

AN BORD PLEANÁLA
LDG- 046591-21
ABP-
13 DEC 2021
Fee: € 240 Type: Cheque
Time: 10:38am By: Hand

Kieran O'Brien

Associates Solicitors

Principal: Kieran O'Brien, B.A., D.L.S.
Solicitor: Daniel Kreith B.C.L

25 Barrington Street, Limerick. DX N0: 3051 LK

**Appeals Section,
An Bord Planeala,
64 Marlborough Street,
Dublin 1**

Our Ref: KOB/AR/MAD001001

10th December 2021

**RE: R21-59, whether the erection of a 1.2M Fence at Riverdale, Westbury, Co. Clare is considered development and if so, is it exempted development.
Planning Authority: Clare County Council**

Applicant: Gerard Madden, of Greengate House, Carr Street, Limerick

Dear Sir/Madam,

We write to advise that we act for Mr. Gerard Madden. the Appellant, herein who has instructed us to lodge an Appeal against the above referenced Decision made by Clare County Council.

The Appellant's application has been refused on the basis of a clear and apparent mistake of fact. Clare County Council had concluded that the land was not exempted development on the basis that Article 9 (1) (a) (x) applied as they contended that this land was habitually open to the public for recreational use within the last ten years. This is entirely incorrect and the land has not been used for public recreation at any time within that period. There is no evidence available whatsoever that there has been any public use of these lands within the last ten years.

The land in question forms part of a 14 acres holding, which is wholly comprised in Folio CE59781F, purchased by my Client circa 2018 at public auction, consigned by the Receiver over Greenband Investments Ltd (In Receivership), which had been in receivership since the 4th of February 2011. This land was purchased free of encumbrances, easements or any other contrary interest. The Applicant is unaware of any other person who contends to have rights over these lands and none such are registered over the lands.

These lands were held to the exclusion of all others by the Receiver. The Appellant has since held the lands to the exclusion of all others. Any entry into the lands without permission would as such be a trespass and therefore contrary to law. The Appellant has not received any requests for the use of this land for the public for recreational use and indeed it is unfit and unsafe for that purpose. As far as the Appellant is aware there has been no public use of this land and no evidence to the contrary has been furnished to him. In accordance with fair procedures, the only information allowable to be considered by Clare County Council in connection with the determination of whether the land is subject to Article 9 (1) (a) (x), is that which he has been made aware of in the course of the within application. Therefore the only evidence before them

has been that there was no such use in accordance with Article 9 (1) (a) (x) at all in the relevant period. In these circumstances it is apparent that the determination was erroneous.

The lands in question have been assigned different zonal planning categories within the Clare County Development Plan. Approximately 4 acres of the land is designated as public open space in the Clare County Development plan of January 2017, marked "OB3" in the Athlunkard Settlement Plan, a copy of which we enclose for ease of reference.

The remaining portion of the lands bordering the Athlunkard Settlement have been categorized as agricultural in nature and this is the area in which the proposed agricultural fencing is proposed to be erected. 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. The only means of ingress or egress into the Lands is through Westbury. No such entrants have sought permission since the Appellant has purchased the Lands.

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). There is no means of access to these lands other than by putting oneself at risk of injury in traversing the referred to barriers. It cannot be considered to be land accessible to the public and used recreationally where this is not met out in fact and would simply be an impossibility.

It is contrary to logic that this land would be designated as open space in the circumstances of its use to date. If the relevant lands were to be open space, then the Council would not have agreed to the construction of a 400m fence, cutting the area off from the actual Open Space designated in P02/2035. It is clear therefore that this land is already inaccessible to the public and has been intentionally demarcated as such by Clare County Council. It is important to note that this fence was erected without planning permission as it was designated exempted development. This was the last user prior to the Appellant having purchased the lands three years ago, since then there has been no public use of the lands whatsoever. It follows therefore that it is not possible for Article 9 (1) (a) (x) to apply in respect of the lands subject matter of the within application.

The exact date of this work, costs, discussions, notes, site photographs, works documentation and correspondence relating to this fence are subject to a freedom of information request to Clare County Council.

A recently erected fence also blocks a right of way from our Client's site to the public road (please see yellow right of way on the left of our site on the attached registry map).

Clare County Council accept that they cleared part of the 14 acres of the vegetation scrub, and landscaped the enabling area that was used to construct the adjoining estate, however, when directly requested by our Client, they failed to furnish to him any proof if all or any of the 9 acres outside the Settlement was being used habitually for recreational purposes before May 2009, which we understand was the operative date or cut-off point for demarcating the area. It

has also been accepted by the Council that this remaining land is overgrown with bushes and scrub. It is therefore unsuitable for public use as indeed it has not been used for that purpose.

The Appellant has requested any and/or all documentation in connection with any public recreational use with the lands in question and also made a Freedom of Information request in connection with same. No such documentation has been provided. It is contended on behalf of the Appellant that this is because it has seen no such use within the last ten years and therefore no such documentation exists.

The lands in question are not covered under 99/2505, 02/700 and 02/2035, we understand this does not apply to the 9 acres.

The only planning permission relevant to this area is under Planning Reference 072235 which permitted the construction of 103 houses, on the land in question, however, this was withdrawn because of issues with the road access for the 103 house development and the inadequate sewage systems in the area. The area was never intended to be public open space, as we understand it.

The fact that Clare County Council constructed a fence between 2011 and 2017, approximately 400 metres long around the perimeter of the land and did not include it as public open space in their settlement plans, is indicative of the fact that this land was not earmarked as part of the original plan and, as such, does not come within Article 9(1)(a)(i) of the Planning Development Act, 2001.

Again, as we understand it, Article 9(1)(a)(ii) of the Planning act does not apply because no new access is being constructed.

Article 9(1)(a)(iii) does not apply as no new access or change of use applies. The land is farming land and no intensification of farming is being applied for. This land has always been accessed through Westbury.

The Appellant submits that Clare County Council has confused the two different use designations, for the total site area due to misunderstanding, in relation to the part known as OS3, which we would set out below;

- (i) Their apparent failure to follow correct procedures in designating the area known as OS3 as a public open space in the Clare County Development plan;
- (ii) Their apparent failure to follow the correct procedures in landscaping part of OS3 and;
- (iii) Their failure to adduce any evidence that this area was used habitually for recreational purposes on or before May 2009.

In connection with point (iii) above, the Appellant cannot establish beyond his own state of knowledge and that obtained through his efforts to ensure that there was no public recreational use in the last ten years. There is no evidence of any public recreational use of these lands. It is not possible to prove a negative beyond this. This has been stated variously by the Applicant and is apparent from the Land Registry Compliant Ordinance Survey maps submitted as part of the Application.

In the decision of *McGoldrick v an Bord Pleanála* [1997] 1 IR 497 the Court accepted that Ordinance Survey Maps could be as evidence to determine the use of lands. Also in *McGoldrick* the Court stated that in order to be in compliance with fair procedures that a statement of fact on an application must be responded to by way of a request for further information, rejection of what has been contended, or acceptance. Neither of the former has occurred in this application and the only evidence available is that the land has not been used for public recreational use at all within the last ten years. Per the decision in *McGoldrick*, if the Council is asserting their determination is correct in fact then it can only be on the basis of information made known to the Applicant. In the instance of this application and appeal the only evidence has been that there has been no such use in the last ten years. It is clear therefore that this determination must be erroneous and as such the sought exemption should have been granted.

Finally, we enclose Office Account Cheque in the sum of €220.00, representing the fee involved in lodging this Appeal.

You might kindly acknowledge safe receipt and furnish us with an Appeal number, once same has been processed.

Yours faithfully,


O'Brien & Associates

Encls.

Applicant: Gerard Madden
Greengate House
Carr Street
Limerick

Date: 09.03.20

To: An Bord Pleanála, 64 Marlborough Street, Dublin 1

Planning Authority: Clare County Council

RE: **R20-4** 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.

Dear Sir/Madam,

I am writing to you to make an APPEAL against Clare County Council's on the above decision.

The land in question was sold by public auction in Sep' 17 by a receiver for Greenband Investments Ltd. This was land what was leftover from the original agricultural farm of about 12 acres. An acre of this land was transferred to Clare County Council to comply with Open Space requirements as previously agreed (Clare County Council drawing no. 12-1106-07, see enclosed).

The receiver was appointed in Feb 2011. Some of this land had been used as an enabling site for the construction housing estate. The rest had been overgrown with bushes and scrub. Between 2011 and 2016 there had been many representations made to Clare County Council about the state of the land's dangerous condition of the enabling site, which was cleaned up around 2016. There was also a wooden fence constructed by Clare Council between the agreed open space and the agricultural land.

The receiver sold the land by public auction in Sep' 17.
The conveyancing was concluded in Dec' 18.

On the 29th May 2019 we attempted to complete the fencing off of our land. After we started the work we were approached by Ann Collieran of Clare County Council. She requested us to cease the work. She said there was a question of the land been open and amenity space for the last 10 years. She said she had to go back and look at the correspondence to see when the land had stopped been an enabling area. She has never come back to us to clarify this. She also told us this land was covered by Clare county Council public Liability Insurance that she also failed to confirm in writing. We sent her an email on May 30, 2019 which she has still failed to answer (Please see enclosed email "A" that we wrote to her). In the intervening period we also asked the Council the following questions and they failed to answer them.

16 Oct 2019

Dear Sir/Madam,

Thank you for letter dated 9/9/19 with regard to us constructing a 1.5m fence internally on this land.

Could you please clarify the permitted area of public Open Space on the map of our land attached. I also attach the Athlunkard Settlement Plan for reference which shows the top part (OS3) as open space.

16 Oct 2019

Dear Sir/Madam,

We wish to make a further query regarding our land as shown the attached map.

I requested to view of the original planning P02/2035 from planning. I could not see where the land in question (our land) was mentioned in condition 5 of this planning.

The land in question is clearly outside Red line on map outlining area in which planning was applied for (please see attached copies site layout and site location from P02-2035). Neither is the land in question to the south of blue hatched area. In other words I can not see where our land is marked as Open Space as specified in condition 5. Our land is not marked as open space on any plans in this planning application. Could you please clarify this?

The only planning permission that makes reference to our land is 072318 (planning for 103 houses on the land in question). From my understanding this planning was withdrawn because of issues with the flood plane.

18 Oct 2019

Dear Sir/Madam,

Could you please confirm that you served notice to the previous landowners of this land (outlined in red on the attached map) that you designated as open space the top of the land (OS3) as per the Athlunkard Settlement Plan (see attached).

Please refer to the act below.

"Planning and Development Act, 2000

14.—(1) Where a planning authority proposes to include, for the first time, a provision in a development plan relating to the preservation of a specific public right of way, it shall serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists."

5 Nov 2019

Dear Sir/Madam,

We are trying to find a planning application for the construction of the raised bank/mound and fence on top of this mound in the position marked blue on the mapped attached. The fence/mound is between our land (marked A on map) and the public space adjacent to BruachIn road. This raised bank and fence was there before we purchased it in 2017. I also attach a photo of it. Was this fence and mound exempt from planning?

We wish to address the points one by one as set out in the Council's letter to refuse the exemption.

(ii) With regard to section 4(1)(h) of the Planning Act 2000 the appearance of the Fence would not be inconsistent with the neighbouring housing estate as the fence would only be a continuation of the existing Council fence which already blends in and is acceptable by the neighbouring housing estate. If the existing Council's fence complies with section 4(1)(h), why would a continuation of the fence not comply? The fence will only be 1.2m high (below eye level) and will consist of green timber post and sheep wire, thus reducing the visual impact so far as possible. The wire will be well tensioned giving a nice neat appearance.

(iii) Neither the Council nor ourselves are aware of any letters served by the Council to the previous landowners of this land that this land was designated as Open Space according to section 14-(1) of the Planning and development act, 2000, which states,

"14.—(1) Where a planning authority proposes to include, for the first time, a provision in a development plan relating to the preservation of a specific public right of way, it shall serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists."

In the case where the Council has not served a notice as above to the previous owners then would NOT make the land in question designated open space. In condition 5 of planning P02-2035 the area marked in blue to the south is outside of our land so it does not apply.

(iv) The previous owner went into receivership on Feb 2011. Up to that date the land was been used as enabling area for the development for the housing estate. In 2011 the land went under the protection of the high court due the receivership process so you can't establish a right of way under such land. In conclusion the land was not habitually open or used by the public during the 10 years preceding this proposed fence.

Signed:

Gerard Madden
IM Properties Ltd

P07

CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLAIR

Planning Department,
 Economic Development Directorate,
 Clare County Council,
 New Road, Binnis,
 Co. Clare,
 P53DAP2

Telephone No. (065) 6821616
 Fax No. (065) 6892071
 Email: planning@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

I. 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 email: donieobyrne@yahoo.co.uk

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. The fence is shown on the enclosed maps.

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

We are seeking exemption to erect a timber post and sheep wire fence, 1.2m high on our site at Riverdale, Westbury. The positions of the proposed fence are marked in green on the enclosed site map. Fence 1 is 69m long and is positioned at the small roundabout at the north of the site. Fence 2 is 144m long and its position lines up with the site boundary in planning P02-2035 as shown on the site plans enclosed. This fence will continue from the existing Council fence (timber + wire mesh) as shown on the site map.

We are not aware of any notice served by Clare County Council to the previous owners of this land regarding designating the land as Open Space.

(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 Location Map
- ② Site layout Plan (showing fence in green)
- ③ Site Location Map showing our site, site boundary of P02-2035 and strip of land owned by Council
- ④ Site map from P02-2035

SCALE 1:1000

Plot Ref: 19714321

Drawn by: Donal O Byrne

Date: 17.01.2020



PROPOSED

FENCE 1 (Green Line)

69m long, 1.2m high

GATE

LAND OWNED
OUTLINED IN RED

FENCE as per boundary
outline on planning P02-2035

PROPOSED

FENCE 2 (Green Line)

144m long, 1.2m high

LAND OWNED by Council
OUTLINED IN BLUE

Existing Council Fence





COMHAIRLE CLARE
CONTAE AN CHLÁIR COUNTY COUNCIL

Registered Post

Mr. Gerard Madden
C/o Donal O'Byrne
Greengate House
Carr St
Limerick

13th February 2020

Section 5 referral Reference R20-4 the name of Gerard Madden
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.

A Chara,

I refer to your application received on 20th January 2020 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

Appeal by 12 Mar '20

Mise, le meas


Thomas Hogan
Senior Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúrthóireacht Forbairt Ghnoilleagrach
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.: R20-4



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R20-4 the name of Gerard Madden
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.

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 –

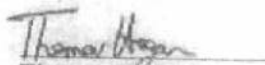
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (d) The planning history of the site including the permitted developments and associated open spaces areas, in particular planning reference no. P02/2035 and condition no.1 and 5 of same;
- (e) The details and particulars as submitted with the referral application.

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 development does not come within the scope of exemption afforded by Section 4(1)(h) of the Planning and Development Act 2000, as amended;
- (iii) The proposed fences, would not be exempted development as they would contravene conditions of a planning permission, namely, conditions number 1 and 5 of planning permission granted under planning reference no. 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;
- (iv) The proposed fences would result in the fencing off or enclosure of lands habitually open to or used by the public during the 10 years preceding such fencing or enclosure, for recreational purpose as a means of access to a place of recreational utility, being open space serving the adjoining housing development and as such the restrictions on exempted development as set out under Article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended, apply in this instance.

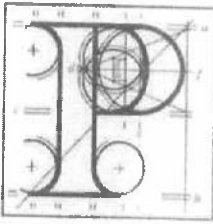
THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

the erection of a fence no. 1 and fence no. 2 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.



Thomas Hogan
Senior Staff Officer
Planning Department
Economic Development Directorate

13th February 2020



An
Bord
Pleanála

Inspector's Report ABP-306874-20

Question	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.
Location	Riverdale, Westbury, Co. Clare
Declaration	
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	R20-4
Applicant for Declaration	Gerard Madden.
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Gerard Madden.
Owner/ Occupier	Gerard Madden.
Observer(s)	None.
Date of Site Inspection	5 th May 2020.
Inspector	Brid Maxwell

1.0 Site Location and Description

- 1.1. This referral relates to a greenfield site located to the east of Riverdale Housing Estate in Westbury, Athlunkard Co Clare in County Clare and within the north-eastern suburbs of Limerick City. The Athlunkard River a tributary of the river Shannon River runs along the eastern boundary of the site and these lands form part of the floodplain. A constructed embankment with dense vegetation and trees is adjacent to the river. The River Shannon is located a short distance to the southwest. Access to the area is open and on the date of my site visit I noted recreational dog walkers in the area.
- 1.2. Photographs of the site and vicinity are appended to this report.

2.0 The Question

- 2.1. The question as posed is whether the erection of a fence 1.2m high at Riverdale Westbury is exempt from planning permission. The submission indicates that it is proposed to erect a timber post and sheep wire fence 1.2m high over two sections of land. The first area proposed to be fenced is 69m in length and is located at a small turning head and the second area 144m in length is to the south of this and would be a continuation of a fence on Council land to the south. The proposed fence follows the line of site boundary 02/2035.
- 2.2. Cover letter indicates that neither the Council nor the applicant are aware of any letters served by Clare County Council to the previous owners of the land indicating that this land was designated open space according to Section 14-1 of the Planning and Development Act 2000.

3.0 Planning Authority Declaration

3.1 Declaration

- 3.1.1 By order dated 13th February 2020 Clare County Council declared the following
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 development does not come within the scope of exemption afforded by Section 4(1)(h) of the Planning and Development Act 2000, as amended;
- (iii) The proposed fences, would not be exempted development as they would contravene conditions of a planning permission, namely, conditions number 1 and 5 of planning permission granted under planning reference no. P02/2035, and, therefore, the restriction on exemption under Article 9(a)(a)(i) of the Planning and Development Regulations 2001, as amended, applies in this instance;
- (iv) The proposed fences would result in the fencing off or enclosure of lands habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purpose as a means of access to a place of recreational utility, being open space servicing the adjoining housing development and as such the restrictions on exempted development as set out under Article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended, apply in this instance

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 erection of fence no 1 and fence no 2 at Riverdale, Westbury, Co Clare constitutes development which is not exempted development as defined within the Planning and Development Acts, 2000 (as amended) and associated regulations."

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 The Planner's report concludes that the erection of fence 1 would contravene conditions no 1 and 5 of Pl. Ref 02/2035. The proposal would result in fencing off of lands habitually open to or used by the public during the 10 years preceding such

fencing or enclosure for recreational purposes as a means of access to a place of recreational utility being open space serving the adjoining housing development.

3.2.2. Other Technical Reports

None

4.0 Planning History

19/30 Question 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

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.

- (v) 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."

07/2318 Application by Greenband Investments for the construction of 103 houses access roads and all associated site works together with alterations to previously approved planning ref no s P02-2035 and P02-700. Withdrawn.

07/2235 As above. Incomplete application.

04/1467 Application for permission for the construction of 166 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 approved planning P02/2035.

04/1301 Incomplete application

02/2035 McInerney Construction Ltd. Permission for 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 site works. Appeal Withdrawn

Condition 1 specified that the development to be carried out in accordance with plans and particulars submitted to the Planning Authority on 22 November 2002 as amended by particular of 24th June except where altered or amended by conditions of the permission.

Condition 5 No development shall occur in the designated open space areas including the open space area to south of the site hatched in blue colour on site layout plan drawing no 03-100A received by the Planning Authority on 24th June 2003.

02/700 Permission for 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.

PL03-120563 99/2505 McInerney Construction. Permission granted and modified following appeal of conditions.

98/1064 McInerney Construction Ltd. Permission for alteration to amenity area layout and the programme for its provision. Withdrawn.

UD19/32 Warning letter issued served 30th May 2019 regarding : The erection of a fence to land designated as open space associated with a residential development and restricting access to members of the public to lands habitually open to and used by the public as a recreational utility and rendering the area inconsistent with the use as open space as specified in permissions granted under the Planning Acts.

UD09/193 Non-compliance with conditions relating to PL02/2035

UD09/194 Non-compliance with conditions 02/700

5.0 Policy Context

5.1. Development Plan

The Clare County Development Plan 2017-2023 refers.

The referral site is within an area zoned open space OS3.

5.2. Natural Heritage Designations

The Lower River Shannon SAC is within 100m of the site.

The River Shannon and River Fergus Estuaries SPA is within 3km of the site.

Having regard to the nature and scale of the development subject of the referral, I am satisfied that no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1 Referrer's Case

6.1.1 The referral case as submitted to the Board outlines the following background.

- The land was sold by public auction in September 2017 by a receiver for Greenband Investments Ltd. and conveyancing concluded in December 2018.
- This was land leftover from the original agricultural farm of about 12 acres.
- An acre of this land was transferred to Clare County Council to comply with Open Space requirements as previously agreed. (Clare County Council drawing No 12-1106-07)
- Some of this land was used as an enabling site for construction of housing estate. The rest had been overgrown with bushes and scrub
- Between 2011 and 2016 there had been many representations made to Clare County Council about the state of the land's dangerous condition of the enabling site which was cleaned up around 2016. There was a wooden fence constructed by Clare County Council between agreed open space and agricultural land.
- On 20th May 2019, referrer attempted to complete the fencing of the land and was subsequently advised to cease work by Clare County Council.
- No clarity from Clare County Council regarding designation as open space or whether notice was served to the previous landowners of this land designated as open space within the Athlunkard Settlement Plan.
- With regard to Section 4(1)(h) of the Planning and Development Act 2000 the appearance of the fence would not be inconsistent with the neighbouring housing estate as the fence would be a continuation of the existing Council fence.
- The fence will only be 1.2m high and will consist of green timber post and sheep wire thus reducing visual impact. Wire will be tensioned giving a neat appearance.

- Neither the Council nor the referring party are aware of any letters served by the Council to the previous landowners of this land that this land was designated as open space according to Section 14(1). In condition 5 of PO2-2035 the area marked in blue to the south is outside the land so does is not relevant.
- In 2011 the land went under the protection of the high court due to the receivership process and a right of way could not be established. The land was not habitually open or used by the public during the 10 years preceding the proposed fence.

6.2. Planning Authority Response

The Planning Authority did not respond to the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

S.2 Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

S.3.(1) In this Act, “development” means, except where the context otherwise require, 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.

S.4(1)(a)-(l) sets out what is exempted development for the purposes of this Act.

7.2. Planning and Development Regulations, 2001

Article 6(1) 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 1.

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), or
- (b) Any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and limitations to same include:

- (1) the height of any new structure shall not exceed 1.2m or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2metres.

Article 9 (1) sets out the instances where development to which article 6 relates shall not be exempted development for the purposes of the Act including:-

- (a) If the carrying out of such development would
 - (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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. I am satisfied that the erection of fence walls within the definition of 'works' under section 2 of the Act and that the carrying out of such works is development as defined under section 3(1) of the Act and this is not disputed by the parties.

8.2. Is or is not exempted development

- 8.2.1 The referrer submits that the development is exempted development by virtue of Class 11 of Schedule 2 Part 1 of the Planning and Development Regulations 2001,

as amended which provides for "The construction erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –

(c) Any fence (not being a hoarding or sheet metal fence),"

The relevant condition and limitation being that the height of any new structure shall not exceed 1.2m in height.

I am satisfied that the proposed fence falls within the relevant conditions and limitations therefore it is appropriate to proceed to consider the restrictions on exemption.

8.3. Restrictions on exempted development

- 8.3.1. I note that the Council in its decision referred to conflict with the terms and conditions of permission reference (02-2035) however the first party notes the proposed fence lies outside the site boundary of 02-2035 and therefore this permission is not directly relevant to the considerations raised within the referral. I note that details of the planning history on these lands including layout plans for 99/2505 02/700 and 02/2035 clearly show the area now proposed to be fenced as public open space.
- 8.3.2. Article 9 details a number of restrictions on exempted development. That relevant to the current case 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.
- 8.3.3. The referrer refutes the assertions of the Council that the lands form part of open space and outlines that the lands had been used partly as an enabling site for the construction of the housing estate and the rest overgrown with bushes and scrub.
- 8.3.4. Having examined the submitted documentation and conducted a site visit, I would observe that as there is unfettered public access over this subject area and based on submitted details, the planning history and observation on site visit it is evident that the area functions as open space. The subject area is not enclosed or fenced and is *open to the public* and is contiguous to and open to a larger network of passive recreational open spaces extending to the north south and east. The site cannot be divorced from the wider area of open space of which it forms part merely be reason

of landownership. The applicant provides no evidence that the subject area has not been habitually open to the public during the last 10 years. The restrictions under article 9(1)(a)(x) therefore apply and the erection of a fence, as proposed, does not constitute exempted development.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the erection of a fence 1.2m high at Riverdale Westbury is or is not development or is or is not exempted development:

AND WHEREAS Mr Gerard Madden requested a declaration on this question from Clare County Council and the Council issued a declaration on the 13th day of February 2020 stating that the matter was development and was not exempted development:

AND WHEREAS Mr Gerard Madden referred this declaration for review to An Bord Pleanála on the 11th day of March 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 6 and 9 and class 11 under Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) That the erection of the proposed fence falls within the definition of works under section 2 of the Act and constitutes development within the meaning of Section 3(1) of the Act.
- (b) That the erection of the proposed fence falls within the scope of class 11 under Part 1 of Schedule 2 of the Regulations and under Article 6(a) of the regulations,
- (c) That, by reason of the said fence enclosing land habitually open to or used by the public during the 10 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 Schedule 2 of the Planning and Development Regulations, 2001.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the proposed erection of fencing at Riverdale Westbury is development and is not exempted development.

Brid Maxwell
Planning Inspector
1 July 2020

Phase I - House numbers 1 to 44 inclusive (as indicated on Drawing no. 3-101p received by the Planning Authority on 24th June 2003)

Phase II - House numbers 45 to 82 inclusive and 206 to 219 inclusive (as indicated on Drawing no. 3-101p received by the Planning Authority on 24th June 2003)

Phase III - House numbers 83 to 110 inclusive, House numbers 153 to 162; and House numbers 188 to 205 inclusive

Phase IV - House numbers 111 to 152 inclusive and house numbers 163 to 187 inclusive

No houses shall be erected on the second or any additional phase unless and until the Public Water Supply and Sewerage Treatment to the area has been upgraded and has been certified by the Sanitary Services Section of the Council as capable of serving the named phase, and the written agreement of the Planning Authority has been obtained.

5. No development shall occur in the designated open space areas including the open space area to south of the site hatched in blue colour on site layout plan drawing no. 03-100A received by the Planning Authority on 24th June 2003.
6. Before development commences, the applicant shall pay to Clare County Council a contribution towards the expenditure incurred by the Council in providing the public water supply in the area which work will facilitate the proposed development. **The contribution shall be calculated at the standard rate applying at the time of payment.** The current rate is €4200 per dwelling. This sum is separate and in addition to any fees that might be levied for the making of a connection to the water supply scheme.
7. Before development commences, the applicant shall pay to Clare County Council a contribution towards the expenditure incurred by the Council in providing the public sewerage scheme in the area which work will facilitate the proposed development. **The contribution shall be calculated at the standard rate applying at the time of payment.** The current rate is €850.00 per dwelling. This sum is separate and in addition to any fees that might be levied for the making of a connection to the water supply scheme.
8. Before development commences, the applicant shall pay to the Council a contribution towards the expenditure incurred by the Council in providing recreational/community facilities in the area. **The contribution shall be €50,000. This is subject to annual review.**
9. The developers shall notify the Planning Authority of progress on the various stages of construction of roads, sewers, surface water drains and other services.
10. The proposed open space area within each phase shall be harrowed, levelled, rolled and seeded with reasonable quality grass seed and made safe if necessary

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLAIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Clare,
ND2P2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planning@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.

I. 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 email: donalobyrne@yahoo.co.uk

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 residential garden 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 in respect of which 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'. The fence will be 74m

(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 Location Map

② Site Layout Plans (shown fence in green)

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property Site (including to 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, 07/2318, 07/2235 04/1301, 04/1467
(h) Date on which 'works' in question were completed/are likely to take place.	Sep' 2021

SIGNED: Gerard Fallon

DATE: 10/8/21

GUIDANCE NOTES

The 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 Chair,
New Road,
Ennis,
Co. Clare
V93DXX2

- (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:	

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

LAND OWNED by other
OUTLINED IN BLUE

DESIGNATED
"OPEN SPACE"

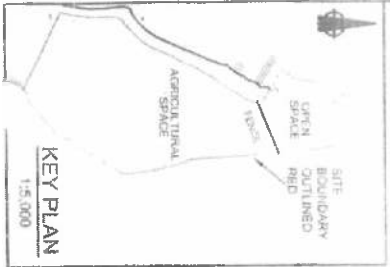
AGRICULTURAL SPACE

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

7.4m

B

A



KEY PLAN
1:5,000

1/10/21

1/10/21



COMMUNITY & CARE
SOUTH AUCKLAND COUNTY COUNCIL

Registered F.S. 10

Gerald Madden
101 Progress Lane
Greengate Heights
Cape Street
Limerick

6th September 2020

Section 5 referral (reference 1921-51) - Gerald Madden

Whether the application of a tenancy law in respect of a residential property, the law, is considered to be a tenancy law for the purposes of the Residential Tenancies Act 1995.

A Chair

Under section 5 of the Residential Tenancies Act 1995, the Residential Tenancies Board is required to determine whether a residential tenancy law applies to a residential property.

The Planning Department has reviewed the application and the findings are as follows:

Where a residential tenancy law applies to a residential property, a declaration may be made under section 5 of the Residential Tenancies Act 1995 for review by the Residential Tenancies Board. Details of the declaration are as follows:

More information

Anna O'Sullivan

Anna O'Sullivan
Staff Director
Planning, Community
Economic Development

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

Reference No.: R21-51



Comhaltas Ceannas na nGairde
Clare County Council

Section 5 referral Reference R21-51

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

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. The proposed fence, would not be exempted development as it would contravene conditions of a planning permission, namely conditions number 1 and 2 of planning permission granted under planning reference number H/02/2000, and therefore the restriction on exemption under Article 9(1)(e) of the Planning and Development Regulations 2001, as amended, applies in this instance.
- iv. By reason of the said fence and being a land habitually occupied by the applicant during the ten years preceding such erection & enclosure of the land, the subject development, by virtue of the provisions of Article 9(1)(e) of the Planning and Development Regulations, 2001, is not exempted development pursuant to the provisions of Article 9(1)(e) of the Planning and Development Regulations, 2001, as amended.

THEREFORE The Planning Authority exercise of the powers conferred by Section 10 of the Planning and Development Act 2000 (as amended) hereby resolves that

The proposed grant of a licence to [redacted] at [redacted] Westbury, Co. Clare for residential development within the residential development as defined within the Planning and Development Act 2000 (as amended) and local planning regulations.


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

6th September 2011

Brief History of Section 5 applications for a proposed FENCE at Westbury, Co. Clare

- We initially applied for a Section 5 application to seek planning exemption for the Fence in Jan' 2020. The proposed fence was in two parts as shown on the map in the application.
- Clare County Council refused this section 5 application saying (i) the Fence would result in fencing of land habitually open to the public for the previous 10 years, (ii) The Fence contravenes Condition 5 of P02-2035, which stated "no development shall occur in the Open Space area to south....."
- We appealed this decision to An Bord Pleanala in Mar 2020 arguing that it was not Open Space, nor was it open to the public for 10 years.
- An Bord Pleanala upheld the Council's decision saying that we had no proof that the land was not habitually open to the public in the past 10 years.
- In Jan' 21 we applied for a Section 5 again for a Fence in a different position that was outside of the 'Open Space' area.
- The Council refused this section 5 application again for the same reasons as previous application despite the fact that the position of the fence was outside the 'Open Space' area.
- We appealed it to An Bord Pleanala but we missed the deadline by a day.
- In Oct. we applied again to the Council with the same application but also included extra information clearly explaining why the Council had misread their planning decision as detailed in part (iii) of the refusal.
- On the 15th Nov the Council refused again with the same reasons as the previous refusal, but this time omitted the part (iii). We now wish to appeal this decision.

Why we think the Council are wrong about their last decision are as follows:

- (i) The land was in receivership and under the protection of the high court and so one should not be able to establish right of ways over the land as established by supreme court decisions (Gore/Booth estate, Mayo)
- (ii) There are no registered right of ways through the land
- (iii) Most of the land is covered in scrub and would not have been physically able to use for recreational purposes
- (iv) The developers/liquidator under the supervision of Clare County Council constructed a 400m fence on the west of the property without going through formal planning process.

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. We are giving you an opportunity to reassess your documentation and decision before we apply for leave to appeal to the high court to judicially review the decision you have made in relation to our fence.

Surveyed 1903-1984
 Revised 2015
 Levelled 1975

Land Registry Compliant Map



60814

UTM CENTRE BY COORDS
 598620.858888

DESCRIPTION

MAP SHEETS
 1:2500
 4682-B 4682-D



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LAND REGISTRY MAP

County Clare

Map No. 4682-B 4682-D

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

Site Area:
 0.064Ha (1.33ac) or thereabouts

SIGNED:
 (BCA Consulting Engineers Ltd.)
 Paul Bourke B.E. Dip APM, C.Eng
 2/5/2017

Land Registry Use Only



Plot Ref. No. 19714321_1_1
 Plot Date 12-MAY-2012

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

LAND OWNED by other
OUTLINED IN BLUE

DESIGNATED
"OPEN SPACE"

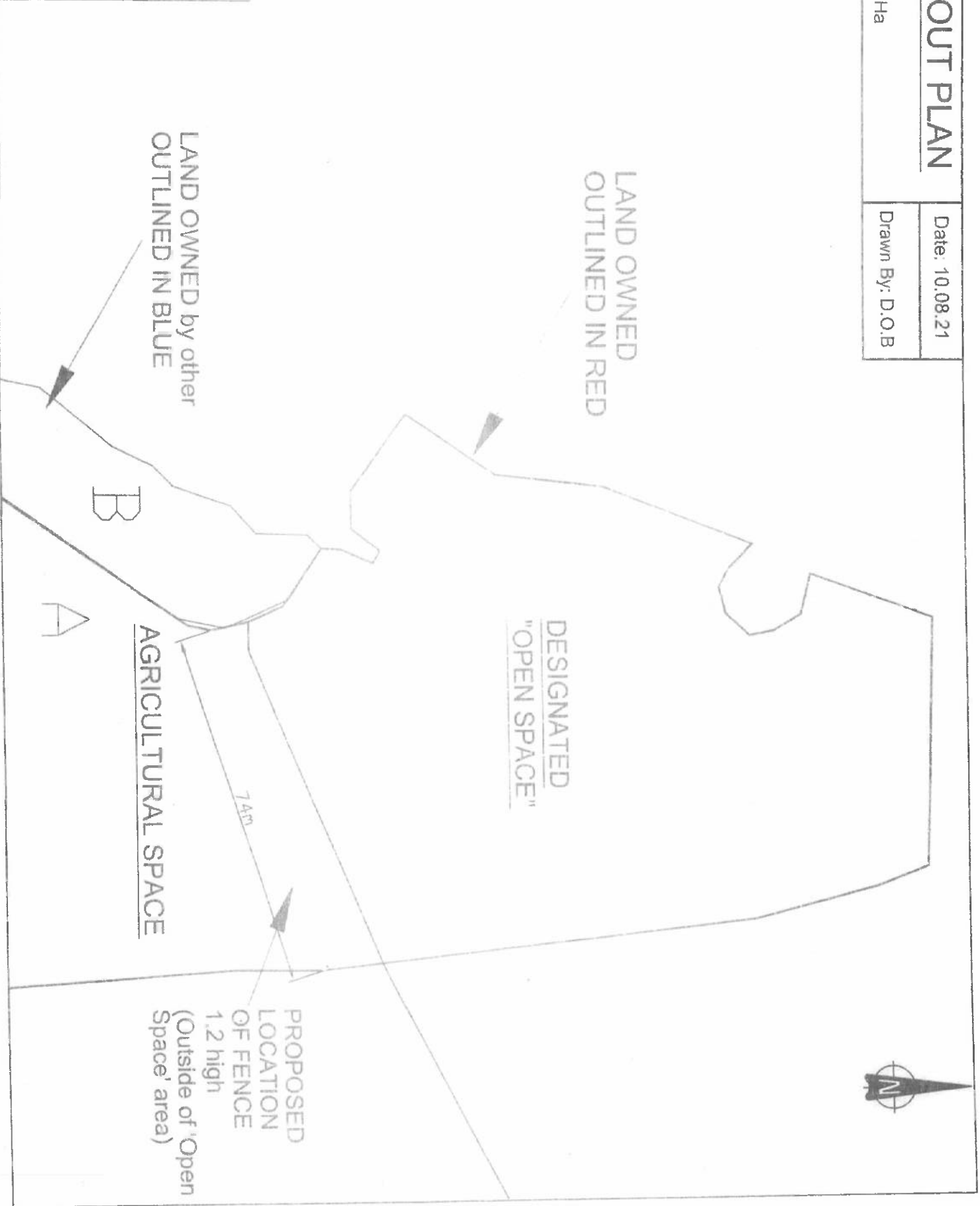
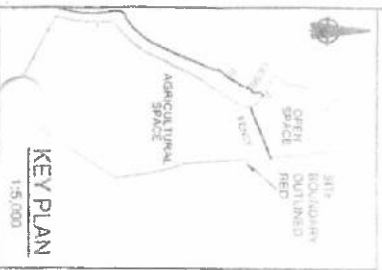
AGRICULTURAL SPACE

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

7.4m

B

A



Surveyed 1993-1994
 Revised 2015
 Levellod 1975

Land Registry Compliant Map



LAND REGISTRY MAP

County Clare

Map No. 4682-B 4682-D

The Extent of the site is outlined in RED
 marked "A" Closing

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

SIGNED: *[Signature]*
 (BCM Consulting Engineers Ltd.)
 Paul Rogan B.Sc. Dip. APML, C. Eng.
 21/06/2015



TRICENTRE PT. COCKROD
 550820.658868

DESCRIPTION

MAP SHEETS
 1:2,500
 4682-B 4682-D

OSI Authorized Internet Map

Map produced by OSI for the
 Department of Lands, Planning
 & Construction, Dublin City Council
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 in this map are reserved by OSI
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Land Development Jan. 2009

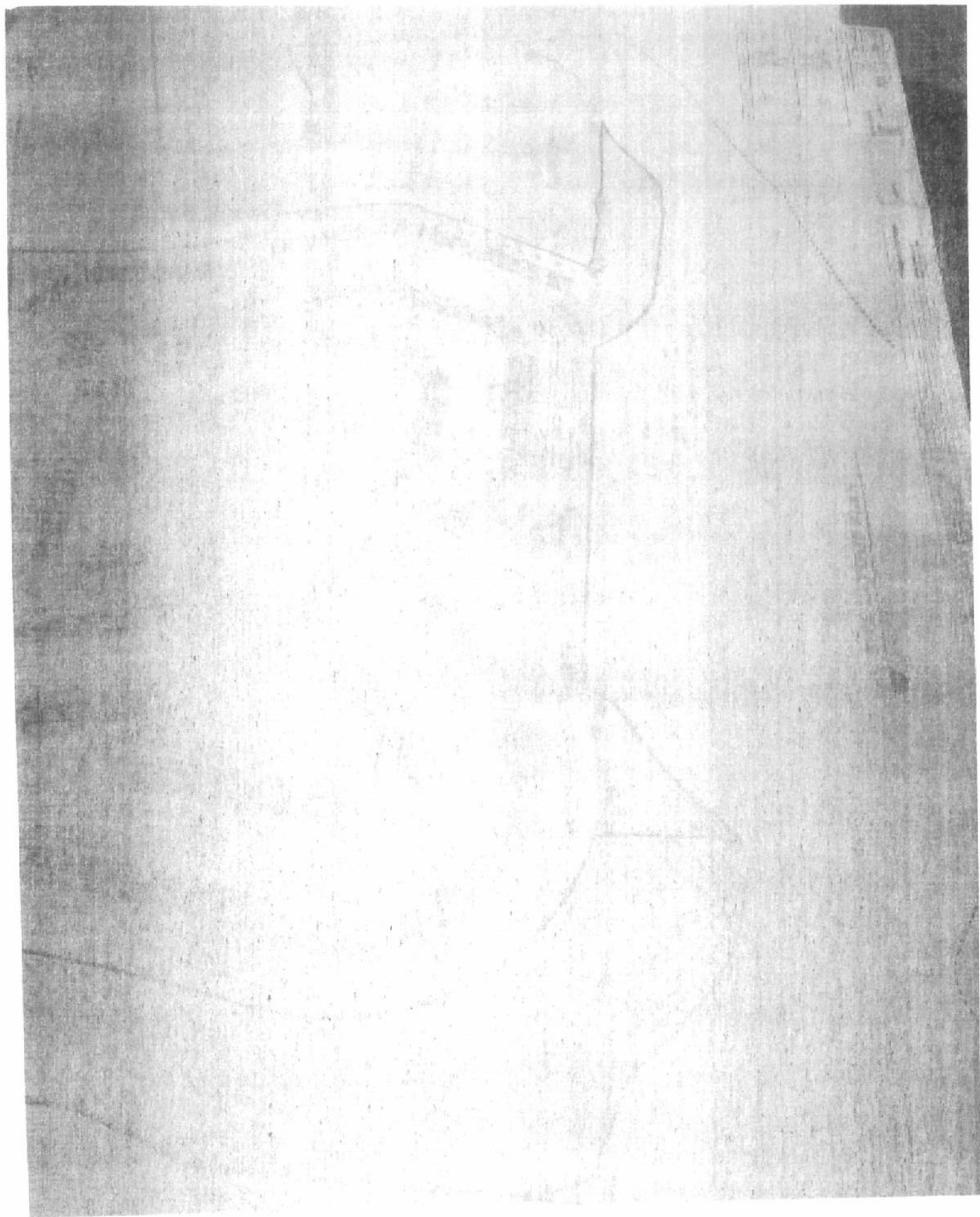
Land Registry Use Only

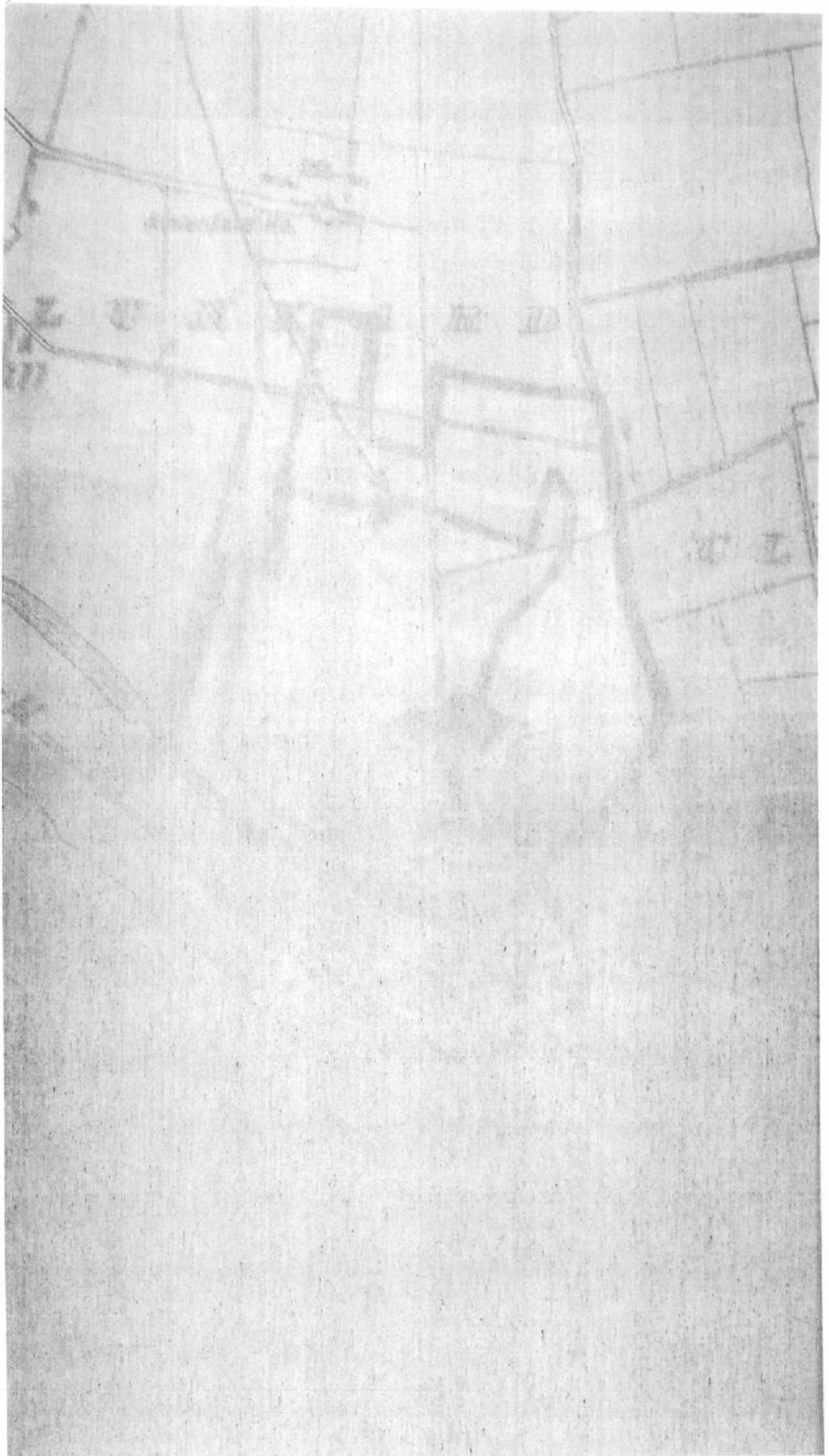
Scale: 1:2,500
 Scale: 1:2,500



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







P07

GLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLAIR

Planning Department,
 Economic Development Directorate,
 Clare County Council,
 New Road, Boalis,
 Clare,
 Co. DAV.

Telephone No. (065) 6821616
 Fax No. (065) 6892071
 Email: planning@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.

I. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	Gerard Madden L.M. Properties Ltd Greengate House Carr Street Limerick
(b) Telephone No.:	XXXXXXXXXX
(c) Email Address:	XXXXXXXXXX
(d) Agent's Name and address:	Donal O Byrne Greengate House Carr Street Limerick email: donalobyrne@yahoo.co.uk

2. DETAILS REGARDING DECLARATION BY THE HOUGHT

(a) PLEASE STATE THE SPECIFIC REASON FOR WHICH A DECLARATION IS NECESSARY

Sample Question

Is the proposed development in high at
risk of flooding or other natural hazards

Answer: Yes, the proposed development is in high at risk of flooding

The proposed development is in high at risk of flooding
due to the proximity of the development to the
river. The development is located on the
left bank of the river and is only a few
meters from the water. The river is subject
to frequent flooding and the development
is at risk of being inundated.

* Please provide a detailed description of the subject

(c) List of plans, drawings, etc. to be submitted

(Note: Please provide a site plan of the proposed development and a map of the site showing the location of the proposed development on the site)

- ① Site layout plan showing the proposed development
- ② Site plan showing the proposed development
- ③ Insurance certificate for the proposed development
- ④ copy of site plan showing the proposed development
- ⑤ copy of site plan showing the proposed development
- ⑥ order of works for the proposed development

3. If the decedent was a resident of the United States at the time of death, enter the following information:

(a) Postal Address of the home to which the decedent returned which the decedent owned: 1000 St. Charles Ave
Metairie, La
70002

(b) Do the words "domicile" and "home" have the same meaning? Yes
Structure or structures owned by decedent at death: 1
Structure? Yes (If "No," enter "None")
57 of the Planning Code (Section 2041) (If "None," enter "None")
attached hereto, or is the decedent's domicile determined by the language of the will?

(c) Legal interests in real property owned by decedent at death: None
Details:

(d) If the physical interests in real property owned by decedent at death are described in the Schedule of Assets of the property, enter the following information:
None
Notes: City of Metairie, Louisiana, has a lien registered from the city of Metairie.

(e) If the decedent was a decedent of a trust, enter the following information:
None
Beneficiary: None
Trustee: None

(f) If the decedent was a decedent of a trust, enter the following information:
None
Beneficiary: None
Trustee: None

(g) If the decedent was a decedent of a trust, enter the following information:
None
Beneficiary: None
Trustee: None

(h) If the decedent was a decedent of a trust, enter the following information:
None
Beneficiary: None
Trustee: None

GUIDANCE NOTES

The following are non-exhaustive advice notes prepared by the County Council for the purpose of advising persons what information is required for a decision to be made under Section 7 of the Planning Act 2008.

- (i) The request for a declaration under Section 3 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale of 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 €20.00.
- (iii) If submitting any additional plans/report 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,
Anne Conroy, or Cathie,
New Road,
Ennis,
Co. Clare
92/ENNS

- (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 assist the Authority to make a declaration on the question.
- (vi) The Planning Authority may also require other relevant information on the question which has arisen and on which the declaration will be given.

FOR OFFICE USE ONLY

Date Received:

Fax No.

Date Acknowledged:

Reference No.

Date Declaration made:

CEC No.

Decision:



Southend Road

Gérard Martin
I.M. Properties Ltd
Greenwich Road
Can Street
London

15th November 1977

Section 5 of the Town and Country Planning Act 1968

Is the section 5 application for the proposed development of the site at 15th November 1977.

A Query

I refer to the section 5 application for the proposed development of the site at 15th November 1977.

The Planning Committee has considered the application and has decided to grant the application subject to the following conditions:

When a development is carried out in accordance with the conditions of the section 5 application, the applicant shall be responsible for the provision of the following details:

1. A site plan

Yours faithfully

Alan Morgan
Staff Officer
Planning Department
Economic Development

A. Morgan

The first

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