAN

SCALE 1:1,000

SITE AREA: 5.89 Ha

Date: 10.08.21

Drawn By: D.O.B



LAND OWNED  
OUTLINED IN RED

DESIGNATED  
"OPEN SPACE"

LAND OWNED by other  
OUTLINED IN BLUE

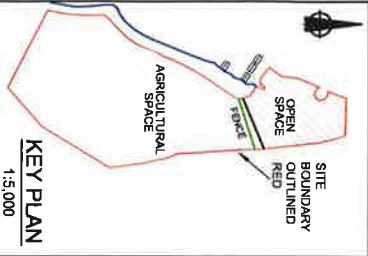
AGRICULTURAL SPACE

PROPOSED  
LOCATION  
OF FENCE  
1.2 high  
(Outside of 'Open  
Space' area)

7.4m

B

A



KEY PLAN  
1:5,000

## Land Registry Compliant Map



500110  
FBI

Contents

PH CENTER PT. COCOS  
569620 664480

DESCRIPTION

## MAP SHEETS

1-2500  
4682-B 4682-D

CLARK  
COUNTY COLLEGE

23 OCT 2021

Receive:

 Authorized Internet Map

Arise, O Son of David, and sit upon  
Sion, thy holy mountain. For thou  
hast said, I will build a temple,  
and I will dwell upon it.

[illegible]

Chlorine is commonly known to be a powerful disinfectant but is also a strong oxidizing agent. Chlorine is used in the form of sodium hypochlorite (bleach) or calcium hypochlorite (bleach powder).

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months of a year of sea-level rise is  
achieved. The representations in this  
map of around 1000 AD suggest a  
evidence of the existence of a right of  
way.

[illegible]

Construction drawings, such as site plans, legal property boundaries, and other drawings, are the basis of the design.

© Cambridge University Press 2002  
© Cambridge University Press 2002

ca und. Development Jan. 2000

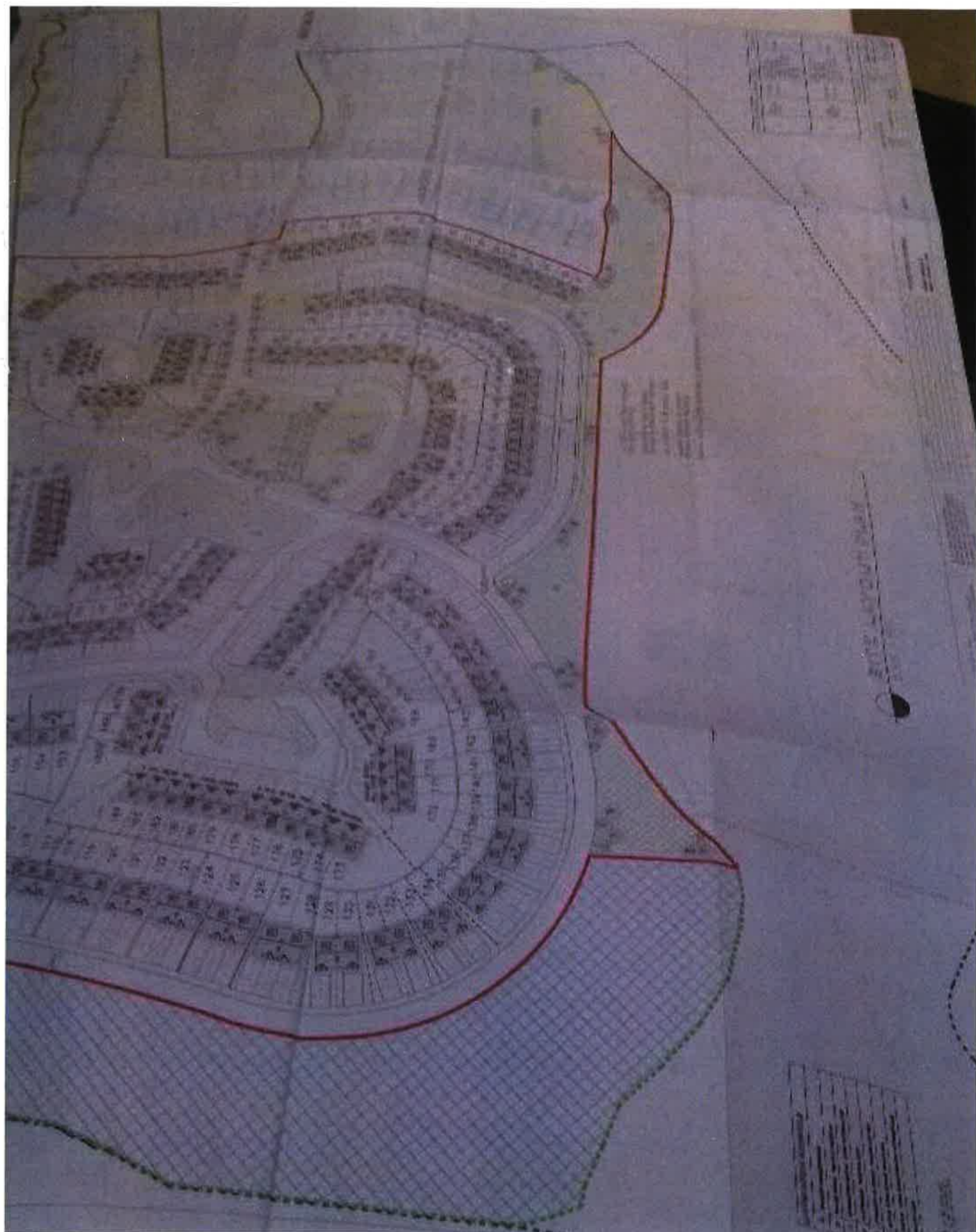
**Land Registry Use Only**

Plot Ref. No. 19714321\_1\_1  
Plot Date 12-MAY-2016

SHEET 4 of 4



CLARK  
COUNTY CLERK  
20 OCT 2021  
Received  
Planning Services







Surveyed 1993-1994  
 Revised 2015  
 Levelled 1975

# Land Registry Compliant Map

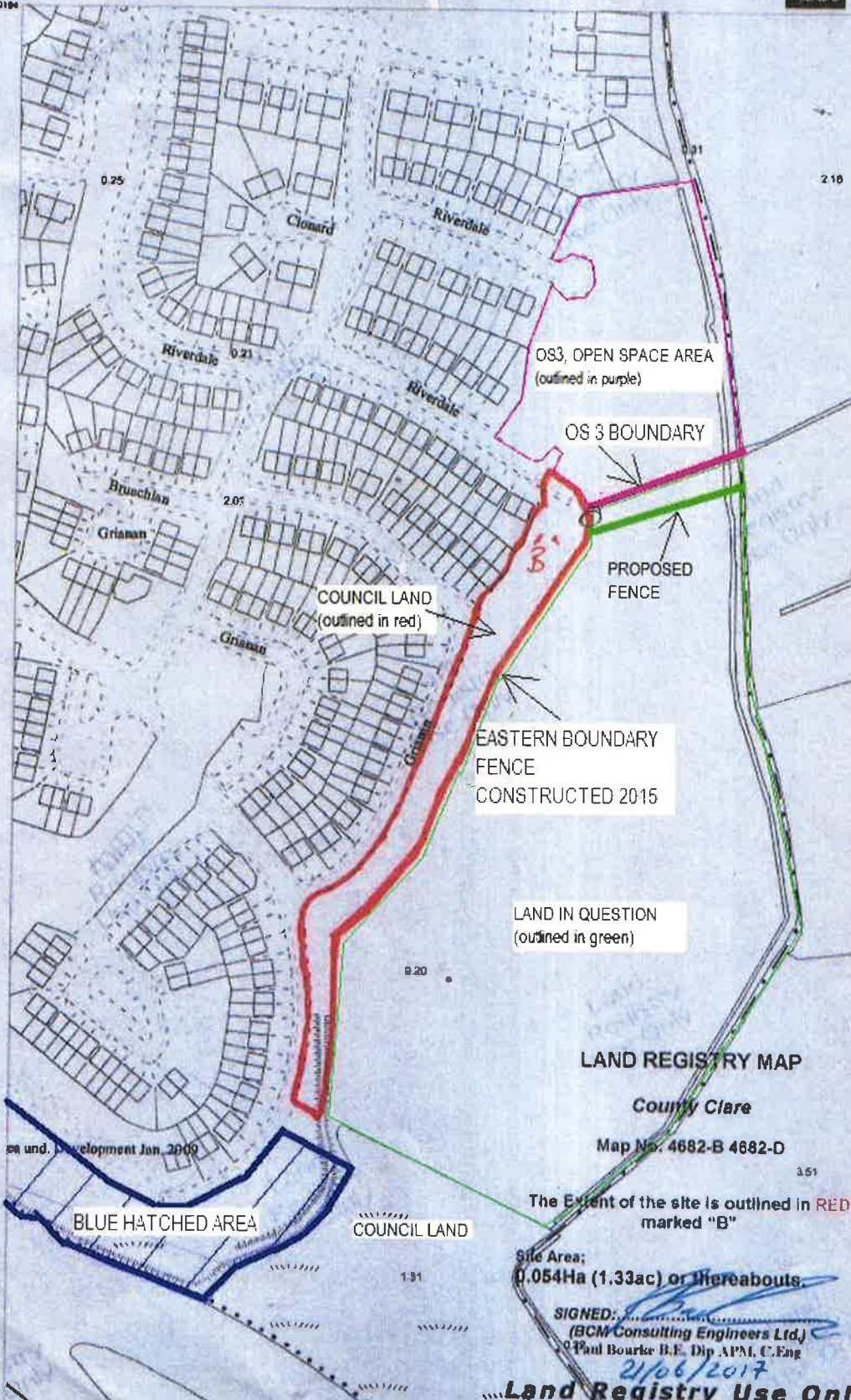


ITM CENTRE PT COORDS  
 659820, 658888

DESCRIPTION

MAP SHEETS

1:2500  
 4682-B 4682-D



OS Authorised Internet Map

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## LAND REGISTRY MAP

County Clare

Map No. 4682-B 4682-D

The Extent of the site is outlined in RED marked "B"

Site Area:  
 0.054Ha (1.33ac) or thereabouts.

SIGNED:  
 (BCM Consulting Engineers Ltd.)  
 Paul Bourke B.E. Dip APAC, C.Eng  
 21/06/2017

Land Registry Use Only

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



Plot Ref. No. 19714321\_1\_1  
 Plot Date 12-MAY-2016



# AN CHLÁIR

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

20/10/2021 09:58:12

Receipt No. : LICASH/0323667  
REPRINT

GERARD MADDEN  
I M PROPERTIES LTD  
GREENGATE HOUSE  
CARR STREET  
LIMERICK  
R21-59



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

Total : 80.00 EUR

Tendered :  
CREDIT CARDS 80.00

Change : 0.00

Issued By : LICASH - Ann Carey