



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Donagh Vaughan - Johnno's Bar
Johnno's Bar
c/o Brian Foudy & Associates
Osprey House,
Carmody Street,
Ennis,
Co. Clare.**

RL 5660 3440 SIE

27th July, 2022

Section 5 referral Reference R22-46 – Donagh Vaughan - Johnno's Bar

Is the enlargement of the existing beer garden at the rear of Johnno's Bar, Quin Road, Ennis, Co. Clare considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st July 2022 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.: R22-46



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R22-46

Is the enlargement of the existing beer garden at the rear of Johnno's Bar, Quin Road, Ennis, Co. Clare considered to be development and if so, is it exempted development?

AND WHEREAS, Donagh Vaughan - Johnno's Bar 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 –

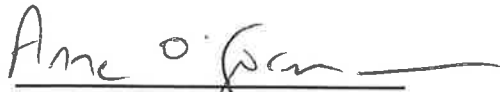
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 1963, as amended,
- (b) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 1st July 2022.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended)
- (d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).

And whereas Clare County Council has concluded:

- (a) The enlargement of existing beer garden to the rear of 'Johnno's Bar' constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.
- (c) The said development does not constitute exempted development as there are no exempted development provisions in either the Planning & Development Act, 2000, as amended or the Planning & Development Regulations 2001. Further it is considered that the said works result in an intensification of an unauthorised structure on the site, namely the original beer garden.

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 enlargement of the existing beer garden to the rear of 'Johnno's Bar', Quin Road, Ennis, Co. Clare, is development which **is not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in dark ink, appearing to read 'Anne O'Gorman', with a horizontal line drawn underneath it.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

27th July, 2022

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: 80188

Reference Number: R22-46

Date Referral Received: 1st July 2022

Name of Applicant: Donagh Vaughan - Johnno's Bar

Location of works in question: Johnno's Bar, Quin Road, Ennis, Co. Clare

Section 5 referral Reference R22-46 – Donagh Vaughan - Johnno's Bar

Is the enlargement of the existing beer garden at the rear of Johnno's Bar, Quin Road, Ennis, Co. Clare considered to be 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, 1963, as amended,
- (b) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 1st July 2022.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended)
- (d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Clare County Council has concluded:

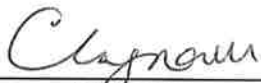
- (a) The enlargement of existing beer garden to the rear of 'Johnno's Bar' constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.
- (c) The said development does not constitute exempted development as there are no exempted development provisions in either the Planning & Development Act, 2000, as amended or the Planning & Development Regulations 2001. Further it is considered that the said works result in an intensification of an unauthorised structure on the site, namely the original beer garden.


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 Candace Ingram, Acting 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, Candace Ingram, Acting Senior Executive Planner hereby declare that the enlargement of the existing beer garden to the rear of 'Johnno's Bar', Quin Road, Ennis, Co. Clare is development which **is not exempted development**.

Signed:



CANDACE INGRAM
ACTING SENIOR EXECUTIVE PLANNER 

Date:

27th July, 2022

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION

FILE REF:	R22 46
APPLICANT(S):	Donagh Vaughan, Johnno's Bar
REFERENCE:	Whether the enlargement of existing beer garden to the rear of Johnno's Bar, Quin Road, Ennis, Co. Clare is considered to be development and if so, is it exempted development .
LOCATION:	Quin Road, Ennis, Co. Clare.
DUE DATE:	28/7/2022

Site Location

Johnno's Bar is located on the Quin Road, approx. 1.5km to the East of Ennis Town Centre. The site is occupied by a two story building, located at the edge of the road, which contains 'Johnno's Bar'. To the side and rear is a parking area associated with the bar. Bruach na hAbhainn housing development lies to the immediate West of the site. The site to the immediate east is a one-off house and there are several further one-off houses further to the east on both sides of the road. The lands immediately opposite the site are in a variety of uses, including a car auction premises, a garden centre and an electrical contractor's office. The boundary to the west is open in character with a relatively low masonry wall. The boundary to the east is defined by tall, mature evergreen trees and a low stone wall.

Site context



Planning History

P11 501 / ABP ref 03.240150

Application by Gallagher Seafood Restaurant Ltd. For planning permission to demolish stand alone dwelling house and shed, to carry out demolitions and modifications to premises known as Johnno's Public House and to extend same with dining room, kitchen and ancillary service rooms, along with car

parking and external areas and associated site works and services. Permission granted following a third party appeal.

An enforcement file was opened in relation to the subject beer garden.

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Donagh Vaughan of Johnno's Bar. It is submitted that Mr. Vaughan is the owner of the subject property.

The applicant is seeking a Section 5 Declaration as to whether the following is development and if so is it exempted development:

- The enlargement of existing beer garden to the rear of 'Johnno's Bar' is development and is so is it exempted development.

Statutory Provisions

Relevant Statutory Legislation

As per the documentation submitted with the subject application, a beer garden and bbq area was constructed in 2014 which was located to the rear of the premises. A letter of verification from the previous owner of the property has been submitted to this effect.

During the COVID 19 pandemic it is submitted that this area was enlarged as per the existing structure on the site.

Planning and Development Act 2000, as amended

In order 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.

Exempted Development

4.—(1) *The following shall be exempted developments for the purposes of this Act—*

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

The subject application was submitted to the Planning Authority under Section 5 of the Planning and Development Act 2000, as amended. Section 5 set out consideration in relation to a declaration and referral on development and exempted development.

Section 5 (6) - (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in *paragraph (a)*.

Section 5 (7) - A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with *subsection (6)(c)*.

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, 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 enlargement of an outdoor seating area built to comply with Covid restrictions at the Johnno's Bar, Quin Road, Ennis, is considered development and if so, is it exempted development.

Is or is not development

Section 2 of the Planning and Development Act 2000, as amended, provides a definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

It is considered that the enlargement of an existing beer garden to rear of pub to create what may be described as an outside amenity area are "works" as they are clearly acts of construction. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the construction of an enlarged beer garden to rear of pub to create an outside amenity area are works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.

Is or is not exempted development

The second question to be addressed is whether those development works constitute exempted development.

Given the assortment of tables, bar stools and other seating areas provided within the 'beer garden', the likelihood is that patrons of the premises may consume their drinks within this space. I note a decision of An Bord Pleanála under ABP ref. 304059-19 within which such a scenario was considered to be development and not to be exempted development. I note the finding of the Inspector that "the smoking area / beer garden would constitute an extension to the internal seating area of the existing public house". I concur with that assessment and find it applicable to the subject premises.

I further note the decision of the Board under ABP Ref RL2986 that the conversion of a former keg store to a smoking area was a material change of use as it involved the extension of the footprint of the public area of the public house and involved consequent intensification of use which had material consequences in relation to the planning of the area. The Board's order under RL3524 that the development would constitute an extension to the internal seating area of the existing public house, and, having regard to the Supreme Court judgement in Michael Cronin (Readymix) Ltd - v - An Bord Pleanála (Supreme Court Appeal No. 304/2010, 30th May 2017) an extension is a development that does not come within the exemption afforded by Section 4 (1)(h) of the Planning and Development Act 2000, as amended.

The subject area formerly part of an undesignated parking area to the rear of the premises. This area is now part of an enlarged beer area. It is stated that the original beer garden was constructed in or around 2014. From a review of CCC records, there is no evidence of planning permission having been granted for such a development. As it stands, this area (prior to construction of the original beer area and / or enlargement of same) would result in more frequent and likely more intense use will lead to greater noise levels. Given that the subject area is adjacent to residential properties, such a change creates material planning consequences. It is likely that the effects such as noise, fumes and late-night activity on the amenities of the surrounding properties. Having regard to the material consequences with respect to the proper planning and sustainable development of the area, it is considered that a material change of use has occurred, which amounts to development.

The Planning and Development Act and Regulations provide for circumstances where a material change of use, although amounting to 'development', may be exempted development. However, it is considered that there are no circumstances arising in the current case where the change of use would be exempted development.

Environmental Impact Assessment

In assessing this application I have had regard to the provisions of EU Directive 2014/52/EU (which amends EU Directive 2011/92/EU), and which has been transposed into Irish legislation by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (SI No. 296 of 2018). The subject development does not fall within the mandatory requirements for EIA as set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. I therefore consider that the proposal constitutes a sub-threshold development and note the requirements of Article 103 (1)(a) and (b) of the Planning and Development Regulations 2001, as amended. As such having regard to the nature and scale of the development as constructed and the nature of the receiving environment I consider that there is

no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment

The development as constructed is located within an established residential area and comprises the construction of a wall.

Having regard to:

- the small scale and domestic nature of the development,
- the location of the development in a serviced urban area so that any construction surface water runoff will be managed via the existing drainage system,
- the consequent absence of a pathway to the European site,

it is considered that the development as constructed would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Conclusion

It is considered that the enlargement of a smoking / beer garden to the rear of the public house, which in my opinion is to create an outside amenity area directly associated with the operation of the public house is development and are not exempted development.

Note: the subject section 5 declaration did not seek a declaration in relation to the original beer garden. It is stated that in the agent's opinion, this is statute barred. While the Planning Authority may be precluded from taking enforcement action, this does not render the structure "de facto" authorised. Therefore the enlargement / intensification of which I would consider to be an existing unauthorised structure, would require the benefit of planning permission.

Recommendation

The following question has been referred to the Planning Authority:

Whether the enlargement of existing beer garden to the rear of 'Johnno's Bar' is development and if so 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, 1963, as amended,
- (b) The works and times in which they were constructed as indicated in submitted documents received by the Planning Authority on 1st July 2022.
- (c) The forms of exempted development as set out in Schedule 1 and Schedule 2, of the Planning and Development Regulations 2001 (as amended)

(d) The restrictions on Exempted Development as set out in Article 9 of the Planning and Development Regulations 2001 (as amended).

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

The enlargement of existing beer garden to the rear of 'Johnno's Bar' constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended

the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.

The said development does not constitute exempted development as there are no exempted development provisions in either the Planning & Development Act, 2000, as amended or the Planning & Development Regulations 2001. Further it is considered that the said works result in an intensification of an unauthorised structure on the site, namely the original beer garden.

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, as amended, hereby decides

The enlargement of existing beer garden to the rear of 'Johnno's Bar'

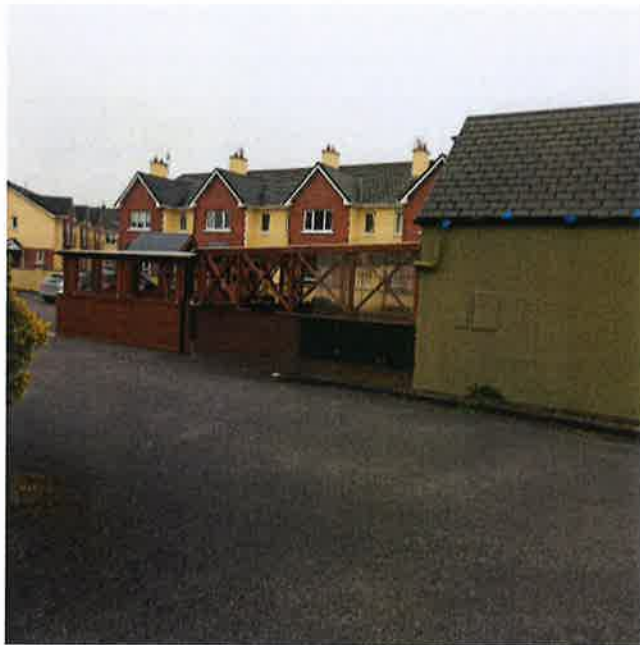
is development which is not exempted development



Fiona Barry
Executive Planner
Date: 25.07.2022



Helen Quinn
A / Senior Planner
Date: 27-07-22





















COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Donagh Vaughan
Johnno's Bar
c/o Brian Foudy & Associates
Osprey House,
Carmody Street,
Ennis,
Co. Clare.

4th July 2022

Section 5 referral Reference R22-46 – Donagh Vaughan - Johnno's Bar

Is the enlargement of the existing beer garden at the rear of Johnno's Bar, Quin Road, Ennis, Co. Clare considered to be development and if so, is it exempted development?

A Chara,

I refer to your application received on 1st July 2022 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

Mark Kerin
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

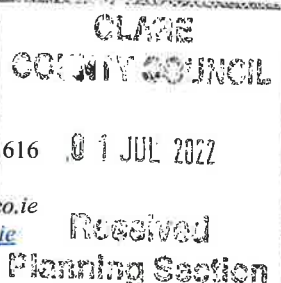


P07

**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 01 JUL 2022
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	Donagh Vaughan <hr/> Johnno's Bar <hr/> Quin Road <hr/> Ennis <hr/> Co. Clare
(b) Telephone No.:	0656893565
(c) Email Address:	brian@foudyconsulting.ie
(d) Agent's Name and address:	Brian Foudy <hr/> Brian Foudy & Associates Ltd <hr/> Osprey House, Carmody Street, <hr/> Ennis <hr/> Co. Clare

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?*

Can the enlargement of existing beer garden at the rear of Johnnos Bar, Quin Road, Ennis
 be considered exempt development.

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

The beer garden was originally developed in 2014 - please see letter attached from Michael Dennehy who was the previous owner. In my opinion the original beer garden is statute barred.

In order to comply with stringent covid separation distancing measures, the garden was enlarged like most pubs in the country. The owner has not recieved any noise complaints from neighbours, and

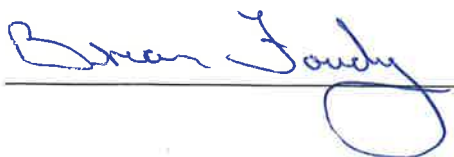
this would be considered a well managed premises. A warning letter was recieved from Clare County Council on 27th April 2022.

- (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)

Osi Map and photos

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Johnno's Bar Quin Road Ennis 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):	Owner
(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>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	No
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	11-501
(h) Date on which 'works' in question were completed/are likely to take place:	Completed by 01st April 2022

SIGNED:



DATE: 01-07-2022

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:	



To whom it may concern,

10/5/22

I can confirm as proprietor of Johnnos pub on the Quin Road from 2006 to 2019, that we developed a beer garden in May 2014, which included seating, tables, barrels, stools and an area for an outside bar and barbeque.

This was done to cater for the World Cup in 2014.

If you have any questions I can be contacted on

Regards,

Michael Dennehy.





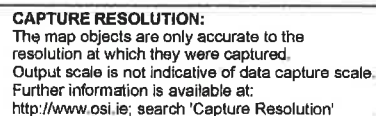


677008

76578



LEGEND:
<http://www.osi.ie>;
 search 'Large Scale Legend'



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



01/07/2022 14:50:11

Receipt No. : L1CASH/0/334794

***** REPRINT *****

DONAGH VAUGHAN
JOHNO'S BAR
C/O BRIAN FOUDY & ASSOCIATES
OSPREY HOUSE CARMODY ST
ENNIS, CO CLARE

COMHAIRLE

AN CHLÁIR

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

Total : 80.00 EUR

Tendered :
CHEQUES 80.00

Change 0.00



Issued By : L1CASH - Colm Murphy
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E