



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Lukasz Batyra  
1 Cloughleigh Road  
Ennis  
Co. Clare**

**24th October 2023**

**Section 5 referral Reference R23-66 – Lukasz Batyra**

Is the construction of a kitchen extension to the rear of the property development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st August 2023 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.: R23-66**



**Comhairle Contae an Chláir  
Clare County Council**

**Section 5 referral Reference R23-66**

**Is the construction of a kitchen extension to the rear of the property development and if so, is it exempted development?**

**AND WHEREAS, Lukasz Batyra** 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) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The works as indicated in submitted documents from the referrer.

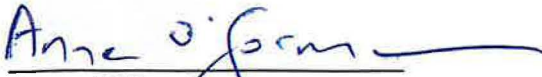
**And whereas Clare County Council has concluded:**

- (a) The construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare 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 of the construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare, is exempted development having regard to Class 1 of Part 1 of Schedule 2 of 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 construction of a single storey extension to the rear of the existing dwelling at 1 Cloughleigh Road, Ennis, Co. Clare **constitutes**

development which is exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, appearing to read 'Anne O'Gorman', with a long horizontal flourish extending to the right.

Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate

24th October 2023

**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: 82604

Reference Number: R23-66

Date Referral Received: 21st August 2023

Further Information Received: 17th October 2023

Name of Applicant: Lukasz Batyra

Location of works in question: 1 Cloughleigh Road, Ennis, Co. Clare

**Section 5 referral Reference R23-66 – Lukasz Batyra**

Is the construction of a kitchen extension to the rear of the property 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) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The works as indicated in submitted documents from the referrer.

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

- (a) The construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare 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 of the construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare, is exempted development having regard to Class 1 of Part 1 of Schedule 2 of 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 Gareth 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 construction of a single storey extension to the rear of the existing dwelling at 1 Cloughleigh Road, Ennis, Co. Clare is **considered development** which is **exempted development**.

**Signed:**

  
\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER**



**Date:**

**24th October 2023**

**CLARE COUNTY COUNCIL  
SECTION 5 DECLARATION OF EXEMPTION APPLICATION  
PLANNERS REPORT (2)**

<b>FILE REF:</b>	<b>R23-66</b>
<b>APPLICANT(S):</b>	<b>Lukasz Batyra</b>
<b>REFERENCE:</b>	<b>Is the construction of a kitchen extension to the rear of the property is development and if so, is it exempted development?</b>
<b>LOCATION:</b>	<b>1 Cloughleigh Road, Ennis, Co. Clare</b>
<b>DUE DATE:</b>	<b>5<sup>th</sup> November 2023</b>

**Introduction**

The following Further Information request was issued to the applicant on 21<sup>st</sup> August 2023:

1. Please provide the planning status of the existing domestic garage which adjoins the dwellinghouse and confirm the measurements (area, height, length) of the structure.
2. Please provide the following details in relation to the proposed kitchen extension for further consideration. Namely:
  - (i). Please confirm the exact location of the proposed extension at the rear of the dwelling by way of the submission of a site layout map for further consideration.
  - (ii). Please confirm that the proposed ground floor extension shall be a distance of not less than 2 metres from any party boundary.
  - (iii). Please confirm that the height of the walls of any such extension shall not exceed the height of the side walls of the house.
  - (iv). Please submit details in relation to the proposed windows of the proposed extension taking into account that any windows shall not be less than 1 metre from the boundary it faces.

**The following question has been referred to the Planning Authority:**

*Whether the construction of a kitchen extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare is development and if so, is it exempted development?*

**Assessment**

**Item 1:**

An opinion regarding the exemption of the proposal from planning permission was received as part of the response from Mr. Mark Hennessy, Chartered Building Engineer and Surveyor who advises that the existing garage which adjoins the dwellinghouse pre- dates the requirement for planning. The letter is dated 9<sup>th</sup> February 2019. He further advises that it is of his opinion that

said structure will require to be replaced in the near future. The applicant advises that the measurement of the structure are as follows:

- Length: 9m
- Width: 4.4m
- Height: 2.9m

The Planning Authority notes the aggregate measurements received of the proposed development is below 40sqm.

**Item 2:**

The site layout plan that was received indicates the proposed location for the proposed development. The applicant, in his cover letter, has confirmed that same will not be less than 2m from any boundary, the height shall not exceed the height of the side walls of the house and that the windows shall not be less than 1m from the boundary it faces. The Planning Authority has taken note of the response and considers that any amendments to same is unauthorised.

**Conclusion:**

The following question has been referred to the Planning Authority:

*'Whether the construction of a kitchen extension to the rear of the property is development and if so, is it exempted development?'*

**The Planning Authority in considering this referral had regard to:**

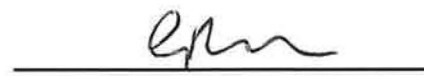
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended ,
- (c) Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The works as indicated in submitted documents from the referrer.

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

- (a) the construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare 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 of the construction of a single storey extension to the rear of the property at 1 Cloughleigh Road, Ennis, Co. Clare, is exempted development having regard to Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

Now therefore Clare County Council (Planning Authority), hereby decides that the construction of a single storey extension to the rear of the existing dwelling at 1, Cloughleigh Road, Ennis, Co. Clare is development and is exempted development.

  
\_\_\_\_\_  
**Graduate Planner**  
**Date: 20th October 2023**  
\_\_\_\_\_  
**Senior Executive Planner**  
**Date: 24/10/23**

Due: 5 Nov. 23



1 Cloughleigh Road,

Ennis

Co. Clare

17/10/2023



Dear Brian.

To address point no.1. I have included a letter of opinion from an Engineer.

The measurements of the garage are 9m long, 4.4m wide, The garage is 2.9m tall.

I have also included a site layout plan and I can confirm that the proposed extension

Will not be less then 2 metres from any party boundary, that the hight will not exceed

The hight of the house and that the proposed windows shall not be less than 1 meter

From any boundaries.

Your Sincerely,

Lukasz Batyra

**Mark Hennessy** MB Eng. CBuild E. MCABE

Chartered Building Engineer  
& Surveyor



## **OPINION OF EXEMPTION FROM PLANNING PERMISSION**

I, Mark Hennessy, Chartered Building Engineer aged 18 years and upwards do hereby certify as follows:

1. I am a Chartered Building Engineer and a member of the Chartered Association of Building Engineers.
2. I have worked on my own account as an engineer for over 10 years.
3. I am retained by Nicholas Nolan Solicitors to furnish an opinion on Planning matters in respect of the works carried out (the Relevant Works) at No. 1 Cloughleigh Road, Ennis, Co. Clare V95 ADX5.
4. I have been informed through local knowledge that the original 33 No. Cloughleigh houses consisted of a mixture of thatched and galvanised roofs with two rooms and two windows. These were replaced in the mid 1950's by Ennis Urban District Council with a new scheme of 24 No. houses costing £37,000 to construct, consisting of three bedrooms, with two bedrooms having fireplaces and a separate front sitting room, which had the advantage that it could be used as an additional bedroom for the larger families. The major advantage of these houses was the long garden.
5. The 24 No. houses constructed in the mid 1950's pre date the Planning Act (1<sup>st</sup> October 1964). I am informed that the garage extension at the gable end of No. 1 Cloughleigh Road was constructed around the same time as the houses but certainly before the 1<sup>st</sup> October 1964. There is a car repair pit in the floor of this garage and a car repair business was conducted from here. At any rate the Local Authority would have been aware of this venture.
6. I visited the offices of Clare County Council on Wednesday 06/02/2019 and inspected both the physical and computerised versions of the Planning Register, I found no Planning Ref. No. entered into this property, therefore, there is no Planning File.

7. Having visited the site and having inspected the Relevant Works (which I did not design or supervise the construction of) I am of the opinion that the relevant development i.e. garage pre dates the Planning Act of the 1<sup>st</sup> October 1964. This garage has all the tell tale signs of a structure constructed in the late 50's/early 60's. The roof, fascia, soffit, windows and doors will all require replacing in the not too distant future. Wall construction consists of 6" concrete block on edge (probably cast on site).
8. The map (reddish orange in colour) accompanying the Transfer Order stating 'Ennis U.D.C. to Tracey coloured Red' was prepared on a working drawing for Cloughleigh Housing Scheme. The drawing proper (red orange) would have been prepared prior to the commencement of the Cloughleigh Housing Project. It would appear that this working drawing minus the said garage has been used for identification purposes in the 'Leasehold interest in the said dwelling vested in John Tracey by the Lease dated 29<sup>th</sup> September 1967'.
9. This opinion is based on visual inspection carried out and takes no account of works covered up.
10. This opinion is issued solely for the purposes of providing evidence relating to Planning matters at No. 1 Cloughleigh Road, Ennis, Co. Clare and is not a report on the condition or structure of the relevant development nor does it warrant, represent or take into account any matters other than those referred to herein.

*Dated the 9<sup>th</sup> day of February 2019*

*Signed*

*Mark Hennessy, M.B. Eng. C/Build. E. M.C.A.B.E.  
Chartered Building Engineer*





## The Property Registration Authority An tÚdarás Clárúcháin Maoine

### Land Registry Sealed and Certified Copy Folio (& Filed Plan)

MHP SELLORS LLP SOLICITORS  
DX 25012  
ENNIS

**This page forms part of the official document. Do not detach.**

**Folio Number:** [REDACTED]  
**Application Number:** P2023LR116181Q  
**Your Reference:** MN/CS/Batyra.M23/97

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of **dealings pending** (if any) on the enclosed folio/filed plan are listed in the **Schedule** below.

  
An officer duly authorised by the Property Registration Authority.



### Schedule

#### Notes:

1. Filed plans should be read in conjunction with the Register. The description of the land in the Register or on the filed plan is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act 1964, as substituted by Section 62 of the Registration of Deeds and Title Act, 2006).
2. Filed plans greater than A3 in size may be provided as separate A3 tiles with an overlap and print gutter. When aligning the tiled sheets, customers are advised to use the underlying topographical detail.
3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

**Land Registry****County Clare****Folio [REDACTED]****Register of Ownership of Freehold Land****Part 1(A) - The Property**

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured Red as plan(s) DM3NK on the Registry Map, situate in the Parish of Drumcliff, in the Townland of CLOGHLEAGH, known as 1 CLOUGHLEIGH ROAD, ENNIS, CO. CLARE, V95 ADX5, in the Barony of ISLANDS, in the Electoral Division of ENNIS No. 1 URBAN.</p> <p>The Registration does not extend to the mines and minerals</p>	<p>From Folio [REDACTED] Grounds Rents Act</p>



## Land Registry

County Clare

Folio [REDACTED]

## Part 2 - Ownership

Title ABSOLUTE

No. The devolution of the property is subject to the provisions of Part  
II of the Succession Act, 1965

- |   |   |   |
|---|---|---|
| 1 | <del>03 JAN 2018</del><br><del>D2018LR003631R</del> | <del>CARMEL PYNE of 20 Maryborough Court, Douglas, County Cork is</del><br><del>full owner.</del> |
|   | Cancelled   | D2019LR039988J  |
|   |   | 19-MAR-2019   |
| 2 | 19-MAR-2019<br>D2019LR039988J                       | LUKASZ BATYRA of 1 Cloughleigh Road, Ennis, County Clare is<br>full owner.                        |

## Land Registry

County Clare

Folio [REDACTED]

## Part 3 - Burdens and Notices of Burdens

No.	Particulars	
1	03-JAN-2018 D2018LR003631R	The property is subject to conditions specified in Instrument Number D2018LR003631R.
2	19-MAR-2019 D2019LR039988J	Charge for present and future advances repayable with interest. EBS DAC is owner of this charge.

533300 mE, 677790 mN

The Property  
Registration Authority  
An tÚdarás  
Clárúcháin Maoine



Folio: [REDACTED]

This map should be read in conjunction with the folio.

Registry maps are based on OSi topographic mapping. Where registry maps are printed at a scale that is larger than the OSi published scale, accuracy is limited to that of the original OSi map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see [www.prai.ie](http://www.prai.ie).

This map incorporates Ordnance Survey Ireland (OSi) mapping data under a licence from OSi. Copyright © OSi and Government of Ireland.

(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- ▽ Soak Pit



A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

**The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.** (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.





COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Lukasz Batyra  
1 Cloughleigh Road  
Ennis  
Co. Clare**

**13th September 2023**

**Section 5 referral Reference R23-66 – Lukasz Batyra**

**Is the construction of a kitchen extension to the rear of the property development and if so, is it exempted development?**

A Chara,

I refer to your application received on 21st August 2023 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I wish to advise that in accordance with Section 5 (2) (b) of the Planning & Development Act, 2000, as amended, the following further information is required:

1. Please provide the planning status of the existing domestic garage which adjoins the dwellinghouse and confirm the measurements (area, height, length) of the structure.
2. Please provide drawings of a site layout plan in relation to the proposed kitchen extension for further consideration to include the following:
  - (i). Please confirm the exact location of the proposed extension at the rear of the dwelling by way of the submission of a site layout map for further consideration.
  - (ii). Please confirm that the proposed ground floor extension shall be a distance of not less than 2 metres from any party boundary.
  - (iii). Please confirm that the height of the walls of any such extension shall not exceed the height of the side walls of the house.
  - (iv). Please submit details in relation to the proposed windows of the proposed extension taking into account that any windows shall not be less than 1 metre from the boundary it faces.

**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



Mise, le meas

  
Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate

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

<b>FILE REF:</b>	<b>R23-66</b>
<b>APPLICANT(S):</b>	<b>Lukasz Batyra</b>
<b>REFERENCE:</b>	<b>Is the construction of a kitchen extension to the rear of the property is development and if so, is it exempted development?</b>
<b>LOCATION:</b>	<b>1 Cloughleigh Road, Ennis, Co. Clare</b>
<b>DUE DATE:</b>	<b>15<sup>th</sup> September 2023</b>

**Site Location**

The site is located at 1 Cloughleigh Road, which fronts onto R-474-11. The site comprises of an existing end of terrace dwellinghouse with adjoining garage to the side rear.

**Recent Onsite Planning History**

There is no recent planning history on site.

**Background to Referral**

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Lukasz Batyra, the stated owner of the property.

The applicant is seeking a Section 5 Declaration as to whether the construction of a kitchen extension to the rear of the property is development, and if so, is it exempted development?

The stated area of the proposed development is noted as being 16sqm and its proposed location is to the rear of the dwellinghouse. Owing to a site visit which took place on 4<sup>th</sup> September 2023 it was noted that there is domestic shed adjoining the dwellinghouse and there are concerns in relation to the proposed location of the proposed kitchen extension and the proximity of same to the neighbouring / boundary wall and its potential encroachment on the open space of the site. Furthermore, it is currently unknown what size the domestic garage is and therefore whether the proposed extension will surpass 40sqm in total.

## Statutory Provisions

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

To assess this proposal, regard must 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.*

### 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.

#### Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 1

*The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.*

1. (a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

(b) *Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.*

(c) *Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.*

2. (a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

*(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*

*(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.*

*3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

*4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.*

*(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.*

*(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.*

*5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.*

*6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*

*(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*

*(c) Where the house is detached and the floor area of the extension aboveground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.*

*7. The roof of any extension shall not be used as a balcony or roof garden.*

**Under Article 9 (1) of the same Regulations,** *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,*
- (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vii) 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

### Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether the construction of a kitchen extension to the rear of the property is development and if so, is it exempted development?

### Particulars of the Development

- Floor Area: 16sqm
- Height: Single storey
- Location: To the rear of the dwelling however it is unknown if the proposal is to the west or east of the rear.
- Status: Not commenced

### Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 1

*The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.*

The extension is located to the rear of the existing dwelling house.

1. (a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

The house has been previously extended by way of an adjoining domestic garage.

(b) *Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.*

The house is end of terrace and the proposed extension is indicated as being 16sqm.

(c) *Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.*

The extension is located on the ground floor.

2. (a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

There is a domestic garage to the side / rear of the dwellinghouse which does not appear to have the benefit of planning permission according to the planning register. It is unknown if the floor area of the proposed extension, in- combination with the domestic garage, exceeds the 40m<sup>2</sup> threshold. Further information is required in this regard.

(b) *Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*

The house is end of terrace.

(c) *Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.*

The proposed extension is located on the ground floor area only.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Further information is required in this regard.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

Not applicable.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

Further information is required in this regard.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

All of the dimensions of the proposed extension have not been provided for, further information required.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

The dwelling occupies a generously sized residential site and the applicant has indicate that the garden will remain in excess of 25m<sup>2</sup>.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

Further information is required in this regard.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

Not applicable – single storey proposal.

*(c) Where the house is detached and the floor area of the extension aboveground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.*

Not applicable.

*7. The roof of any extension shall not be used as a balcony or roof garden.*

Not applicable.

### **Conclusion**

Having regard to the above I consider that the proposed extension constitutes works and that in order to conclude if the proposed development benefits from exempted development status under Part 1, Class 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), further information is required.

### **Article 9 of the Planning and Development Regulations 2001, as amended**

Under Article 9 (1) of the same Regulations, *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*

The proposal does not appear to contravene a condition of any previous permission.

*(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,*

No access points onto the public road network are affected by the proposal.

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

The proposal does not create a traffic hazard or obstruct road users in the area.

*(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*

The proposal site is not located in a solar safeguard zone.

*(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,*

Not applicable to the proposal

*(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies*

Not applicable to this proposal

*(vi) 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.*

The proposed extension is located to the rear of the dwelling and there is very limited visibility of same from the public road. The proposed will not have a negative impact on the character of visual amenities of the area.

*(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,*

Not applicable to this proposal

*(viiiA) 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,*

There are no known archaeological features in the vicinity of the proposal site.

*(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,*

The proposed development will not have a significant effect on European sites. A screening for Appropriate Assessment and determination is attached to this report.

*(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."*

Not applicable in this instance

*(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,*

Further information is required in this regard.

*(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,*

Not applicable in this instance

*(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,*

Not applicable in this instance

*(xi) obstruct any public right of way,*

Not applicable in this instance

(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.

The development site is not within an Architectural Conservation Area.

### **Conclusions**

The following question has been referred to the Planning Authority:

*"Whether the construction of a kitchen extension to the rear of the property is 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) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer.

**And whereas Clare County Council (Planning Authority) has concluded that Further information should be issued:**

1. Please provide the planning status of the existing domestic garage which adjoins the dwellinghouse and confirm the measurements (area, height, length) of the structure.

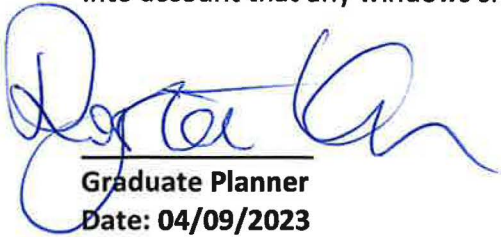
2. Please provide <sup>drawings + a site layout plan</sup> the following details in relation to the proposed kitchen extension for further consideration. ~~Namely to include the following:~~

(i). Please confirm the exact location of the proposed extension at the rear of the dwelling by way of the submission of a site layout map for further consideration.

(ii). Please confirm that the proposed ground floor extension shall be a distance of not less than 2 metres from any party boundary.

(iii). Please confirm that the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(iv). Please submit details in relation to the proposed windows of the proposed extension taking into account that any windows shall not be less than 1 metre from the boundary it faces.

  
Graduate Planner  
Date: 04/09/2023

  
Senior Executive Planner  
Date: 04/09/23



Site Visited 4<sup>th</sup> September 2023

Section 5 Declaration – R23-66





COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

Lukasz Batyra  
1 Cloughleigh Road  
Ennis  
Co. Clare

21/08/2023

**Section 5 referral Reference R23-66 – Lukasz Batyra**

Is the construction of a kitchen extension to the rear of the property development and if so, is it exempted development?

A Chara,

I refer to your application received on 21st August 2023 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

**Brian Fahy**  
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



# COMHAIRLE

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

21/08/2023 11:32:13

Receipt No. : L1CASH/0/353468

\*\*\*\*\* REPRINT \*\*\*\*\*

LUKASZ BATYRA  
1 CLOUGHMEEGH ROAD  
ENNIS, CO. CLARE



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

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](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://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	Lukasz Batyra, 1 Cloughleigh Road, Ennis, Co. Clare
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	

## 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 construction of a kitchen extension to the rear of the property exempt from planning permission?

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

I would like to build a 4 metre x 4 metre single story kitchen extension to the rear of the property. It will not be visible from the road and the garden space will still be above 25m<sup>2</sup> so I just want to be sure this construction is planning exempt.

- (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)*

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	<u>1 Cloughleigh Road</u> <u>Ennis</u> <u>Co. Clare</u>
(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?	<u>No</u>
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	<u>Owner</u>
(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)?:	<u>Yes</u>
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	<u>No</u>
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	<u>No</u>
(h) Date on which 'works' in question were completed/are likely to take place:	

SIGNED:



DATE:

21.08.2023

### **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: .....	

[illegible]

Ennis Municipal District, Áras Contae an Chláir, New Road, Ennis, Co. Clare  
T: 065 6821616 F: 065 68 21915  
E: [ennismunicipaldistrict@clarecoco.ie](mailto:ennismunicipaldistrict@clarecoco.ie) W: [www.clarecoco.ie](http://www.clarecoco.ie)

Designed by: T.S.	Drawing No.:  EMD-17-38-01	Rev.
Drawn by: T.S.		
Approved by: F.O.D.		
Scale: 1/1000 @ A3		
Date: 02/08/2017	Location: Enns Area Office	